

1985

## United States Foreign Policy and Human Rights: An Overview

David Weissbrodt

University of Minnesota Law School, weiss001@umn.edu

Follow this and additional works at: [https://scholarship.law.umn.edu/faculty\\_articles](https://scholarship.law.umn.edu/faculty_articles)



Part of the [Law Commons](#)

---

### Recommended Citation

David Weissbrodt, *United States Foreign Policy and Human Rights: An Overview*, 7 WHITTIER L. REV. 697 (1985), available at [https://scholarship.law.umn.edu/faculty\\_articles/280](https://scholarship.law.umn.edu/faculty_articles/280).

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in the Faculty Scholarship collection by an authorized administrator of the Scholarship Repository. For more information, please contact [lenzx009@umn.edu](mailto:lenzx009@umn.edu).

# WHITTIER LAW REVIEW

VOLUME 7

1985

NUMBER 3

© Copyright 1985 by Whittier Law Review

## SYMPOSIUM—ADDRESSES

- UNITED STATES INVOLVEMENT  
IN INTERNATIONAL HUMAN  
RIGHTS: AN OVERVIEW  
*Hon. Stanley Mosk* ..... 663
- LEGISLATION RELATING TO THE  
DEPORTATION OF REFUGEES  
*Ronald Tasoff* ..... 669
- HUMAN RIGHTS AND HUMANITARIAN  
LAW  
*Karen Parker* ..... 675
- THE REAGAN ADMINISTRATION AND HUMAN  
RIGHTS POLICIES  
*Michael Posner* ..... 683
- HUMAN RIGHTS POLICIES OF THE CARTER  
AND REAGAN ADMINISTRATIONS: AN OVERVIEW  
*Amy Young* ..... 689
- UNITED STATES FOREIGN POLICY AND  
HUMAN RIGHTS: AN OVERVIEW  
*David Weissbrodt* ..... 697
- AN INSIDE VIEW OF UNITED STATES  
FOREIGN POLICY UNDER THE REAGAN  
ADMINISTRATION  
*James E. Thyden* ..... 705
- ARTICLES
- LITIGATING THE INTERNATIONAL LAW OF HUMAN RIGHTS: A  
"HOW TO" APPROACH  
*Michael Bazylar* ..... 713
- ENFORCEMENT OF INTERNATIONAL HUMAN RIGHTS LAW IN STATE  
AND FEDERAL COURTS  
*Joan Hartman* ..... 741
- WHITHER THOU GOEST—THE STATE CONSTITUTION AND  
ELECTION RETURNS  
*Hon. Stanley Mosk* ..... 753
- THE RIGHTS, PRIVILEGES, AND IMMUNITIES OF THE AMERICAN  
PEOPLE: A DISJUNCTIVE THEORY OF SELECTIVE  
INCORPORATION OF THE BILL OF RIGHTS  
*Arnold T. Guminski* ..... 765

# UNITED STATES FOREIGN POLICY AND HUMAN RIGHTS: AN OVERVIEW

DAVID WEISSBRODT\*

The organizers of this symposium asked me to provide a background for the present status of human rights in the foreign policy of the United States Government. They suggested that I provide a history of the subject, stressing the approach of President Carter. I have written such a history, stressing the United States human rights legislation which was not created by President Carter, but which he found already in place when he reached the White House. Rather than recite this historical background, I think it would be more useful to look at three basic questions which might assist students to analyze the situation for themselves. First, why have a United States foreign policy on human rights? Second, how do we determine what that policy is? And third, what can we do about it, once we have identified the policy?

First, why have a human rights policy? One reason, is that this country is very proud of its traditional values in respecting human rights, civil liberties, and civil rights. While this country's record is not unblemished, there is a strong popular perception that our foreign policy should reflect those traditional values. Indeed, many studies have shown that unless the American people support our foreign policies, at least over the long term, the foreign policy will not succeed. Now the United States has, of course, a lot of other objectives in its foreign policy: economic interests, security interests and military interests. But if the image of the United States is tarnished by its support of torture, killing, or other forms of repression by governments that are allied states, then its image and its ability to achieve and pursue those other objectives may be hampered. If we support a dictator

---

\* Professor of Law, University of Minnesota.

who tortures and kills his citizens, after that dictator falls, then the new government may not entirely like the United States government and may make trouble for United States policy. I think that may explain a little bit about the Greek government, for example, today. Also, the United States wants to live in a peaceful world. We all want to live in a peaceful world; and so long as injustice exists in the world, there is going to be a danger of war. With this danger of war, we want to try to avoid total destruction, and that leads many of us to hope that there will be a foreign policy that will be oriented towards human rights.

