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THE HUMAN RIGHTS REVOLUTION*

THOMAS BUERGENTHAL**

Today the war in the Gulf is on all of our minds. That was not true many months ago when Dean Aldave asked me to deliver this lecture. Had she known then what the newspaper headlines would be today, she might well have asked a general or a Middle East expert to deliver this lecture. Barbara, as a former dean, I know how you must feel and wish I could oblige.

But let me note that the problems of the Middle East are not unrelated to the topic of my talk. If we did not have a brutal dictator in Iraq who has been violating human rights on a massive scale for many years, we would not have this war. Human rights violations are often either the cause or the effect of the many armed conflicts we hear and read about daily.

The war in the Gulf must not be allowed to obscure the dramatic human rights achievements of the most recent past. Since the bad news always pushes the good news off the TV screens, let me recall some recent developments for you.

The Berlin Wall is no more, Walesa is the President of Poland and Havel of Czechoslovakia. Hungary also has a democratically elected president, but I can't pronounce his name.¹ Gorbachev's policies, despite his recent retreat from *glasnost* and *perestroika*, are a far cry from the brutality and oppression of his predecessors. Democracy has been reestablished in Chile and Uruguay. In Nicaragua, the

* The idea for the title of this talk derives from the first sentence of an article by Professor L.B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U.L. REV. 1 (1982), which reads as follows: "The modern rules of international law concerning human rights are the result of a silent revolution of the 1940's, a revolution that was almost unnoticed at the time."

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1. His name is Arpad Goencz.

Sandinistas were defeated in the first free election that country has ever had, and Haiti today has its first democratically elected president. In Paraguay, General Stroessner was overthrown after more than thirty years in power. This leaves Castro in Cuba as the dictator with the longest tenure in the western hemisphere, but he too will soon be gone. Nelson Mandela is free and the South African government is finally beginning to dismantle apartheid, law by law. One of the worst dictators in the Horn of Africa—President Barre of Somalia—was just overthrown. True, the Statue of Liberty no longer reigns over Tiananmen Square, but it may only be a question of time before the Chinese people are again allowed to demonstrate their yearning for freedom. Time, which was supposed to work in favor of communism and the vast suffering it imposed on humanity, has in fact worked in favor of freedom, democracy and human rights.

Of course, the picture is not rosy everywhere. We still have a long way to go, in Latin America, Eastern Europe, the Middle East and Asia. But the past few years should have convinced even the worst of cynics that the human rights revolution is upon us. In fact, if there is one single political force or idea that symbolizes the second half of the twentieth century, it is the struggle for human rights and human dignity. Before our very eyes, a veritable revolution has been taking place. Its significance has not been fully understood in the U.S. because, for the most part, we have escaped the suffering and oppression other peoples have been subjected to.

The Nazi holocaust provided the impetus for the revolution I am talking about, but its conceptual foundation was laid by the United Nations Charter and the Universal Declaration of Human Rights. These international instruments transformed modern international law; they transformed the world's view of human rights; and they transformed mankind's expectations about human rights. Before the adoption of the Charter of the United Nations, international law did not, with minor exceptions, regulate the manner in which a state could treat its nationals. Thus, for example, as long as Hitler and Stalin limited themselves to the extermination of their own citizens, international law was not violated. And since international law did not regulate the subject, it was deemed to be an interference in domestic affairs for one nation to accuse another of violating the human rights of its citizens.

This state of international law invited a conspiracy of silence. A country could violate human rights with impunity because it knew

that other governments would not speak out in protest. Other governments had a good excuse, moreover, if they wanted one, for remaining silent and inactive. You need recall only the genocide of the Armenians, the pogroms in Czarist Russia and Romania, Stalin's Gulag; I could go on—they were all met by a deafening silence. There also existed hardly any international organizations, governmental or non-governmental, no Amnesty International, no international human rights commissions, to act or speak out on behalf of those whose human rights were being violated.

This state of international law, which mirrored the political reality of the pre-World War II era, had other consequences as well. When people were mistreated by their governments, they tended not to expect or look to other governments or to the international community for help. They had no internationally protected human rights and they knew it. The behavior of their own government could therefore not be deemed illegal or illegitimate under any other law than the law of the state itself, and that law obviously provided no rights and no remedy. The appeal to divine law or universal morality tended to have little impact on the offending governments. World public opinion was difficult to arouse, if only because there existed no international political consensus that individuals had any rights other than those that the state granted. And what the state granted, the state could take away. It was that simple and that hopeless.

