

REVISTA

IIDH

INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS
INSTITUT INTERAMERICAIN DES DROITS DE L'HOMME
INSTITUTO INTERAMERICANO DE DIREITOS HUMANOS
INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS



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DOCTRINA

POLITICAL AND ECONOMIC INTEGRATION AND HUMAN RIGHTS IN LATIN AMERICA*

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*Estadounidense, Assistant Executive Secretary,
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From the rubble of a destroyed Western Europe following World War II two sets of institutions were established. One was aimed at a European common market. Its headquarters are in Brussels. The other sought to avert another holocaust. It is known as the European System for the Protection and Promotion of Human Rights consisting of a Commission and Court. Its seat is Strasbourg.

In the following discussion, let us see which lessons can be derived for Latin America.

* The views contained in this article are the author's own and do not necessarily represent those of the Inter-American Commission on Human Rights or the Organization of American States.

The Author is indebted to his colleague, Dr. Oswaldo Kreimer, for sharing his ideas, particularly his notion of "La Integracion Perversa", which figures in the second half of this study. Likewise, Mr. Minor Anderson shared his thoughts on this topic with the author and helped enrich this discussion. Any errors, of course, are the writer's own.

These European institutions are products of two different multilateral treaties, the offspring of two inter-governmental organizations: the European Community ¹ and the Council of Europe ².

The EC now has 12 member states and has developed from a free trade association, a so-called customs union, passing through different stages to a point at which in 1992 Europe anticipates the removal of the last internal barriers in community countries and the free flow of capital, people, goods and services, the so called "four freedoms." The result will be the largest unified market in the world, embracing 325,000,000 people. The next goal of the Europeans is a monetary union with a common currency.³

On the human rights side of the equation, the most notable accomplishment of the Council of Europe has been the creation of a European Commission and Court of Human Rights. All member states have ratified the European Convention on Human Rights⁴ and all but Cyprus and Malta have accepted the obligatory jurisdiction of the European Court of Human Rights.⁵

The upshot of these evolutionary changes is by anyone's account a degree of economic prosperity second to none, health and education standards that are the envy of the world and a degree of civility heretofore unknown on a continent that for two millennia rarely knew a moment when all its tribes, ethnic, religious and linguistic groups, monarchies, duchies, principalities, city-states and countries were at peace.

At this very moment the countries of Eastern Europe are clamoring for admission to the EC. Those countries have yet to enjoy the benefit of economic abundance but know all too well what it is like to live under regimes that systematically violate human rights.

Is there a linkage between political-economic integration and respect for human rights? The people of Eastern Europe think so. And so do I.

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- 1 Treaty of Rome, March 25, 1957, Office for Official Publications of the European Communities, Luxembourg, 1973.
 - 2 Treaty Establishing the Council of Europe, London, May 5, 1949.
 - 3 Newhouse, John, "The Diplomatic Round (The New Europe)", *The New Yorker*, August 27, 1990, p.78.
 - 4 European Convention for the Protection of Human Rights and Fundamental Freedoms, November 4, 1950, 213 U.N.T.S. 221.
 - 5 *Ibid.* Article 46.1.

In the western hemisphere, under the aegis of the Organization of American States there has been an effort since at least 1945 to codify human rights in the inter-American system and to create institutions to promote and protect those rights.⁶

In 1959 at the Fifth Meeting of Consultation of Foreign Ministers at Santiago, Chile, the Inter-American Commission on Human Rights was created to monitor human rights compliance in the OAS member states.⁷ In 1969 a specialized conference of the OAS adopted the American Convention on Human Rights known as the Pact of San Jose.⁸ It entered into force in 1978. To date 22 OAS member states have ratified the Convention and, at least one more, Brazil, has indicated its intention to do so in the near future.⁹

When the OAS Charter was amended by the Protocol of Buenos Aires in 1967, the Commission became a "principal organ" of the Organization.⁹ The Commission's sister institution, the Inter-American Court of Human Rights, was established in 1979 and has had a decade of prudent achievement.¹⁰