As lawyers, we should also know that one reason for having a foreign policy based on human rights is that it is required by law. Section 502B of the Foreign Assistance Act, which was enacted before the election of President Carter, states as follows:

It is the policy of the United States in accordance with its international obligation as set forth in the Charter of the United Nations, in keeping with the constitutional heritage and traditions of the United States, to promote and encourage increased respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. To this end, the principal goal of the foreign policy of the United States is to promote the increased observance of internationally recognized human rights by all countries.

So there is a policy of human rights in our foreign policy under Section 502B of the Foreign Assistance Act.

This statute must be read with a realistic sense of what is possible. The United States is not omnipotent. It cannot achieve everything it may desire in the world. Human rights is not the only objective of our foreign policy. It may be a principal objective but it is not the only one. There is also no certainty of results in this field. If there are changes, they may come out good and they may come out bad. They may come out like Uruguay in recent days, which has left a government of torture, killing and "disappearances," and become a government that is trying to get over that bad period with people being released from prison, torture being stopped and prisons being closed. Or, they may come out like Iran. So, the inclusion of human rights within foreign policy does not provide a panacea.

The second basic question is how do we determine United States policy on human rights? That is a much more difficult issue, because the United States has a very large government, with multifaceted institutions. I am going to pose a few questions for you to think about in determining what is the policy of the United States on human rights.

The first question is, what are the public pronouncements of this Administration or any administration about the general subject of human rights? Does the Administration say human rights will be replaced by other causes? For example, concern about terrorism? Or, does it express support for human rights? What is its attitude toward international law and human rights? Does it recognize the obligations of international law and international organizations? Such as the United Nations or the International Court of Justice?

A second and related question would be: Does it support the ratification of human rights treaties such as the Genocide Convention, the Racial Discrimination Convention, the two Covenants on Civil and Political Rights and Economic Social and Cultural Rights, the Optional Protocol to the Covenant on Civil and Political Rights, the American Convention on Civil and Political Rights, the new Convention against Torture, Protocols One and Two of the Geneva Conventions, and the Geneva Conventions themselves? To the extent that the answer to these questions is yes, and that the Administration is working hard to get treaties ratified, then one can say there is strong support for human rights in foreign policy.

The third question has to do with human rights and military aid. Section 502B again limits military assistance and military transfers to those governments which have engaged in a consistent pattern of gross violations of internationally recognized human rights. Notice the incorporation of international standards into domestic law. There is an exception in this law, however, for national security. Is this provision being enforced? At least is it being implemented in some respects by the Administration?

A fourth question goes beyond military aid. To what extent is the United States aiding governments or opposition groups which are, because of the United States' encouragement, violating human rights? One thinks, for example, of Indonesia's suppression of East Timor, where thousands upon thousands have been killed or of the Contras' attacks on Nicaragua.

A fifth question has to do with economic assistance. Here again, we have a statute. Section 116 of the Foreign Assistance Act which provides for economic assistance to countries so long as they have not engaged in a consistent pattern of gross violations of human rights. Aid may, however, continue to "needy people." Is that being implemented in practice? I will give you a few examples. If we are formulating an aid package to build a dam in a certain country, are we worrying about the fact that the indigenous peoples of that area may

be kicked out? Or are we giving aid to create a large fruit plantation in a particular country which will displace small farmers? Will those farmers then protest, and be arrested or tortured? Are these issues being considered?

A sixth question to consider: How is the United States conducting its work in the international financial institutions. Again, there are legal limitations in 701, 703, and 705 of the Foreign Assistance Act. The Administration's representatives are supposed to, by "voice and vote," work against aid to countries which engage in consistent patterns of gross violations of human rights so long as that aid is not going to "needy people." Is this provision being implemented with regard to the World Bank and other international financial institutions?

A seventh question is a grab bag of similar questions about the Export-Import Bank, the Overseas Private Investment Corporation and the export of crime control or torture implements to such places as South Africa, South Korea, Turkey and Spain. Those are questions that need to be answered.

The next question is to what extent are there public pronouncements on specific human rights violations? When and under what circumstances does the President, Secretary of State, or lower officials criticize or support human rights violations? Who is called the "moral equivalent of the founding fathers?" Who are called "terrorists?" Which governments are complimented on their progress towards human rights and which are defended while they kill their citizens?