The revolution I am talking about has changed all this. We live in a world in which the yearning for human rights is a universal phenomenon. You can see it on your television screen: from Tiananmen Square to Lithuania, from Haiti to South Africa, to Romania. Never before have so many people everywhere believed that they have human rights and that it is the purpose and obligation of governments to respect and to protect these rights. True, many people in different countries suffer today as much as others have at other times. What has changed though is that today the people believe that the government which subjects them to this suffering is depriving them of their internationally recognized rights and that, consequently, these governments are acting illegally. This perception, this perceived illegality, gradually robs the governments which violate human rights of the political legitimacy they need to govern. The process that produces this result can sometimes take many years; at other times, it is fast and dramatic. Whatever the time frame, the process of governmental disintegration caused by political oppression is today readily observa-

ble in many countries. Look at Cuba, China, South Africa, Liberia, Somalia, Ethiopia, Albania.

The legal and political developments I have described give the struggle against governmental oppression an international and domestic legitimacy. This legitimacy, in turn, translates into real political power. It endows the human rights efforts around the world with an emotional appeal few revolutionary movements have enjoyed in the past, and it creates strong bonds of international solidarity and support. This makes it increasingly more costly for governments to suppress human rights movements in their countries. Of course, governments still try and some are still quite successful. Increasingly, however, they appear ever more pathetic as they attempt to stem a tide that cannot be dammed in much longer. The world knows that it is only a matter of time, and their leaders probably know it too.

How do we explain what has happened? How do we explain this dramatic and universal shift in perception about human rights as rights that belong to human beings wherever they may live; rights that belong to them as members of the international community and not as citizens of this or that state or nation; rights that are theirs because they are the common heritage of humankind?

The answer, or part of the answer, has to do with what I like to call the internationalization of human rights and the humanization of international law.² Today, human rights are no longer governed exclusively by national law; they have taken on an international character because of the existence of the large and ever expanding body of international legal norms that prescribe the manner in which governments must treat human beings. These norms recognize and proclaim that human beings have human rights and that they are entitled to enjoy these rights as a matter of international law. This may not mean much to you if you live in the U.S., but it means a great deal when you live in countries whose national law does not protect you against governmental abuse.

The internationalization of human rights and the humanization of international law is a process that began after the Second World War. It continues to evolve. In a formal sense, the process begins with the Charter of the United Nations, which is both an international treaty and the constitution of the U.N. Adopted in 1945, the Charter de-

2. I first used this phrase in Buergenthal, *Human Rights: A Challenge for the Universities*, 31 UNESCO COURIER 25, 28 (Oct. 1978).

clares in Article 1(3) that one of the purposes of the U.N. is to achieve international cooperation “in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” And in Articles 55 and 56 of the U.N. Charter, the member states obligate themselves and the organization to promote “universal respect for, and observance of, human rights and fundamental freedoms without distinction as to race, sex, language, or religion.” Note that the Charter contains no definition of “human rights and fundamental freedoms” and that it establishes no specific mechanism to enforce these rights.

When the U.N. Charter was being drafted in San Francisco, some countries sought to strengthen these obligations and to append a bill of rights to the Charter. These efforts failed in large measure because the major powers—the U.S., the U.S.S.R., France and the United Kingdom—favored only the weakest statements on human rights. The San Francisco conference adjourned with the understanding that one of the first items on the agenda of the United Nations would be the drafting of an international human rights bill, that is, a treaty setting forth binding obligations on the subject. However, agreement on the contents of such a treaty proved difficult, prompting the decision to draft an instrument—it became the Universal Declaration of Human Rights—which was supposed merely to list, in a non-binding U.N. General Assembly resolution, a common understanding of the human rights to which the Charter referred. The Declaration was, as you know, adopted in 1948. It has gradually evolved into the Magna Carta of the international human rights movement and the premier normative international instrument on the subject. While the Declaration was gaining this status, it took the U.N. until 1966 to agree on the text of the treaty which became the International Covenants on Human Rights. Another decade elapsed before the Covenants entered into force. While the Universal Declaration has come to symbolize the universality of human rights, the Covenants and the many other international human rights instruments in force today—actually there now exists a vast body of international law on the subject—have strengthened the legal foundation of the international human rights revolution.

The fact that the effort to internationalize human rights never enjoyed enthusiastic governmental support explains why the U.N. drafting process was so slow and why the U.N. itself did little to protect human rights. Yet it is equally clear that the growing universal de-

mand for human rights made it ever more difficult for many of the same governments to oppose the codification effort or to resist the pressure for the ratification of these instruments.