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- 6 "American Declaration of the Rights and Duties of Man," Adopted by the Ninth International Conference of American States, Bogota, Colombia, 1948, *Basic Documents Pertaining to Human Rights in the Inter-American System*, March 1, 1988, p.17.
- 7 Declaration at the Fifth Meeting of Consultation, Santiago, Chile, August 12-18, 1959. Final Act, OAS Official Records. OEA/Ser. C/II. 5, pp. 4-6.
- 8 See *Basic Documents, supra* at 6, pp. 25-53.
- ** Editor's note: On the date of publication, 22 OAS Member States have ratified the American Convention. They are: Argentina, Barbados, Bolivia, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Surinam, Uruguay and Venezuela. Twelve nations have accepted the binding nature of the Court's jurisdiction. They are: Argentina, Colombia, Costa Rica, Chile, Ecuador, Guatemala, Honduras, Panama, Peru, Surinam, Uruguay and Venezuela.
- 9 Charter of the Organization of American States, Signed in Bogota, Colombia, 1948, Amended by the Protocol of Buenos Aires, 1967 in force as of February 27, 1970, *Basic Instruments of the Organization of American States*, Treaty Series No. 61, OEA/Ser. X/ii, Article 51, p.15.
- 10 Although technically the Court came into existence on July 18, 1978 when the American Convention on Human Rights entered into force, election of judges and their installation did not take place until 1979. *Basic Documents, supra* at 6, p.15.

The 1990's hold much promise for the smooth coordination between these two agencies of human rights protection.

During the last half dozen years, the hemisphere has seen positive political change as one country after another has shaken off military dictatorship and returned to democratic processes.

Unfortunately, the developing nations of the OAS member states, with few exceptions, have not matched their political achievements with their economic performance. Almost all member states are burdened by enormous national debts, frequently, but not always, contracted by corrupt and inept military governments. A number of countries are still experiencing civil strife that has put economic development on indefinite hold.

And yet the desire to strengthen the relationship between human rights and economic development is still evident in the inter-American system. Thus, in 1989 the OAS General Assembly approved the Additional Protocol on Economic, Social and Cultural Rights, also known as the Pact of San Salvador,¹¹ which holds out the prospect of state commitment to the so-called second generation of human rights. However, since this treaty has been open to ratification, no member state has stepped forward to do so. Given the rates of inflation, unemployment, natural disasters and other negative indicators that have characterized the economic situation in most of Latin America and the Caribbean region in recent years, it is not surprising perhaps that the Pact of San Salvador remains an aspiration which serious democratic leaders are hesitant to embrace given their limited capacity for giving real meaning to such an undertaking.

And what of economic and political integration?

Except for the Eastern Caribbean islands, whose leaders frequently refer to some form of eventual federation, and the countries of Central America which are still seeking to establish a Central American Parliament, it is probably premature to say much about real political integration in the western hemisphere.

Economic integration, on the other hand, is a different matter. With the prospect of a united Europe in 1992, augmented most likely by the addition of a number of Eastern European members and the free North American trade zone comprised of Canada and the United States and very

11 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador," OAS Treaty Series No. 69, OEA/Ser. A - 44.

possibly Mexico, a number of Latin American and Caribbean leaders worry about being left behind.

These scenarios have given added impetus to an older vision, one dating in modern times to the Alliance for Progress. The Latin American Free Trade Association,¹² the Andean Pact,¹³ the Central American Common Market,¹⁴ CARICOM,¹⁵ and successor institutions such as the Latin American Economic System (SELA),¹⁶ all give witness to the realization of planners, economists and statesmen alike that there is mutual advantage to be obtained through cooperation and free trade. Moreover, the nation-states of this hemisphere have important interests at stake in the current Uruguay round of the GATT talks and will play a significant part in those multilateral discussions. Finally the President of the United States, George Bush, has recently put forward a proposal now referred to as the Bush Initiative, which contemplates the whole western hemisphere becoming a free trade zone.

