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Europeans Disagree Over Human Rights Conditions at Home

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HUMAN RIGHTS

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BRIEF

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Human Rights and Environmentalism: Forging Common Ground

by Gabriel Eckstein & Miriam Gittlin

At its annual meeting held in February and March of this year, the United Nations Commission on Human Rights declined to adopt the recommendation of Special Rapporteur, Madame Fatma Zohra Ksentini, of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, to appoint a Commission-level rapporteur to investigate the link between human rights and the environment. This nonfeasance was due in great part to the reluctance of industrialized nations to unite human rights and environmental protection efforts within a common agenda. Instead, the Commission called for the Secretary-General to conduct further study of the issues raised in the Special Rapporteur's report. Many environmental and human rights organizations were disappointed by this outcome as they considered the substantive aspects of the report to have been already fully discussed.

Since the early 1970s, the international community has widely acknowledged the nexus between human rights and environmental protection. References to this association, and even to a human right to some minimal quality of environment, can be found in numerous international instruments. The Stockholm Declaration

on the Human Environment, for example, proclaims that human beings have the "fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being." Similarly, the Additional Protocol to the American Convention on Human Rights states that "everyone shall have the right to live in a healthy environment."

Despite this widespread acknowledgment of the relationship between human rights and environmental protection, the convergence of these two ideals has remained primarily as an academic issue. On the practical level, efforts to develop a comprehensive strategy for addressing common themes, by both human rights and environmental activists, have been overshadowed by the individual needs and goals of each community.

Much of the difficulty in developing a cooperative initiative centers on the differing perspectives from which activists from both fields view the salient issues. Many human rights proponents contend that environmental protection can only be properly regarded as subsumed within the rubric of human rights law. Although environmentalism is aimed at preserving the world's flora and fauna, human rights activists contend that it is humankind which is the ultimate beneficiary. On the other hand, contemporary environmental philosophy rejects this anthropocentric bias towards the individual, arguing that such utilitarian views of environmental protection would submit all non-human

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As a result of intense controversy over the content of the European Parliament's (EP) draft of the annual human rights report for 1993, the Parliament's President, German Social Democrat Klaus Haensch, recently agreed with the leaders of EP factions to withdraw the report from open debate on the floor of the Parliament. Although the controversial report was passed as a draft by the Parliament's Committee for Domestic Affairs in December 1994, and had already been widely discussed by the European media, it was declared confidential and is no longer available for public dissemination.

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The EP annual report is a comprehensive overview of human rights conditions in the European Union, as well as in the world in general. In recent years, similar reports and other declarations on the issue of human rights, adopted by representatives of the European Union's 15 Member States in the EP, have caused ideological disputes and controversies within the European institutions.

The draft report concerning the situation in the Union, which was mainly formulated by Socialist, Communist, and Green members of the Parliament, states that the EP "is disturbed over indications of maltreatment in police custody and

The controversial report was declared confidential and is no longer available for public dissemination.

prisons in connection with racist prejudices, which are aimed directly at asylum seekers, citizens from non-member countries or ethnic minorities in several Member States." It further states that "the Union is not credible if it calls upon the developing countries to obey human rights, although several million people in the Union live in fear of being verbally or physically maltreated or systematically molested because they are considered to be different." The draft also calls for a general amnesty for crimes committed by members of the Stasi, the former powerful East German secret police.

The draft, consisting of 140 points, drew criticism from several directions, mainly from conservatives. They argue that with this report, the EP is trying to address domestic issues such as refugee law, asylum law and questions of ethnic minorities at the supranational European level, which is not within the Parliament's mandate. Furthermore, many politicians are disgruntled by the "inflation of human rights declarations in the European Parliament," according to one member of the EP.

Behind the dispute over the report, however, lies a much more fundamental conflict over how Europeans should define human rights, and in particular, whether human rights include second-generation social rights or even collective third-generation rights.

The EP, whose legislative power includes mainly veto but no initiative

rights, is following a broad and extensive interpretation of human rights that is



supported mainly by socialist and social-democratic parliamentarians. It includes poverty, unemployment, rights for women, children, the disabled, refugees and immigrants as well as ideas of "third generation human rights" (e.g. right to peace, development, environment and solidarity rights). In a 1989 Declaration of Basic Rights and Basic Freedoms, the EP listed a catalog of rights that included several social rights and a call for environmental protection. In its 1992 report, the Parliament demanded the implementation of a system to guarantee minimum standards of housing, social security and medical treatment—areas which are indispensable for human habitation, but which require intensive governmental measures.

