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DEPARTMENT OF STATE

BRIEFING PAPER

NEW  
FILE  
HUMAN RIGHTS

*Policy Plan*

Transition Paper 76

Current State of Issue

The current emphasis on fundamental freedoms and human rights in U.S. foreign policy reflects both the deteriorating state of individual human rights in many countries today and a growing domestic sentiment that American moral and ethical values should be given higher priority in the foreign policy decision making process. While there is widespread agreement on the objectives we should seek in this field, there has been strong debate over the methods for achieving them and the practical limits of possible accomplishment.

Definition and Criteria

Both the Executive and the Congress use the Universal Declaration of Human Rights as an authoritative statement of human rights and fundamental freedoms under the U.N. Charter. Current legislation specifies illustratively "torture or cruel, inhuman or degrading treatment or punishment, prolonged detention without charges or trial, and other flagrant denial of the rights to life, liberty or the security of the person" to be included in the definition of "gross violations" of human rights. There is a broad consensus that these represent standards below which no government can fall without offending fundamental values. Of great importance as well are other basic political and civil rights such as freedom of assembly, the press, and religion, etc.

There is less agreement, however, as one moves from these individual rights to the remainder of the Universal Declaration's articles which cover social and economic rights. It has been U.S. policy to address these latter rights generally under the heading of economic and foreign trade policies. It is the U.S. view that social and economic progress is not only a desirable goal in itself but can create a stronger foundation for the development of democratic institutions.

Difficulties arise also in trying to establish criteria for what constitutes "a consistent pattern of gross violations of internationally recognized human rights"-- criteria that are realistic and broadly applicable to situations which may be improving, chronic or transitory, diplomatically malleable or intractable. Preliminary work has been done in the Department on this issue, but no clearcut answers are in sight.

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- 2 -

### The Roots of Repression

There is a broader question of how we get at the causes of repressive practices by foreign governments, so that we are not just coping with symptoms. In order to deal more effectively with human rights problems, more work is needed on such problems as: (1) Whether popular tolerance for repressive practices is a function of the level of economic and social development; (2) the causes of the basic insecurities which give rise to such practices, and (3) the means to meet genuine security and economic concerns of a government without enhancing its capability for repression or building an image of U.S. support for a repressive regime which may itself become more vulnerable because of those practices.

### Human Rights and Other U.S. Interests

A vexing problem is how to relate U.S. interest in promoting human rights in a country to other U.S. interests in that country. The question is crucial in cases where strong measures, such as denial of security or economic assistance, could weaken a nation's defenses against external aggression, could endanger the maintenance of U.S. security installations in a country, risk the continued flow of fuel for ourselves or our allies, or inhibit reaching agreement on limits to thermonuclear arms. In short: can we, and how can we, maintain our vital interests in a country while taking appropriate measures to indicate our concern over the human rights behavior of the current rulers? In countries where our other interests are minimal, the answers may seem easier, but the levers of influence may also be minimal.

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### The Question of Balance

Another controversial area relates to the need for a degree of even-handedness in dealing with human rights issues. Is it or is it not fair or wise to single out individual countries for public criticism or even economic pressures while remaining silent regarding other countries whose violations are not much different? Are we harder on right-wing regimes than those on the left? It is fair to be harsh with the governments of relatively small countries with their greater vulnerabilities while dealing more gingerly with the human rights violations of more powerful nations? Are we going to be more severe on "friends" who need our aid while we virtually ignore the sins of adversaries? Or are we justified in demanding a more rigorous code of conduct from some governments on the ground that we provide them with arms which protect their

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- 3 -

security but can also be used to repress their people? Any human rights policy which seeks broad support will have to find answers to these questions.

#### Implementation Problems

Even should a decision be made that a human rights situation requires a U.S. response, numerous difficult questions would remain over the nature of the response. The need is for positive results. But what measures or combination of approaches will be most effective: pressure of public opinion, denial of trade or aid, or quiet diplomacy behind the scenes? Are there way of providing incentives (as well as pressures) for improved human rights practices? Can we work cooperatively with the confidence of the governments concerned without becoming associated with their repressive practices? And finally, what are the relative advantages and disadvantages of bilateral and/or multi-lateral approaches; how can they most effectively be used in combination?

Because of the complexities involved in the above factors, the Department has been unable to find any single formula for categorizing the human rights situations that require attention and action, and has tentatively concluded that decisions have to be made case by case from an analysis of all the circumstances involved. It is clear that this is an area where we could profit from systematic studies examining instances of success and failure and analyzing the factors which determined the outcome.

#### Positive Programs

In seeking alternatives and supplements to reliance on threats and pressures as a means of promoting human rights, the Department has tried to encourage efforts at positive programs in this field. A modest start has been made in AID towards using its resources and facilities to develop projects which will promote the protection and preservation of human rights and fundamental freedoms as part of the development process. A similar effort is underway in CU to place new emphasis on this subject in its exchange programs.