A ninth question: To what extent do the country reports, produced by the Department of State last year, provide an information, baseline from which we can work? Or, are they merely apologia for the defense of our allies? I think these volumes are surprisingly candid in their concern about human rights. They have become very useful as a resource. But, on the other hand, one opens them and reads for example, the following sentence: "There have been allegations of torture during interrogation of prisoners in areas of continuing security disturbances such as East Timor . . . . No conclusive evidence has come to light to suggest torture as employed in these areas as a matter of policy by Indonesia." That quote is in the face of the issuance by Amnesty International of a training manual of the Indonesian Army which not only explains how to torture people, but how to cover it up in East Timor.

A tenth question: What is the Administration doing about individual cases, particularly urgent cases such as those of torture? Are

they willing to act on those cases? Or do they act with indifference to those events? Or at least, are they willing to check their facts?

The eleventh question: To what extent is the immigration policy of the United States, which is a part of our foreign policy, implementing a concern for human rights? I would just isolate one or two issues. When we decide that almost all of the refugees should come from Communist countries, to what extent are we implementing a truly even-handed concern about international human rights? Only 3,000 refugees are to come from the entire continent of Africa where there may be five million refugees. And, almost all come from Ethiopia, where there is a government allied with the Soviet Union. And, 3,000 refugees are authorized from all of South and Central America. In practice all of them come from Cuba. Meanwhile, the United States admits tens of thousands of refugees fleeing the Communist countries of Eastern Europe and Southeast Asia. Is that a concern for human rights? Are the opinions of the State Department fair about asylum cases—those people who are already inside the United States rather than those who are refugees coming from the outside? Are there consistent rejections of applications from certain countries which are United States' client states, and consistent acceptances of applications from countries which are political opponents of the United States? Does the United States allow entry to individuals who support the United States policy and refuse visas to those who might tell us about human rights violations in their countries?

A twelfth question: How do the United States delegates to international organizations conduct themselves in those international organizations? Do they support useful and impartial initiatives like Working Group on Involuntary or Forced Disappearances, the Special Rapporteur on Torture, the Working Group on Slavery and the Working Group on Indigenous Populations? Or, do they try to undermine those institutions? Do they try to deny funding? Do they remove significant political support? Do they campaign for United States political allies as members of such bodies as the Working Group on Communications? Or, do they work against violations when there are violations?

The thirteenth question: What is the attitude of the United States Government to nongovernmental organizations which provide independent sources of information in an attempt to generate public activity on human rights violations? Does the administration attack the credibility of these organizations? Does it attempt to help these organizations? Or at least, not interfere with their work?

A fourteenth and final question: What actions have other governmental and nongovernmental institutions in the United States taken in regard to international human rights? Basically, I have only summarized a part of the foreign policy of the United States. There are many other aspects. For example, Congress has an independent role in this context by having Congressional hearings and by performing a very useful ombudsman function in working for individual human rights victims. To what extent does Congress fulfill its role in human rights? The courts have a function in defining and implementing international human rights law. States and cities have also taken actions relating to international human rights. For example, the New York City Council last year adopted a very effective measure against apartheid in South Africa, when it threatened banks with removal of city funds if they continued to make loans to the South African government. The city councils of Duluth and St. Paul have adopted resolutions urging sanctuary for Salvadorians fleeing the civil war in their country.

Even the National Security Agency might have a useful role to play in investigating international human rights violations. The National Security Agency is responsible for the surveillance satellites which can take remarkably clear pictures of any place in the world. The National Security Agency could assist the investigation of human rights violations by taking pictures of prison camps in such difficult to research countries as Albania or North Korea.

My third and last subject is: What do we do about United States' policy once we figure out what it is? First, we have to answer the questions that I have posed and that is not going to be easy. There are a lot of questions and some of them are difficult. Second, democracy is more than pushing a lever once every two or four years. There are a lot of things individuals can do in urging the Congress and in urging the Executive to do what they should do in human rights. Professor Newman has referred to the critical role of Congress in pressing for the enforcement of many of the laws that I have mentioned. And finally, we as individuals have a responsibility. We have our own foreign policy, if you wish. We can work towards the improvement of human rights by writing letters, by contacting other governments, and by trying to get them to stop the torture of our fellow human beings. I am reminded of the case of Margarita Baez who was imprisoned for her politics in Paraguay. The Supreme Court of Paraguay has determined that she should be released, and she was scheduled to leave prison several days ago. As of this date she is still being held. She was brutally tortured the last two times she was imprisoned and there is

some concern that she may be ill-treated again. I urge everyone present to write telegrams asking for her release.\*

Ultimately, it is our responsibility as citizens to learn about the human rights policies of our nation and to do what we can to assure that human rights continues as an important aspect of this country's foreign relations.

---

\* Author's Note: Both Amnesty International and a representative of the Department of State later informed Professor Weissbrodt that Margarita Baez was released from prison within a day or two after his speech.

