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SPEECH

PRACTICAL CONSIDERATIONS ON HUMAN RIGHTS WITHIN THE OAS CONTEXT

Val T. McComie*

It gives me great pleasure to participate in this important seminar on the Inter-American Human Rights System. I was delighted to accept the invitation of my good friend, Professor Claudio Grossman, to speak to you today, because we of the Organization of American States (OAS)¹ are very proud of our achievements in the promotion of respect for human rights.

The successive steps which have been taken to institute a juridical system of human rights in the Americas, starting with the American Declaration of the Rights and Duties of Man in 1948² and leading up to the American Convention on Human Rights (Convention),³ have affirmed the commitment of the governments and peoples of this hemisphere to accept respect for human rights as the foundation of social peace and well-being.

This year we are pleased to commemorate the tenth anniversary of the coming into force of the Convention which has already proved to be

* Assistant Secretary General, Organization of American States. Ambassador McComie delivered this speech on October 28, 1988 at the Second Conference on the Inter-American Human Rights System at the Washington College of Law, The American University.

1. Charter of the Organization of American States, April 30, 1948, 2 U.S.T. 2416, T.I.A.S. No. 2361, 199 U.N.T.S. 3, Protocol of Amend. Feb. 23, 1967, 21 U.S.T. 607, T.I.A.S. No. 6847 [hereinafter OAS Charter].

2. American Declaration on the Rights and Duties of Man, adopted May 2, 1948, by the Ninth International Conference of American States, Bogota, Colombia [hereinafter American Declaration], *reprinted in* BASIC DOCUMENTS PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM 17, OEA/ser. L./V/II.71 doc. 6 rev. 1 (1987) [hereinafter BASIC IACHR DOCUMENTS].

3. American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, at 1, OEA/ser. L./V/II.23, doc. 2 rev. 6, 1, O.A.S.O.R. OEA/ser. K./XVI/I.1, doc. 65 rev. 1 corr. 2 (1970), *reprinted in* 9 I.L.M. 673 (1970), also *reprinted in* BASIC IACHR DOCUMENTS at 27.

an effective shield for the protection of human rights. Indeed, the Convention is now being recognized as the most important instrument in the Inter-American system, because it deals with the fundamental question of the relationship between the people and their government.

Traditionally, most international treaties and covenants have tended to deal with relations between states by defining their rights and duties. The impression given is that the rights of individuals is subordinate to the rights of the state. However, as the American Convention states in its Preamble, "the essential rights of man are not derived from one's being a national of a certain State, but are based upon attributes of the human personality."⁴

The conclusion to be drawn is that the basic rights of human beings pre-date the existence of the state, and they are of a higher moral order than states' rights. It should be borne in mind that the state is a juridical abstraction. States are formed and governments exist, because society's evolution reached a point where there is a need for a formal structure to ensure a juridical order in which individuals can exercise their rights without detriment to other people's rights. Therefore, the primary responsibility and duty of the state is to guarantee the human rights of the citizens. However, the observance and respect for human rights is not just the responsibility of the state and the government, it is also the responsibility of the society as a whole. When human rights are violated, a crime is committed against human solidarity. It is then the people's right and duty to react by adopting appropriate measures to correct the wrong.

It is against this background that I have come to visualize the Organization of American States⁵ as an organization of the people; because it is in the name of the people that our member states incorporated themselves and signed the Charter. That is why I think it must be understood that any failure to react against human rights violations anywhere in the hemisphere is a breach of the mandate which the organization received from the people.

Having established for you the premises for my understanding of the primacy of human rights in the national and international juridical and moral order, let me state categorically that I believe that the Inter-American System⁶ has had a distinguished record of service in the defense of human rights. I do not think I need to expatiate before such a

4. *Id.*, Preamble.

5. OAS Charter, *supra* note 1.

6. American Convention, *supra* note 3, art. 33. Article 33 establishes the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights as competent organs of the Organization of American States. *Id.*

specialized and enlightened audience on the work of the Inter-American Commission of Human Rights.⁷ Its brilliant record speaks well for itself, and the support, both moral and financial, which this organ is receiving from the governments of the region is proof positive of the respect it enjoys for its objectivity and impartiality.

