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## Farer Explores Lessons of Somalia

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# HUMAN RIGHTS

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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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UN Operations in Somalia to address issues relating to the reconstruction of that war-torn country. He was in Somalia during the June 5, 1993 attack on Pakistani UN peace-keeping forces and was asked to conduct an inquiry as to who was responsible for the massacre.

Professor Farer was assisted in his investigation by UN lawyers and a Pakistani major who acted as a liaison for the UN armed forces. They met with UN personnel and various Somalis, some of whom represented General Aided. Although Aided invited Professor Farer



Professor Tom Farer

to interview witnesses, the interviews did not take place as Professor Farer could not guarantee that some witnesses, whose names appeared on UN arrest lists, would not be taken into custody; other interviews did not go

forward because Aided agreed to make the witnesses available only as part of a "package deal."

Professor Farer concluded that there was a "strong prima facie showing that General Aided was responsible for the attack on the UN troops." His investigation revealed that Aided "had notice of where the troops would be on the day they were attacked." A day before the massacre, notice was sent to Aided indicating that an arms inspection was to occur the following day at Radio Mogadishu, Somalia's only operating radio station and one of five sites where Aided had indicated weapons were being stored. The Pakistanis were ambushed when they arrived to conduct the inspection.

"Aided had the means to carry out an attack, because the militia was under his control, and the southern portion of the city where the attack occurred was completely controlled by him," said Professor Farer. He believes that Aided was motivated out of fear that the UN would gain control of the radio station.

Professor Farer feels that the UN "mis-handled" Aided. "General Aided should have been allowed to define himself outside of the political process" and the UN should have given Aided "the benefit of the doubt until he demonstrated that he was incorrigible."

Professor Farer presented his report to the Secretary General in August 1993. "Overall, I think that the UN tried to do too much, but, its intentions certainly

were excellent" he said. He suggests that another, and arguably less costly option than deploying troops, would have been to "deploy the carrot of large scale economic assistance to those areas of the countries that had achieved peace," as a means of encouraging the warring clans to end their fighting.

Professor Farer believes that in the future, the "UN will be less likely be heavily involved in sending troops to confront local actors, and instead, will concentrate on what it has done in the past," which has been to intervene with UN troops only after receiving the consent of local officials. He believes that in order for the UN to succeed, "the Secretariat needs to vastly improve its ability to acquire information so that the UN is able to anticipate a crisis." He suggests that promotions and recruitment should be based on merit, instead of geographical quotas, that training programs for UN staff become more innovative, and that the UN become more accessible to the press and public.

Professor Farer believes that the UN has a role to play in every conflict, "whether it is providing good offices, mediation, or promoting negotiations." Farer maintains that currently, the UN's economic measures are not strong, well-coordinated or directed, though he does not place the blame on the Secretary General. "The leading economic powers, starting with the United States, have not given the Secretary General the power to coordinate international institutions, including the World Bank and International Monetary Fund."

Professor Farer believes that until the UN establishes a communications network and control over intelligence and supply, the UN will be forced to continue working with states or other organizations to respond to international disputes. "UN officers are being blamed for the UN's failure, when it is really the board of directors [UN members] who must bear a large portion of the responsibility," he contends.

Since returning from Somalia, Professor Farer has addressed a number of audiences regarding the lessons learned from Somalia, including the House Foreign Affairs Committee, key members of the Senate and House of Representatives, and scholars at Cambridge University in England.

A summary of Professor Farer's report can be obtained from the public information office of the UN. The document is called Report of Security Council in Response to Resolution 837. ☉

## WCL Hosts Conference

On April 5, 1994, the Center for Human Rights and Humanitarian Law, in conjunction with the Washington College of Law and the Inter-American Commission on Human Rights, hosted a Conference on the Inter-American Human Rights System: Defending Human Rights 1959-1994. Marking the 35th anniversary of the founding of the Commission, the Conference convened jurists, diplomats, and human rights activists from non-governmental organizations to analyze human rights violations in this hemisphere, as well as the institutional response to these violations.

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



Left to right, Heraldo Munoz, Ambassador of Chile to the OAS; Reed Brody, Executive Director of the International Human Rights Group; Harriet Babbitt, Ambassador of the United States to the OAS.



Conference luncheon speaker, Leo Valladares, member of the Inter-American Commission on Human Rights.