
Human Rights and Related Concepts

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[The following is a reprint of a new Chapter 24 that has been added to the recently published 14th edition of the DISAM textbook, *The Management of Security Assistance*.]

To none will we sell, to none deny or delay, right or justice.

Magna Carta, 1215

Introduction

Human rights considerations have been a long-standing element of U.S. foreign policy. Members of the security assistance community, in particular, should understand and appreciate the importance accorded human rights and civilian control of the military in our relationships with other nations. This importance is reflected in a variety of ways. For instance, international students attending U.S. military schools under the International Military Education and Training (IMET) and Foreign Military Sales (FMS) programs are increasingly being exposed to human rights policies and issues as part of their studies. Moreover, U.S. personnel permanently assigned or temporarily deployed to foreign nations are well advised to know what to do in the event they become exposed to suspected human rights violations. Additionally, U.S. personnel should be able to intelligently discuss with international students and host country personnel the human rights and civil responsibilities that all people have under international law.

Increased attention concerning human rights and related themes can be traced to the 1991 changes to the Foreign Assistance Act of 1961, as amended (FAA)—namely the emphasis on “Expanded IMET.” The principal objectives of Expanded IMET are fostering greater respect for, and understanding of, the principle of civilian control of the military; improving military justice systems and procedures in accordance with internationally accepted standards of human rights; increasing professionalism and responsibility in defense management and resource allocation; and contributing to cooperation between military and law enforcement personnel with respect to counternarcotics law enforcement efforts. These Expanded IMET objectives, combined with the traditional purposes of the IMET program—to expose international students to the U.S. professional military establishment and the American way of life, including U.S. regard for democratic values, respect for individual and human rights, and belief in the rule of law—make *human rights and related concepts* high priorities in the conduct of the U.S. security assistance program.

Terminology

HUMAN RIGHTS

Webster's International Dictionary defines a *right* as “a power, privilege, or condition of existence to which one has a natural claim of enjoyment or possession.” Human rights, which constitute a fundamental category of rights, may be defined as a relationship between individuals (citizens) and governments (nation states). The concept that legal systems should protect the rights of individuals from abuses by government is rooted in *natural law*. As reflected in his

Two Treatises of Government, published in 1690, the English philosopher John Locke believed that human rights, not governments, came first in the natural order of things.¹ In short, human rights precede governments and only governments can commit human rights violations.

Domestic guarantees concerning human rights may be embodied in such sources as national constitutions and statutes which are, in turn, supplemented by international protection resulting from the actions of international organizations, such as the United Nations. Regional organizations also recognize the existence of human rights.²

Much of the concern for, and discussions surrounding, human rights is due to several factors, including: (1) the fact that human rights are not universally observed by all governments; and (2) there is not universal agreement in the world community as to how far the human rights umbrella extends.³ For example, is the right to a fair trial, from a human rights standpoint, on an equivalent level with the "right or entitlement" to a job with a reasonable wage? In response to questions such as this, some nations might claim that both situations involve human rights; other nations might disagree. Within the literature, human rights are categorized by various groups, as follows:⁴

- *Civil and Political Rights.* These rights, which are often referred to as fundamental or core human rights, existed prior to the creation of governments. Therefore, governments can provide benefits in addition to these rights, but cannot deny or limit the exercise of civil and political rights. All human beings enjoy civil and political rights regardless of their geographic location, social, economic, or political status. Examples often include: rights to life, liberty, and security; freedom from enslavement, torture, and cruel, inhuman, or degrading punishment; freedom from arbitrary arrest (and if arrested, a person is presumed innocent until found guilty by a competent, impartial tribunal), detention, and exile; and freedom of opinion and expression, conscience, and religion.

- *Economic, Social, and Cultural Rights.* This group of rights (or, perhaps more accurately, "entitlements") did not exist prior to the creation of governments. As these entitlements are created by citizens and administered by government for the benefit of the governed, they can also be limited or denied by the citizens if, for example, the government's resources become limited. Note, however, that the government's expansion of these entitlements for one group should not erode the civil and political rights of others under the government's jurisdiction. Examples include entitlements to: a minimum living standard, including food, clothing, housing, and medical care; education; and social security.