What is this hemisphere's record, excepting the United States and Canada, in efforts aimed at economic integration? In Central and South America, at least, rhetoric has outstripped performance. Economic nationalism clearly won the first round. Protectionism and tariff barriers have continued to impede trade and commerce between and among regional neighbors.

There have, however, been some notable exceptions to this general conclusion, mostly in the underground economy. Thus, we have seen the development of a sophisticated, albeit mostly illegal paradigm of economic integration in drug trafficking. Growers, reapers, packers, shippers,

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- 12 Treaty Establishing a Free Trade Area and Instituting the Latin American Free Trade Association (Montevideo Treaty), Signed at Montevideo, Uruguay, February 18, 1960, *Instruments Relating to the Economic Integration of Latin America*, Inter-American Institute of International Legal Studies, Oceana Publications, Dobbs Ferry, N.Y., 1968, p.207.
 - 13 *Acuerdo de Integracion Subregional (Acuerdo de Cartagena)*, signed at Bogota, Colombia, May 26, 1969, *El Ordenamiento Juridico Andino*, Instituto Interamericano de Estudios Juridicos Internacionales, F.V. Garcia Amador, Ediciones De Palma, Buenos Aires, Argentina, 1976, p.238.
 - 14 *Instruments Relating to the Economic Integration of Latin America*, *supra* at 12, p.3
 - 15 Caribbean Community, established July 4, 1973, *World Almanac 1990*, Scripps Howards Co., New York, p.776.
 - 16 *Convenio de Panama Constitutivo del Sistema Economico Latinoamericano*, 1975, *International Legal Materials*, Washington, D.C., 15(5): 1081-1099, September, 1976.

refiners, bankers and marketers, persons of varying nationalities living in a host of different countries, have established a division of labor and a degree of coordination that would be edifying if one ignored the trail of blood and corruption on both the production and consumption ends of the market.

Similarly, gun-running, technical assistance in the use of weapons and the dove-tailing of supposed "revolutionary" and "counter-revolutionary" movements that have found drug trafficking profitable sources of support for political causes have exhibited in an ironic way the stubborn characteristics of a fluid international production and marketing system.

But the establishment of an integrated economic system in drug trafficking does not stand alone. In the market place of ideas, the 1970's and part of the 1980's saw the espousal and acceptance on a wide scale of certain notions, the most prominent being the doctrine of state security. The core idea here was that the armed forces of the various Latin American countries had a responsibility to forcibly repress anti-western, anti-Christian ideologies, in a word "marxism", defined by the military in the broadest and loosest terms. To assure eventual victory against these alien notions, the military of countries as far ranging as Argentina and Nicaragua collaborated, exchanging training, intelligence, arms, and most importantly, a common view of the perceived enemy and the perceived solution.

Other examples of informal and illicit economic integration exist in our part of the world. Take trafficking in prostitutes. Any business person flying throughout the Caribbean on a regular basis has seen plane loads of young women travelling the circuit of brothels in the region. Another manifestation of the same phenomenon is the underground railroad of refugees fleeing South and Central America. Young people escaping national conscription or civil war or unemployment or huge inflation or, most likely, all of these ills, can readily tap into a network of documents forgers, agents, guides and "coyotes" who transcend the single nation-state and stand ready for a price to move the beleaguered traveller towards his destination, armed with bogus identification papers, passports, visas, birth and baptismal certificates and the like.

Similar examples ranging from contraband cigarettes, to dry goods, to stolen automobiles can be readily marshalled. If the underground business forces of the region, sometimes the least educated and the most poorly financed, can accomplish a degree of economic integration which from a strictly economic viewpoint one cannot help but admire, is it then

unreasonable to suppose that legitimate economic forces, led by elected leaders with greater intellectual resources at their disposal, might not be able to do the same and accomplish much more in the process without the toll of human suffering that characterizes the trends just described?