#### UN and Other Multilateral Questions

From the inception of the United Nations, the United States has played a leading role in its human rights activities. During the first twenty years, when Western influence was predominant, the emphasis was on the drafting of instruments such as the Universal Declaration of Human Rights and numerous human rights conventions.

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With the increase in membership which has taken place since 1966 Western influence has diminished. The focus has shifted to a more direct United Nations involvement in actual situations of human rights violations.

Human rights activities in the United Nations roughly follow a yearly cycle, starting with the Human Rights Commission, which will hold its 33rd session in Geneva February 7 - March 11, 1977. Human rights questions also comprise a significant part of the work of UNESCO and the ILO. We are represented in all of these bodies and are continually required to take positions on human rights issues which fall into three broad categories: (a) drafting of instruments, (b) action on specific cases, and (c) procedures and machinery.

The principal substantive human rights issues which will be confronting the United States in the UN and other multilateral bodies in the coming year will concern: (a) racism and racial discrimination, especially in relation to southern Africa (apartheid) and the United Nations Decade for Action to Combat Racism and Racial Discrimination, (b) human rights in Chile, (c) human rights and detente, (e) the problem of torture, (f) the question of political prisoners, and (g) religious intolerance.

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UN consideration of human rights questions in recent years has been marked by a highly political, selective, and, at least in Western eyes, hypocritical approach. Charges of human rights abuses in southern Africa, the occupied territories in the Middle East, and Chile have dominated the attention devoted to specific cases, while numerous other grave situations have been passed over in silence. This selectivity has been due in large measure to the shift in voting majorities which has taken place in recent years.

The other two multilateral fora in which the U.S. operates--the Organization of American States and the Helsinki Accords--have proven advantageous in organizing collective pressures against repressive regimes while avoiding charges that the U.S. is seeking to impose its own standards on other nations or to bully smaller countries. Thus the U.S. has been able to join with other Latin American countries in the OAS to press Chile for improved human rights practices and has pushed hard for the adoption and implementation of Basket III (the human rights provisions) of the Helsinki accords. (This will be discussed in the CSCE paper.)

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~~CONFIDENTIAL~~

- 5 -

### Current U.S. Policy

Current U.S. policy on human rights in international affairs is formally set out in recent legislation. Section 502B of the Foreign Assistance Act of 1961, as amended, states "It is the policy 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, a principal goal of the foreign policy of the United States is to promote the increased observance of internationally recognized human rights by all countries." The President is directed to construct his security assistance programs to accomplish this objective.

Congress has gone on to lay down the further policy that except under extraordinary circumstances no U.S. security assistance may be provided to any country whose government "engages in a consistent pattern of gross violations of internationally recognized human rights." A similar policy is laid down for AID's programs of development assistance, except where such programs will benefit needy people. U.S. representatives on the governing bodies of the Inter-American Development Bank (IDB) and the African Development Fund (ADF) are also required by the so-called Harkin Amendment to vote against loans to governments under the same terms. (These will be discussed further in the paper on Human Rights and Official Development Assistance.)

The new legislation requires the Executive Branch to submit basic data and information on human rights practices in each country proposed for security assistance in FY 1978 and, if requested, more detailed statements on particular countries explaining the extraordinary circumstances underlying the request for assistance, the actions taken by the U.S. to disassociate itself from a repressive regime, and justifications for continuing U.S. assistance based on U.S. interests. On the strength of this, the Congress will decide if it concurs with the Administration's action. If not, Congress can terminate, restrict or continue assistance to that country by joint resolution of both Houses.

Preliminary information and data have already been given informally to Committees of the Senate and House at their request on 13 countries\* in anticipation of the

\* Brazil, Chile, Uruguay, Paraguay, India, Pakistan, Bangladesh, Korea, Ethiopia, Nigeria, Mozambique, Zaire, Spain.

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- 6 -

forthcoming FY 1978 legislative program. More detailed formal statements, including explanations and justifications, have been submitted on an additional six countries.\*\* Reports on approximately 80 countries, including the foregoing, are now in preparation for submission to the Congress, probably in February 1977.

United States policy is to support and encourage an evenhanded, objective approach to consideration of human rights matters in multilateral fora. This policy is most directly reflected in our consistent strong support for the development of procedures and machinery to assure effective multilateral action on all situations of serious human rights violation anywhere in the world. We seek to develop what we believe to be a fundamental community of interest between us and the Third World in advancing the protection of individual rights.

#### Brief History of Policy

The renewed emphasis on the subject of human rights during the past three years represents in many respects a revival of the interests and concerns which characterized the World War II period and the early days of the United Nations which culminated in the adoption at the end of 1948 of the Universal Declaration of Human Rights.

Beginning in 1973 Congressional concern resulted in the restrictive provisions of the foreign aid legislation described above. Moreover, the treatment by Eastern European countries of their citizens and the emigration policies of these countries, particularly the USSR, led to the adoption of the Jackson-Vanik amendment to then-pending trade legislation.