- *Group Rights.* Some groups of citizens may claim entitlement to what is referred to as group rights. Group rights may be defined as "additional rights" accruing to individuals by virtue of their being members of a particular group(s) or class(s) of individuals, e.g., senior citizens "rights." Group rights are not universally recognized by governments, being more of a theoretical claim than a legally accepted set of rights.

- *Planetary and Brotherhood Goals.* Although these are "goals" and have less global acceptance than civil and political rights and economic, social, and cultural rights, *planetary and*

¹Janis, Mark W. *An Introduction to International Law*. Second Edition. Boston: Little, Brown and Company, 1993, p. 241.

²Plano, Jack C. and Olton, Roy. *The International Relations Dictionary-Fourth Edition*; Santa Barbara, California: ABC-CLIO, 1988, p. 301.

³Shafritz, Jay M., Williams, Phil, and Calinger, Ronald S. *The Dictionary of 20th-Century World Politics*; New York, Henry Holt and Company, 1993, p. 346.

⁴Papers prepared by the U.S. Army Judge Advocate General School, 1993.

brotherhood goals arise from both individual and collective desires to promote the general welfare and to provide for a better life in the future. Examples of such goals include: peaceful coexistence between sovereign states; economic development; environmental protection and clean habitat; and humanitarian relief.

DEMOCRACY AND THE RULE OF LAW

Several related themes and concepts are often introduced in USG policy statements and educational programs addressing human rights. Two of these concepts are *democracy* and the *rule of law*. In his address to the United Nations General Assembly in September 1993, President Clinton mentioned the following strengths of democracy:

Democracy is rooted in compromise, not conquest. It rewards tolerance, not hatred. Democracies rarely wage war on one another. They make more reliable partners in trade, in diplomacy, and in the stewardship of our global environment. And democracies, with the *rule of law* and respect for political, religious, and cultural minorities, are more responsive to their own people and to the protection of *human rights*.⁵

In addition, according to one State Department source, the following relationships exist among human rights, democracy, and the rule of law:

Human rights, democracy and the rule of law are not the same. But they are complementary and mutually-reinforcing. *Fundamental rights* are best guaranteed by the basic institutions of democracy: a free press, an independent judiciary, a vibrant civil society, freely contested, transparent and meaningful elections. *Democracy*—the rule of, by, and for the people—is only possible in a political and social order that fully respects the rights of each and every man, woman, and child in society. And the *rule of law* can ossify into mindless and authoritarian legalism unless it reflects representative government and the utmost respect for the rights of the individual. . . . Governments that do not respect the rule of law are by definition lawless.⁶

CIVILIAN CONTROL OF THE MILITARY

Importance and Rationale. Discussions of human rights in the context of the goals of the U.S. foreign assistance program often introduce the concept of *civilian control of the military*. For example, incorporated within its statement concerning human rights policy, the Clinton Administration specifically refers to helping “new democracies make a smooth transition to civilian control of the military.” [See Attachment 1.] Moreover, predating the Clinton Administration policy, Section 541 of the Foreign Assistance Act of 1961, as amended, addresses the importance of using the IMET program to “foster greater respect for and understanding of the principle of civilian control of the military.” Thus, it is clear that civilian control is a major policy issue in the eyes of both the Administration and the Congress.

The basic rationale behind the association of *civilian control of the military* with such terms as human rights and democracy lies in the belief that a military establishment, particularly a large

⁵President William Clinton, Address to the U.N. General Assembly, September 27, 1993. Reprinted in Foreign Policy Bulletin, November/December 1993, p. 51. Emphasis added.