The Inter-American Court of Human Rights,⁸ the youngest of the monitoring mechanisms and perhaps the most difficult for a state to accede to, because of the sensitivity of states about safeguarding their sovereignty, has already achieved some distinction in its short existence. I note with great satisfaction that the study of the first cases and possible jurisprudence that may derive from these decisions, figure prominently in your seminar, and I congratulate you all for that.

I also wish to underscore the importance the OAS attaches to the codification and progressive development of international law with respect to human rights. In recent years, a number of legal instruments have been adopted which I am pleased to draw to your attention.

First, in 1985, the OAS General Assembly adopted the Inter-American Convention to Prevent and Punish Torture.⁹ Second, this year at the OAS General Assembly which will be held in San Salvador,¹⁰ the states parties to the American Convention are expected to adopt and sign an Additional Protocol of Economic, Social, and Cultural Rights.¹¹ The adoption of the Protocol affirms the belief of the OAS member states that a decent standard of living is a fundamental human right. It is an achievement of the system that a Protocol was adopted to complement the Pact of San Jose rather than the adoption of a second convention. Third, pursuant to an initiative of the Commission and the Government of Uruguay, a new protocol will be drafted calling for the abolition of the death penalty.¹² Lastly, on the Commission's initiative a draft Inter-American Convention on Forced Disappearances¹³ will be

7. *Id.*

8. *Id.*

9. Inter-American Convention to Prevent and Punish Torture, AG/Res. 783 (XV-O/85) 46-54, OEA/ser. P./AG doc. 2023/85 rev. 1 (1986).

10. The 1988 General Assembly of the Organization of American States was held in November 1988 in San Salvador, El Salvador. Ambassador McComie's speech was given on October 28, 1988.

11. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, OEA/ser. P AG/ doc. (signed Nov. 19, 1988) 2325/88 rev. 1 (1988).

12. Additional Protocol to the American Convention on Human Rights to Abolish the Death Penalty, OEA/ser. P AG/doc. 2336/88 rev. 1 (1988).

13. See Draft Inter-American Convention on Forced Disappearances, Annual Report of the Inter-American Commission on Human Rights 1987-1988, OEA/ser. L./V/II. 74, doc. 10 rev. 1, 346 (1988) (pointing out that in its resolution AG/Res. 890 (XVII-O/87), the General Assembly invited member countries to submit observations

presented to this year's General Assembly for further action.

The proliferation of non-governmental and governmental human rights groups and organizations during the past dozen years, and the concomitant publicity generated by their work, have contributed enormously to a greater universal awareness of the obligations of governments and other social institutions to respect the rights of the individual. The work of these entities in monitoring the respect or abuse of human rights at the national level, has been invaluable in maintaining violations at a minimum. However, this favorable trend has been paralleled by an alarming upsurge in the incidence of violence against the individual that has put a severe strain on the forces of law and order and threatens to undo the very fabric of our societies. I should like to examine briefly some of the factors that represent threats to the enjoyment of human rights and pose problems for those entrusted with the responsibility of protecting human rights.

The first of these factors is the phenomenon of terrorism and the tremendous challenge and dilemmas it poses for the police forces and other law enforcement agencies. Terrorism as a phenomenon is not new in the hemisphere. Indeed, since the first generalized appearance in the 1960s, when some groups in society did not feel that the available constitutional means allowed for adequate redress of their grievances, or because of outright criminal attempts to impose their will through violence against constituted authorities or other groups in the society, terrorism has become an agonizing feature of life in many countries. In dealing with the brutality and savagery frequently associated with terrorism, traditional law enforcement agencies often proved inadequate, and governments have had to resort to militarizing their response. In the resulting crossfire, the human rights of civilians are the first unfortunate casualty.

The next step has usually been to call upon the military forces themselves to address the problems of terrorism. Terrorists, in turn increase their own military power and the vicious circle begins to generate increasing pressure upon law enforcement agencies. The military, as you well know, is not generally trained or equipped to deal with violations of the law committed by their own nationals. So the result is an exaggerated number of abuses and violations of the human rights of all involved. One of the most sinister side-effects is the emergence of paramilitary groups from all angles of the ideological spectrum, whose major purpose is to shield their identity from public scrutiny in order to commit violent acts. New and heretofore rare and cruel forms of abuse

and comments aimed at producing a draft convention).

of the rights of the individuals such as "disappearances" have emerged to further complicate the picture.