If we accept that the wit, energy, ingenuity and manpower are available in abundance, as illustrated by these various illegal and unethical examples of integration, is it not reasonable to assume that the same talent could be turned to wholesome economic endeavors? And could the times be more opportune given the reestablishment of representative democracies throughout the hemisphere?

Without genuine economic progress the first generation of human rights, political and civil liberties, currently undergoing a rebirth in the hemisphere will be fragile at best and subject to erasure by the next *caudillo*, or strong man on horse back who takes advantage of popular anxiety and circumstances to restore autocratic rule. Landless peasants will again be suppressed and labor leaders will be persecuted as in years gone by. Students will disappear and "order" will prevail. The so-called second generation of human rights namely economic, social and cultural rights will continue to languish. The rich countries will get richer and the poor will get poorer and the latter will continue to impotently shake their fists at the former. And human rights protectors such as the Inter-American Commission and the Inter-American Court will issue their reports, resolutions, and judgements, fighting a rear guard action in the name of humanity to try to stem the flow of human rights violations.

On the other hand, the restoration of representative democracies and the general diminution of gross human rights violations in the region offer a favorable foundation which must be built upon if the bleak cycle of rising expectations and repression is to be curbed.

Individual creativity flourishes where there is freedom. Capital does not take flight from countries that are politically stable. In such an environment brains stay at home rather than drain away to enrich already wealthy countries. Peaceful mechanisms for deciding national, regional and local issues reinforce people's confidence that they can ply their trades, establish their businesses, invest in their farms and expect a reasonable return on their efforts.

In other words, respect for human rights is an indispensable prerequisite for economic progress but no guarantee in and of itself that such progress will inevitably follow. Frequently developing countries enjoy few economic advantages and often-times those are raw materials, natural

beauty or fortuitous location. It stands to reason then, that they can strengthen their prospects by banding together with neighbors to increase nearby marketing possibilities and by sharing in complex endeavors in which each partner contributes with that which it does best. If this was true for the rich or once less than rich countries of the north, it is equally true for the south.

This is the lesson that the western Europeans learned from the United States, which was the first substantial, modern common market. It is the lesson which is being emulated in the Far East and Southeast Asia.

Clearly, however, no stable nation in which human rights are respected will wish to align itself to a despotic regime next door. And a single strife-ridden neighbor might be sufficient to jeopardize an entire region or sub-region's aspirations toward economic integration.

In the meantime, far-sighted leaders are not waiting on utopian ideas. Hence, bilateral and multilateral agreements between and among Brazil, Uruguay, Argentina, and Paraguay are being negotiated, signed and implemented in a variety of fields, from ports, harbors and energy generation to digging common canals.

The instruments for these ventures are at hand. This hemisphere has its Inter-American and Caribbean Development Banks. No one seriously doubts that the intellectual talent pool is up to the task. Moreover, a common culture and almost common language should facilitate the process. What is needed is the strengthening of the justice systems to place respect for human rights on a firmer footing in those countries where true democracy has been restored. However, the task is more formidable in a few countries where human rights abuses are far more common and entrenched.

Violations in neighboring countries are abhorrent not only because of their inhumanity but because they prevent the kind of economic cooperation that is essential for progress.

It has been established that human rights are legitimate concerns for the entire international community. Pariah regimes must not be tolerated. Only when rules for civilized conduct are respected can the challenge of economic integration be taken up. And only with enlightened self-interest will economic integration, a *sine qua non* process, in an interdependent world be achieved. Economic integration coupled with a more just distribution of wealth can then give real meaning to the expression "second generation of human rights."

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DERECHOS HUMANOS: ENTRE VIOLENCIA
ESTRUCTURAL Y VIOLENCIA PENAL

Alessandro BARATTA

DERECHOS HUMANOS EN LAS SOCIEDADES
SOCIALISTAS EN TRANSICION

Tamás FÖLDESI

CONCEPTUALIZACION DEL TERRORISMO:
UN PUNTO DE VISTA NORMATIVO

José ZALAQUETT

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PRACTICA IBEROAMERICANA EN MATERIA DE
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DECIMO ANIVERSARIO IIDH