

HUMAN RIGHTS

Respect of human rights and integration: is harmony possible?

Summary of the conferences and discussions on Friday, September 19, 1997

Chair:	Mr. Carlos Baraibar President of the Chamber of Deputies of the Eastern Republic of Uruguay
Vice-chair:	Mr. Mario Dumont Member of the National Assembly of Québec
Speakers:	Mr. Paulo Sérgio Pinheiro Director of the Centre for the Study of Violence, University of São Paulo Mr. Rúben Ignacio Zamora Rivas Member of the Legislative Assembly of the Republic of El Salvador Mr. Diego García-Sayán Director of the Andean Commission of Jurists Board Member, Inter-American Institute of Human Rights (IHR) (In the absence of Mr. García-Sayán, the presentation was read by Madam Nancy Thede of the International du Centre for Human Rights and Democratic Development — ICHRDD.)
Secretary:	Mr. Michel Bonsaint National Assembly of Québec

Mr. Paulo Sérgio Pinheiro is Director of the Centre for the Study of Violence, University of São Paulo. He is a United Nations Special Rapporteur on human rights in Burundi. He is a professor of political science and is the author of several books on social history, human rights and violence. Recently, he taught at the École des Hautes Études en sciences sociales de Paris, at the Kellogg Institute of Notre Dame University in the United States and at the School of International Affairs of Columbia University in New York. Mr. Pinheiro was Rapporteur for the Brazilian Plan of Action on Human Rights, which was launched by President Fernando Henrique Cardoso in May 1996.

As this century ends, Latin America seems to be at a turning point in its development; one has the impression that changes are under way. However, these changes could prove to be less spectacular regarding the respect of human rights. Following the democratic transitions, it was mistakenly

expected that Human Rights, around which the resistance against military dictatorships was articulated, would be universally respected.

In nearly all the countries of Latin America, there exists a considerable gap between the letter of the law and the way in which it is enforced, despite the existence of constitutional protections in the area of human rights. Indeed, very few countries have succeeded in reforming the institutions so as to make the respect of human rights an actuality. The profound economic inequalities between citizens foster the spread of crime, the repression of which is characterized by arbitrary police behaviours most often directed toward the most vulnerable groups in society. Moreover, the police are most often considered as a tool to serve the wealthy, and do not take interest in the repression of organized crime involving the classes that hold power. In addition, the majority of the population do not truly have access to justice, which induces them to resort to violence to resolve conflicts. The democratic transitions in Latin America have not brought about any improvements either, regarding the conditions of imprisonment of inmates.

The role of the State — as a defender and advocate of human rights — is more than ever necessary in order to define the compensatory mechanisms, aimed at large sectors of the population whose social conditions tend to worsen under the effects of globalization. The State should not rely on the laws of the marketplace themselves to correct the economic and social imbalances responsible for the inequalities. For that purpose, the State should enhance the participation of the poor, while counting on the cooperation of the elite groups. This is the main contradiction and the main challenge set for the new democracies of Latin America for the next decade.

Mr. Rúben Ignacio Zamora Rivas is a Member of the Legislative Assembly of the Republic of El Salvador. He holds a licence in legal sciences from the University of El Salvador. He obtained a Master's degree in Latin American politics and government at Essex University in England. After having served as a Member and Vice-President of the Legislative Assembly between 1991 and 1993, he was a candidate for the Presidency of the Republic in the elections of March 1994. He was founder of the Foundation for Peace and President of the Salvadorian Institute for Democracy (1995).

Human rights are of a historical, universal and progressive nature. They are not inherent in the human being, but rather stem from a process. They appear at a precise moment in history and evolve in a regular and continuous manner, thereby fitting into the definition of human nature. Moreover, in this field one could hardly envisage a regression, since that would mean a serious loss for human identity. Even though they may be adapted and modified according to cultures, human rights are nonetheless universal. For example, one would not entertain the concept of Eastern or Western human rights.

The instigation of democracy in Latin America made it possible to take a step forward in the area of advocating human rights. Whereas the populations limited themselves, during the process of establishing democracy, to demanding a *first generation* of rights, such as the right to life and the right to integrity of the person, they now demand rights that form part of a *second generation*, namely social rights. In contrast to the industrialized countries, where the historical entry of human rights occurred in three successive phases, the countries of Latin America today must deal with an accelerated process which includes all three generations of rights, in a context laden with problems.