Here we have an interesting phenomenon: governments know that people want human rights protection; many governments do not really believe in human rights, but they recognize that human rights pronouncements have popular appeal; that they make good propaganda. So the governments issue these pronouncements and vote on resolutions without really meaning to abide by them. But the people are captivated by the ideas in these pronouncements and want them to be honored. It thus becomes increasingly more difficult for these governments not to conform their conduct to their own propaganda. Let me give you an example. In 1975, the Soviet Union insisted that the Helsinki Final Act, which contains human rights pledges, be published in the major newspapers of all signatory states. Some Western signatories, including the U.S., had difficulty with the Russian proposal, in part because they doubted that their major papers would publish the Helsinki Accords, and they certainly could not compel them to do so. The Soviets had no such problem. They ordered the publications of the document, in Pravda and Izvestia, and people believed and liked what they read about their rights. They began to form Helsinki watch committees and to have public discussions relating to these rights. Similar groups sprang up in other East Bloc countries and in the West. The solidarity movement in Poland and Charter 77 in Czechoslovakia, among others, relied heavily on and were inspired to action by the Helsinki Final Act.

Words on paper that were not supposed to have any legal or political impact, statements made for propaganda purposes, took on a life of their own. When governmental hypocrisy articulates ideals that express the aspirations of mankind and capture the imagination of mankind, they can become mighty weapons. That is how revolutions are made. Words, ideas, and beliefs inspire revolutions. Think of the American Declaration of Independence. Think of the impact that the words of Patrick Henry and Thomas Paine had.

The Universal Declaration and the International Covenants on Human Rights together comprise the International Bill of Human Rights. These instruments proclaim a basic catalog of civil, political, economic, social and cultural rights. They, in turn, are complemented by a large body of other U.N. treaties and declarations dealing with genocide, racial discrimination, apartheid, torture, women's

rights, religious intolerance, the rights of the child, etc. Some of these instruments set up intergovernmental institutions, commissions and committees, working groups and special rapporteurs to supervise the observance of the obligations the documents proclaim. The specialized organizations of the U.N., particularly the International Labor Organization and UNESCO, have also produced many specialized human rights instruments and institutions.

There now also exist three major regional human rights treaties: the European Convention of Human Rights, the American Convention on Human Rights, and the African Charter of Human and Peoples' Rights. Each proclaims an extensive catalog of human rights. The European and American conventions also establish human rights courts in which governments can be held responsible for human rights violations, and have been so held.

Some of these institutions work better than others, some not at all. Some have proved to be very effective—the European Court of Human Rights, for example. Others are quite ineffective. Some might become effective in the future. Others probably never will be. In any event, it will take a long time before the various international human rights systems in existence today will be able to prevent or put an end to all the many human rights violations that still cause so much suffering in the world.

Obviously, we cannot and should not close our eyes to that suffering. Moreover, it is quite understandable that some of us look at all the international law on human rights that exists on paper and say that it is nothing but window-dressing to cover up the sins of the killers and torturers and rapists who do the bidding of brutal governments. When you feel that way, when you are tempted to despair—and I am not immune to that feeling—try to remember what has been achieved in a few short decades. The international human rights code that came into being over the last forty years has created an international political climate that is daily more sensitive to the illegality of human rights violations, less and less willing to tolerate them, and ever more responsive to public and private pressure to prevent or stop them. Today more and more Western governments condition their foreign aid on the improvement of human rights in the aid-receiving nations. Human rights violations in one country are debated in the national parliaments of other countries; reports of nongovernmental international human rights groups are taken very seriously by an increasing number of governments; and the political and economic

health of many a country depends on the perception that people in other countries have about how it treats its nationals. In short, governments find it increasingly more difficult not to take human rights considerations into account when making foreign policy decisions.

The existence of international human rights law has thus had an important socializing impact on the international community. Governments now know that there is a political and economic price to be paid for large-scale violation of human rights. That knowledge affects their conduct; not because they have suddenly become good or altruistic, but because they need foreign investment or trade, economic or military aid, or because their domestic political power base will be seriously weakened by international condemnation. The international human rights code also legitimates the struggle of the victims of oppression. It gives them faith that the struggle is just, that they have law and the international community on their side and that they are not alone in their struggle. Their struggle thus acquires an ideology that has a normative basis, an ideology that enjoys universal legitimacy. That is why national political ideologies that foster or tolerate oppression cannot in the long run successfully compete against this new ideology.

When law, whether domestic or international, mirrors the aspirations of society and captures its imagination, it acquires a moral and political force whose impact can rarely be predicted. It often far exceeds the wildest expectations or fears of those responsible for its promulgation or of those who oppose it. The lessons history teaches about the power of ideas and the irony of hypocrisy should be studied very carefully by all of us who are interested in a world in which human beings can live in dignity and peace. These lessons are particularly telling when we look at the role the human rights revolution is playing today in many parts of the world. That revolution is proving ever more convincingly that so-called political realism, which discounts all but military and economic power, has no monopoly on political wisdom nor is it all that realistic. We may need bread to live, but we are sustained as human beings by our dreams and our hopes for a better tomorrow: for freedom, for human dignity. That, ultimately, is what the human rights revolution is all about and why it is succeeding.