In 1974 Congress attached specific restrictions of U.S. assistance to Chile and Korea on grounds of their performance on human rights and enacted the first version of Section 502B of the Foreign Assistance Act, which expressed the sense of Congress that security assistance should be curtailed or denied to governments that demonstrated a consistent pattern of gross violations of human rights. In 1976 explicit restrictions were added on assistance to Chile and Uruguay. Other attempts on the Hill to cut off or restrict assistance to Brazil, South Korea, the Philippines and Indonesia on human rights grounds were voted down.

\*\* Argentina, Peru, Haiti, Iran, Indonesia, Philippines

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- 7 -

Paralleling these Congressional actions, the Department has taken a number of organizational and other steps. Action was taken in 1974 to appoint human rights officers in each of the geographic and several of the functional bureaus of the Department. Posts overseas were instructed to advise governments of increasing U.S. concerns and Congressional legislation in this regard and to report on the status of human rights observance in their respective countries. In the summer of last year a Coordinator for Humanitarian Affairs was designated in the office of the Deputy Secretary to pull together Departmental efforts in this regard and to perform other humanitarian coordination functions.

### Congressional Perspectives

The growing sentiment among broad sectors of the U.S. public that American moral and ethical values be made more apparent in U.S. foreign policy has been strongly articulated by the Congress. Those members in both Houses concerned with human rights issues have felt that the Executive Branch has not been sufficiently vigorous in its pursuit of human rights objectives and has been too closely identified with certain repressive regimes. The Congress therefore voted a series of measures to enforce its will--the Jackson-Vanik amendments, the human rights reporting requirements of the security assistance legislation, the Harkin amendments and cut-offs of security assistance to Chile and Uruguay.

The Department was unsuccessful in opposing most of these measures. Leading proponents of human rights in both Houses met several times with the Secretary and the Deputy Secretary to discuss their differences. On numerous occasions the Secretary publicly criticized the Jackson-Vanik amendment in particular as having proven counter-productive. The Department's argument has been that most of the legislation has been too sweeping to be effective in its intended purposes.

Although there has been a recognition by many in the Congress that such broad legislation as the Harkin Amendment is not effective in improving human rights observance and may even be counter-productive, there has nevertheless been a feeling among many members that this has been the only course of action open to them. Current indications are that most of the legislation is likely to remain in place for at least another session. Congressional leaders on

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- 8 -

human rights issues will need to be persuaded over time that the Executive Branch is implementing its stated human rights policies in good faith before they will move to ease the Congressional pressure in this sphere. At the same time, there have been indications since the elections that the Congress may hold off on further legislative measures and hearings on human rights practices in individual countries in order to see what the new Administration's human rights policy will be.

The complexities inherent in implementing the present legislation have demonstrated the need for further consultation between Departmental officials and Congressional members and staff. While top level Department officers have consulted with Congressional leaders and appeared at committee hearings to discuss human rights issues, more detailed consultations at staff levels, have been offered and will be needed to gauge the results of the reporting operations and to determine ways in which the legislative and executive branches can cooperate most effectively to promote human rights observance abroad.

Executive-Legislative cooperation on human rights activities at the UN has been generally good. Congressional interest in the U.S. posture and performance has been increasing since 1973 when Representative Fraser's Subcommittee on International Organizations and Movements conducted hearings on the international protection of human rights. The following year this Subcommittee conducted a review of the 1974 session of the United Nations Commission on Human Rights. A staff member of the House Committee on Foreign Affairs has served as a member of the U.S. delegation to the last three regular sessions of this body.

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Periodic consultations between State Department personnel, representatives of non-governmental organizations, and staff members of the Fraser Subcommittee have been held since 1974 to discuss the preparation of positions on human rights questions for U.S. delegations to the UN Human Rights Commission and the General Assembly.

On the other hand, Executive action to support a number of multilateral human rights treaties approved by the United Nations has met with marked reluctance on the part of the United States Senate. For example, the

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- 9 -

Genocide Convention, first submitted in 1948, still awaits Senate approval. The entry into force this year of the United Nations Human Rights Covenants has proven a handicap under which we have to operate in the UN as a result of our failure to ratify these treaties.

#### Outside Studies

A substantial volume of material has been published by non-governmental organizations on human rights conditions and problems in particular countries and regions. Reports on such conditions also appear in the transcripts of Congressional hearings.

A basic study on "U.S. Policies on Human Rights and Authoritarian Regimes" that addresses some of the decision-making problems discussed in this paper was written by a consultant with Departmental input and was completed in October 1974. A number of new studies that are in process outside the Department sound promising. A project has been initiated by the International Commission of Jurists, with Departmental encouragement and Ford Foundation financing, on the protection of human rights in one-party or authoritarian states. The 1980s Project of the Council on Foreign Relations includes a human rights component in which the Department has participated and which should result in a useful paper. Researchers in several academic institutions are now working on various aspects of human rights policy and have been seeking support for their projects from the Department's external research office.

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