A process in three stages must serve as the basis for the development and respect of human rights in Latin America: first, a stage which consists in breaking with the heritage of the previous decades, and in enabling the citizens to gain access to effective juridical instruments through which it is possible for them to react in relation to the State; secondly, a stage which consists in consolidating the enforcement of the social rights of the *second generation*, in the neoliberal context, for which any State intervention in social matters is judged needless and unproductive; thirdly, a stage consisting of enforcing the *third generation* of rights, which fit within a global context — more particularly in the context of North-South relations — such as the right to peace and immigrants' rights.

In contrast to the previous decades, the role of the State and of parliamentarians is absolutely fundamental for the promotion and development of human rights. Mr. Zamora Rivas therefore

proposes an alliance between the parliamentarians of the Hemisphere and the international human rights organizations, in order to develop in concert a program that can contribute to making our societies more humanitarian.

Mr. Diego García-Sayán is Director of the Andean Commission of Jurists and a Board Member of the Inter-American Institute for Human Rights (IHR). He teaches at the Faculty of Law of the University of Peru, where he occupies the Chair on Human Rights. Since 1988, he has represented the Latin American countries within the Working Group on Enforced or Involuntary Disappearances of the United Nations Human Rights Commission. Since 1989, he has been a member of the Advisory Board of the International Human Rights Law Group, and a member of Inter-American Dialogue.

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During the second half of the 20th century, the international evolution of human rights on a normative and institutional level has not had concrete consequences in certain parts of the world, particularly in Latin America. A lack of awareness of this normative and institutional evolution resulted in a systematic placing aside, on the part of certain States, of international law concerning human rights.

This branch of international law is constantly evolving, both from the substantive point of view and from that of protection mechanisms. Certain “classical” mechanisms include limits that could be reviewed — particularly with regard to the investigation processes. There are also new mechanisms which are coming to light, such as peacekeeping operations launched by the UN in situations of war or armed conflict. Such operations have also been conducted in other circumstances in certain African countries, during the veritable collapse of the State and of its public institutions.

In a context of globalization, the protection mechanisms must be strengthened, in order to attack the problems at their root, namely: poverty, deterioration of the environment, demographic growth and

the urban concentration of the population. In addition, economic openness must coincide with a greater freedom of movement for populations. Finally, the encouragement and consolidation of economic and political cooperation between countries of the Hemisphere relies on a reform of organizations such as the OAS and the Inter-American Commission on Human Rights. A reinforcement of these organizations is needed in order to enable them to increase their capacity to protect democracy and human rights.

SUMMARY OF DISCUSSIONS

It was mentioned that any economic free-trade agreement should include a clause expressly providing for the respect of human rights by the signatory countries, as economic development and the respect of human rights are interdependent. However, if economic development is not beneficial to the entire populations, it will not lead to a greater respect of human rights. A free-trade agreement could also include a clause aiming to ensure the respect of certain international labour standards, which could in particular have the effect of civilizing the economy on the international level and of preventing labour standards from being subordinated to the laws of the marketplace.

Others maintained that a treaty ought not to be limited to demanding only the respect of primary rights, such as democratic electoral rights. It must also deal with the *third generation* rights, such as the right to development, the right to peace, the right to a clean and healthy environment and the right to balanced development. Also an agreement should not leave aside certain social, political and cultural dimensions of economic integration. For this reason, a hemispheric free-trade agreement could include a clause on immigration policy.

Finally, it was argued that a free-trade agreement must not limit itself to setting out broad principles in the area of human rights; it should also provide effective mechanisms to concretely ensure the respect of human rights in each of the signatory countries, in particular by granting international organizations the tools necessary to act effectively in the countries concerned.

According to certain participants, the parliamentarians should more systematically inform themselves of the different issues relating to the respect of human rights, particularly by studying the different reports produced by certain international organizations. In order to more effectively inform themselves of issues related to human rights, parliamentarians should encourage the creation of parliamentary committees on human rights. It is also necessary to break the isolation of Parliament from civil society, so that issues relating to human rights may not be examined exclusively by Parliament.

Parliamentarians should also exercise a rigorous control over their governments, in order to ensure that the latter do not negotiate an economic free-trade agreement without taking into account the respect of human rights. In this regard, the parliaments that have the power to do so should refuse to ratify any economic free-trade agreement that does not expressly provide for the respect of human rights.