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BRIEF

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Report Exposes Problems within Peru's Judicial System

by Antonio Maldonado and Diego Rodríguez

The last issue of *Human Rights Brief* reported on the appointment of WCL's International Legal Studies Director, Professor Robert K. Goldman, to a commission of international lawyers charged with evaluating the Peruvian judiciary in the wake of the April 5, 1992 auto-golpe by Peru's president Alberto Fujimori.

The commission, created by an agreement between the United States and Peru, was established to evaluate measures and procedures affecting judicial independence and defendants' due process rights within the framework of Peru's judicial system. In addition, the commission was to examine Peru's draft constitution in order to determine whether these issues were adequately addressed.

According to the commission's comprehensive report, released at a March 31, 1994 press conference at The American University, the Peruvian judicial system's treatment of terrorism and

treason cases is "seriously flawed and is at odds in many key respects with Peru's international legal obligations."

In evaluating Peru's judicial independence and due process guarantees, said Professor Goldman, "we have not held the government of Peru to 'idealized' standards or to our own notions or predilections concerning the proper administration of justice." According to Professor Goldman, the commission assessed Peru's judicial independence and due process guarantees with obligations mandated by treaties freely ratified by Peru, as well as with standards set forth in various resolutions and declarations adopted or recognized by international bodies, such as the United Nations and the Organization of American States.

In its assessment, the commission recognized the government's right to react forcefully against violence and terrorism by opposition groups, such as Shining Path (Sendero Luminoso), in a form "consistent with the rule of law," said Professor Goldman. But the report noted that Peru was obligated to act within the confines of international law, stating that the government does not have "unlimited license in the methods it chooses to quell dissident groups and maintain public order."

The report criticized President Fujimori's "reorganization of the judicial power," concluding that it ceded to the executive a "virtual unchecked exercise of the prerogatives of nominating, confirming, promoting and removing judicial personnel." It noted that following

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Farer Explores Lessons of Somalia

by Fatimah A. Mateen

The last of the U.S. troops have pulled out of Somalia leaving behind a tragic legacy: countless Somalis dead, 26 U.S. servicemen killed, 24 Pakistani peace-keepers massacred in a single day, and General Mohamed Farah Aided, the man believed to be responsible for much of the carnage, still on the loose.

As the United Nations licks its wounds, received in its ill-fated Somalia mission, Professor Tom Farer, Director of The American University's Joint Degree Program between Washington College of Law and the School of International Service, is pondering the question 'what went wrong?'

Last year Professor Farer was retained as a legal consultant to the Director of

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Gabriel Eckstein



Members of the commission Jose Raffucci, (left), and Professor Robert Goldman, at the March 31, 1994 press conference during which the commission's report was made public.

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the transfer of power, a substantial number of Supreme Court justices, judges and prosecutors were dismissed, amounting to a "wholesale purge of judicial personnel involved in every aspect of the administration of justice."

The report also expressed concern about the fairness of using anonymous judges in terrorism cases, stating that the anonymity deprived defendants of the right to know whether the judge possessed adequate legal training and experience. It further asserted that anonymity in the judiciary violated defendants' right to be tried by an impartial court as defendants challenge judges thought to be biased or partial. The commission recommended that Peru repeal those laws preventing defendants and their defense counsels from identifying judges and prosecutors, and those which limit defendants' right to be presumed innocent until proven guilty.

The commission further found that the language of Peru's anti-terrorism laws were too broad and permitted law enforcement officials to regard almost any violent act as a crime of terrorism. It also concluded that the definition of the crime of treason was similarly overbroad, involving virtually identical conduct to that proscribed by anti-terrorism laws. Unlike terrorism cases, though, the report pointed out that treason cases are tried by military tribunals

applying "extremely summary procedures."