⁶Shattuck, John, Assistant Secretary of State for Human Rights and Humanitarian Affairs. Keynote Address: “Vienna and Beyond: U.S. Human Rights Diplomacy in the Post-Cold War World.” San Francisco, August 29, 1993. Emphasis added.

standing army, potentially poses a threat to individual liberty and to popular control of the government. Maintaining civilian control of the military through constitutional checks and balances is seen as the best solution to the problem. Simply defined, *civilian control of the military* in the United States means that the armed forces are controlled by the President (a civilian) and are organized, equipped, and supplied by Congress (a body of civilians). According to one analyst, civilian control generally requires that:

- The armed forces do not dominate government or impose their unique values upon civilian institutions and organizations.
- The armed forces have no independent access to resources of military unity.
- The armed forces' policies on the recruitment, pay, education, training, treatment, promotion, and use of personnel are not inconsistent with basic civil liberties and individual beliefs—with some compromises for military discipline and combat effectiveness.
- The use of military force is not determined by the values of the military establishment itself, either for or against military action, either in the conduct of foreign or domestic policies. Conversely, civilian decisions on the use of force should not disregard the relationship of policy ends and military institutional characteristics in terms of personnel, doctrine, training, equipment, and morale.⁷

When discussing the use of military force, it is stressed that compliance with international and domestic human rights law is never inconsistent with the accomplishment of legitimate military objectives.

U.S. Civilian Control Structure. The present structure of the U.S. military establishment demonstrates how civilian control is assured: At the top are the National Command Authorities (NCA), i.e., the President and the Secretary of Defense (SECDEF), both of whom are civilians. The organizational structure presided over by the SECDEF consists of an administrative side and an operational side.

On the administrative side are the military departments (the Departments of the Army, Navy, and Air Force), the defense agencies, and the Office of the Secretary of Defense. Forbidden by law to become involved in operational matters, these departments, which are headed by civilian Secretaries, organize, train, and equip forces for assignment to unified and specified commands. The Secretaries supervise the Chief(s) of each of the armed forces.

The operational side consists of unified and specified commands, each headed by a Commander in Chief (CINC) who reports to the NCAs. Acting as a channel of communication between the NCA and the CINCs are the Joint Chiefs of Staff (JCS), who also prepare strategic plans and advise the NCAs (they have no command authority). The JCS act as principal military advisers to the President, the SECDEF, and the National Security Council and provide collective advice and expertise on all national security matters having military implications. The JCS is not a general staff.⁸

MILITARY JUSTICE

Military justice relates to legal systems within each nation which govern order and discipline for members of their armed forces. For example, U.S. armed forces members are

⁷Papers prepared by the Naval Justice School, Newport RI, 1993.

⁸*Ibid.*

subject to the *Uniform Code of Military Justice (UCMJ)*. The following military justice-related topics are especially complementary to the overall framework of human rights: the rights and responsibilities of military personnel; the role of the military commander in military justice; and effective military justice systems and how they ensure accountability for and deterrence from human rights abuses by military personnel. Section 541 of the FAA stresses the importance of the IMET program as a means to "improve military justice systems and procedures in accordance with internationally recognized human rights."

Human Rights Instruments and Authority

INTERNATIONAL SOURCES

United Nations Charter. The Charter of the United Nations, which entered into force in 1945, specifically addresses human rights in its preamble and in two of its articles. Article 55 reads as follows:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56 of the U.N. Charter states: "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."

U.N. Universal Declaration of Human Rights. Due to the general language of Article 55 of the U.N. Charter, member states quickly turned to efforts to specify its meaning. The first result was the oft-cited and widely heralded Universal Declaration of Human Rights, which was adopted by the U.N. General Assembly in 1948. It is important to recognize that the Universal Declaration is not binding law but a U.N. recommendation to nations. Thus, the Declaration, in and of itself, offers no means of implementation other than through the good will of the member states.⁹

Notwithstanding these technical deficiencies, the Declaration was and still is important because: (1) it is an attempt at authoritatively stating the meaning of Article 55; and (2) parts of the Declaration reflect customary law or quasi-law. Over time, because the Declaration does reflect customary law, it has become highly valued as a document that identifies many human rights areas which are enforceable in other states. Moreover, the Declaration has been reaffirmed so often without opposition, and so many states have incorporated it into their national constitutions, that the Declaration is considered more than just a normal U.N. recommendation.¹⁰ The text of the Universal Declaration is at Attachment 2.

⁹In order for the Universal Declaration to become international legislation, it would have to be adopted as such through the treaty ratification process of the U.N. member states, including the U.S. This has not yet occurred.

¹⁰Naval Justice School papers, op. cit., p. 11.