By the late 1980s, another frightening phenomenon appeared in the form of armed violence committed by the drug traffickers and related criminals. The huge profits generated by this illicit trade, its strange alliance with the forces of terrorism and the opportunities for corruption this engenders, have wreaked havoc with many of the law enforcement agencies of the hemisphere, and shaken the very foundations of the judicial process and respect for the rule of law.

Throw into the equation the easy availability of weapons and the hemispheric tolerance of the so-called right of citizens to bear arms, and one begins to understand the chaotic situation of many societies in our hemisphere. This dreary panorama is further obscured by the fact that for many of the more industrialized countries in the region, the arms industry has become a major export-oriented growth industry. In this regard, one must welcome the initiative of the Government of Colombia in introducing the topic of the illicit traffic of arms on the agenda of the forthcoming OAS General Assembly.

Confronted by these extremely difficult circumstances, it could even be argued that it is much more difficult for an elected democratic government to protect and defend the rights of all its citizens when faced with the seemingly insurmountable levels of violence I have just attempted to describe, than it is for an authoritarian regime. As we have seen in some well publicized cases, the under-financed security forces of the state often prove to be no match for the corruptive power of well-funded criminal enterprises.¹⁴ In this relentless struggle, respect for human rights is too often disregarded by all the parties involved.

And yet, it is to governments that we must first attribute responsibility for protecting the rights of its citizens. But in the process, we cannot tolerate abuses of human rights by governments; for it is governments who are called upon to uphold the rule of law and safeguard the ethical standards of a society.

But this by no means excuses society itself from shouldering its own responsibility for monitoring and denouncing the violations of the rights of those charged with upholding and enforcing the law. We must begin to encourage the creation and operation of more non-governmental

14. Colombia has been particularly hard hit by this criminal activity. *Colombia Sets State of Siege After Murder*, Wash. Post, May 2, 1984, at A16. Drug traffickers have been accused, among other instances, of participating in the violent seizure of the Supreme Court, that resulted in the assassination of half the Justices of the Court. *Id.* Drug traffickers have also been held responsible for the killing of Minister of Justice Rodrigo Lara Bonilla, and Attorney General Carlos Mauro Hoyos. *Id.*

monitoring agencies which will also be critical of the violations of the rights of the public officials and the judges who represent the front-line forces that struggle against this escalation of violence.

This is a lacuna in the area of human rights which needs to be filled rather urgently. Society's responsibility for the protection of human rights must be squarely addressed. This objective can only be realized if we deal with the whole question of political, economic, and social injustice which are the root causes of violence.

In this context, I would like to focus on three specific aspects of the question:

It is impossible to end the use of violence by individuals who attempt to redress imagined or justified wrongs, so long as the international community fails to devise adequate means to control and sanction the use of force and violence to settle disputes. Mutual respect for the rights of others, tolerance for cultural differences and belief in representative institutions are the major vehicles for alleviating the tensions that find expression in violence.

Society must set high moral and ethical standards to govern relations among all its citizens. But this is particularly important for officials charged with carrying out the public trust. Government officials, the police, customs-agents, etc., must be tempered to resist the corruption of criminals as a first step in stemming the corrosion that leads to abuse of human rights. This imposes on society the obligation to pay these officials a decent living wage to enable them to resist temptation.

We must recognize that most of the natural substances from which narcotics are produced are derived from agricultural products. Indeed, in some instances, these agricultural products are alternate crops to the traditional primary products which no longer command fair and remunerative prices in world markets. If, therefore, we hope to wipe out the scourge of the production, consumption, and traffic in narcotics that lead to so many abuses of human rights, we must also address the question of how to guarantee our farmers equitable prices for their traditional food crops.

In conclusion, I would like to reaffirm my faith in the goodness and wisdom of the people. I am proud that the American Convention on Human Rights provides a means of guaranteeing respect for the human rights of all the peoples of the hemisphere as the foundation of justice and social peace. I call on each one of you present here today to enlist in the crusade on behalf of the worthy cause of transforming the principles of the Convention into reality in our daily lives.