Although the European Court of Human Rights has limited its jurisprudence to the scope of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, the Court takes a progressive attitude toward the issue of human rights. It is regarded by many as the most progressive court in Europe for the development of social human rights. Although social rights were deliberately omitted from the Convention, the Court has ruled on several occasions that the Convention is a "living instrument which must be interpreted in the light of present-day conditions" and has extended its interpretation to include social rights wherever possible. The Court, however, has made it clear that it can only interpret the Convention, not create new

rights: "The evolutive interpretation of the Convention can only concern those areas with which it deals. The Convention is a selective instrument adopted to guarantee certain human rights ... Therefore, the interpretation cannot be so dynamic as to amount to the invention of new rights not guaranteed by the Convention." For this reason, the Court only recognizes those social rights which have their foundation in the Convention. Nevertheless, within this framework, it is willing to interpret the rights broadly. This approach shows that the Court is dominated by a majority of judges from civil law countries who see their role more in interpreting rather than making law.

The European Commission for Human Rights reached a similar conclusion when it stated that while some articles of the Convention "may require positive action from contracting states in certain circumstances, it is inevitable that when questions of policy and implementation arise, considerable discretion must be left to the policy maker."

Some national courts in Europe have a similarly reluctant approach, if not more so, towards social and cultural rights. For example, the German Federal Constitutional Court, the Bundesverfassungsgericht, has stated in the past that "the

"The Union is not credible if it calls upon the developing countries to obey human rights, although several million people in the Union live in fear of being verbally or physically maltreated."

more a modern state is turning to social security and cultural promotion of its citizens, the more the demand of a civil rights guarantee as a participatory right of the individual to receive state measures and benefits steps beside the primary goal of assuring basic civil liberties in the relationship between the citizens and the government." The Court, however, noted that "generally, one has to recognize that even in a modern social state, it is left to the decision of the legislator, who can not be challenged in court, if and how the state will grant active (social) rights."

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The European Council, as the main decision-maker in the Union, has made it clear that it does not intend to make rights one of its major policy issues within the Union. For example, the European Union has not yet adopted the European Convention of Human Rights,

"It is not acceptable to report about the human rights situation in the Union the same way as on the situation of human rights in totalitarian developing countries. We are not in Bangladesh."

although the EP has demanded that it do so many times. The European Union has also accepted the European Social Charter, but only as a politically, rather than a legally, binding document, and therefore no rights can be drawn from this document. And most recently, the Union set aside questions of human rights for economic and other political reasons to reach an agreement with Turkey for a customs union.

Conservative parties in the EP share and even go beyond the Council's position. Some EP-members, like German Christian Democrat, Hartmut Nassauer, take the view that the Parliament's human rights reports and declarations are a "door-opening of ideologising human rights. It must be clear that human rights first of all mean civil liberties and that there is still a difference between murder, racism and torture on the one hand, and the question of providing payable housing or adequate jobs on the other hand. It is not acceptable to report about the human rights situation in the Union the same way as on the situation of human rights in totalitarian developing countries. We are not in Bangladesh."

Center Hosts Conferences

On April 10–11, 1995, the Center for Human Rights and Humanitarian Law and the American Red Cross, in cooperation with the International Committee of the Red Cross, hosted the Conference on International Humanitarian Law. Experts and scholars addressed key issues relating to the contemporary rele-



Representative of the UN Secretary General on Internally Displaced, Francis Deng, addresses International Humanitarian Law Conference

vance of international humanitarian law, with respect to UN peacekeeping activities; the gathering of evidence of humanitarian law violations; international displaced persons in armed conflicts; belligerents' duty to avoid civilian casualties; and the enforcement of humanitarian law by states and the international community.

On April 13, 1995, the Center, the International Legal Studies Program, and the Washington College of Law sponsored the second annual Conference on the Inter-American System for the Protection of Human Rights. The Conference convened jurist, diplomats, and human rights activist to analyze human rights violations in this hemisphere and the institutional response to these violations.

A complete review of the conferences was not possible in this issue of *The Human Rights Brief* due to publication deadlines.



(left to right) Marco Sassoli, Deputy Head, Legal Division, ICRC; A.B. Clapman, Amnesty International, New York; Roy S. Lee, Principal Legal Officer, United Nations, New York; Lt. Steven Lepper, Deputy Counsel to the Chairman, Joint Chiefs of Staff, Pentagon, discussing humanitarian law and UN peacekeeping operations at the Humanitarian Law Conference



Keynote speaker, Sonia Picado, Ambassador of Costa Rica to the United States, discusses human rights issues with conference participants at the Conference on the Inter-American System for the Protection of Human Rights



(left to right) G.J.H. van Hoof, Chairman, Netherlands Institute of Human Rights; Judge Antonio Cançado Trindade, Inter-American Court of Human Rights; Alvaro Tirado Mejía, President, Inter-American Commission of Human Rights; and WCL Dean Claudio Grossman, at the Conference on the Inter-American System for the Protection of Human Rights



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