The commission recommended the reform of Peru's legislation pertaining to treason and terrorism. Specifically, it concluded that the definition of the crime of terrorism should be re-drafted in language that clearly and precisely defines the unlawful conduct, and that the Peruvian government repeal laws that allow military courts to try civilians for the crime of treason. The commission additionally recommended that current treason cases be transferred to civilian courts and that the Supreme Court review military convictions of civilians charged with treason.

The commission also suggested that Peru repeal laws that permit authorities to: hold persons incommunicado, arbitrarily transfer persons held in custody, restrict individuals' right to defense counsel of their choosing from the moment of arrest or detention, and restrict the right of free and private communications with defense counsel, or which in any way limit defendants' right to examine and confront witnesses and introduce and challenge evidence during trial.

The commission's review of Peru's new constitution focused on provisions that affected the independence of the judiciary. The report expressed particular concern over the transfer of cases premised on treason or terrorism from civil courts to military tribunals, and the

authorization of the death sentence for persons convicted of these crimes. The commission concluded that these provisions violate the American Convention on Human Rights, which forbids the extension of the death penalty to crimes that were not punishable by death at the time of a state's ratification of the Convention.

"The government of Peru has taken some isolated positive measures up to this date," said Professor Goldman, "but it cannot be said that there is an improvement in the Peruvian administration of justice, according to the findings and recommendations of the commission." Goldman further noted that, "we hope that the Peruvian government, as part of its ongoing program of judicial reform, will implement the suggestions contained in our report on which it has not yet acted."

The complete report can be accessed and downloaded from The American University's INTERNET server Via FTP: [ftppub.wcl.american.edu](ftp://ftppub.wcl.american.edu) (147.9.101.22); go to [pub/intlaw](ftp://pub/intlaw) directory; log in as anonymous and use your email address as the password; type GET perueng.txt (for English text) or peruspn.txt (for Spanish text). ☉

Antonio Maldonado is a Peruvian attorney currently pursuing his LL.M. in International Legal Studies at WCL.

Diego Rodriguez, a Colombian attorney, will complete his LL.M. at WCL this spring and is currently a legal associate for Latin America at the International Human Rights Law Group.

ALUMNI PROFILE

LL.M. Alumni Fights for Free Press in Armenia

by Ayesha Qayyum

Hobhannes Asrian, LL.M. '93, returned to his native Armenia last Fall where he is currently serving as Chief Counsel for the Armenian Parliament's Standing Committee on Human Rights. Asrian spent a year in the Washington College of Law's (WCL) International Legal Studies Program focusing on the international protection of human rights. As part of his responsibilities as Chief Counsel, Asrian helps draft legislation designed to extend internationally recognized human rights to the people of Armenia. He also reviews draft legislation proposed by other committees to ensure that they do not infringe on such rights, and prepares government statements and initiates public discussions on particular human rights issues.

Recently, Asrian helped to successfully

defend the opposition newspaper *Golos Armenii* against litigation initiated by the government in its effort to close down the paper. Asrian describes his role as defense counsel in the case as "very fulfilling," though he noted that it did not particularly endear him to his government colleagues. His activities, in fact, caused a great deal of problems in his work with the Parliament. Nonetheless, Asrian considers the outcome well worth the price. He views the newspaper's continued publication as a clear indication that civil society and the protection of individual liberties have triumphed in Armenia.

In addition to his litigation work and involvement in Parliament, Asrian recently published a booklet in Armenian entitled "Human Rights in the Modern

World." Asrian's future plans are presently vague due to the unsettled political situation in Armenia. Currently, there is an ongoing debate among the political elites as to the method of adopting the country's new constitution. Asrian said the outcome of this debate could determine the direction of his personal career.

According to Asrian, the knowledge he gained during his time at WCL was extremely valuable. In particular, Asrian believes that the understanding of international human rights he acquired during his studies at WCL was instrumental to the defense of the *Golos Armenii*. Asrian considers this success as a victory also for the WCL LL.M. program as it exemplifies the excellence in education offered at the Washington College of Law. ☉