Human Rights Conventions. In addition to the U.N. Charter and Universal Declaration, there are a number of international human rights "conventions" which take the form of treaties or international agreements. These conventions are compiled in an appendix to the annual *Country Reports on Human Rights Practices*, produced by the Department of State. The United States is shown as a *party* (signed and ratified) to nine agreements and a *signatory* (signed but not ratified) to seven agreements. In addition, any nation, which is a party or signatory to an agreement, can attach specified *reservations*.¹¹

The following international conventions and agreements were selected from the *Country Reports* appendix.

- **Geneva Conventions.** These refer to agreements reached in Geneva, Switzerland, among nations relative to wartime situations. Included are the *Geneva Convention Relative to the Treatment of Prisoners of War* and the *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, both dated August 12, 1949. The United States is listed as a party to both agreements. These are revisions of similar 1906 and 1929 humanitarian conventions.¹²

- **International Covenants.** The United States is listed as a party to the *International Covenant on Civil and Political Rights of December 16, 1966*.¹³ The *Covenant*, which is regarded by many to be the single most important human rights treaty, codifies the essential freedoms people must enjoy in an effective democratic society (such as the right to vote and participate in government, freedom of peaceful assembly, equal protection of the law, the right to liberty and security, and freedom of opinion and expression). Subject to a few essential reservations (e.g., to reflect the requirements of the First Amendment of the U.S. Constitution), the principles the *Covenant* expresses are entirely consistent with the Bill of Rights. The United States is also listed as a signatory to a second covenant, the *International Covenant on Economic, Social, and Cultural Rights of December 16, 1966*.

- **Other Conventions.** Additional agreements to which the United States is listed as a party in the aforementioned *Country Reports* appendix are:

- Convention to Suppress the Slave Trade and Slavery of September 25, 1926, as amended by the Protocol of December 7, 1953.
- Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948.
- Convention on the Political Rights of Women of March 31, 1953.
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of September 7, 1956.
- Convention Concerning the Abolition of Forced Labor of June 25, 1957.
- Protocol Relating to the Status of Refugees of January 31, 1967.

¹¹A *reservation* is a means of showing that a party will abide by all articles of the convention, except that it reserves the right to act independently in selected areas. The 1969 Vienna Convention on the Law of Treaties defines a reservation as "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." To be acceptable in international law, a reservation must be "compatible" with the object and purpose of the treaty or convention. (See Janis, pp. 22 and 24.)

¹²Shafritz, Williams, and Calinger, p. 298.

¹³As an example of the U.S. ratification process, the Senate gave its advice and consent to ratification of the International Covenant on Civil and Political Rights of December 16, 1966, by unanimous voice vote on April 2, 1992, subject to five reservations, five understandings, four declarations, and a proviso. The instrument of ratification was deposited with the UN Secretary General on June 8, 1992. No implementing legislation was deemed necessary. The Covenant entered into force for the United States on September 8, 1992.

Customary International Law. The most fundamental human rights, such as the right to be free from extra-judicial killings, torture, arbitrary arrests, detentions and disappearances, genocide and slavery, are generally thought to be customary international law.¹⁴ This would make these principles legally binding internationally on all nations even if they have not signed the applicable human rights treaties. Customary international law arises when there has been a long-standing and continuous practice by countries; the practice is based on the belief that it is required by, or consistent with, international law; and there is a general acceptance not only of the practice but of the belief by other states.¹⁵

Figure 1 provides human rights excerpts from various international sources, ranging from the U.N. charter to regional agreements.

FIGURE 1
Illustrations of "Human Rights" Provisions

"All human beings are born free and equal in dignity and rights . . ."

Universal Declaration of Human Rights, adopted by the U.N. General Assembly, December 10, 1948

"We the peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights . . ."

Preamble to the *Charter of the United Nations*, done at San Francisco, June 26, 1945

"Every human being has the right to life, liberty and the security of his person."

American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States, March 30-May 2, 1948

"Everyone's right to life shall be protected by law . . ."

Article 2(1), *European Convention for the Protection of Human Rights and Fundamental Freedoms*, done at Rome, November 4, 1950

"Every human being has an inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

Article 6(1), *International Covenant on Civil and Political Rights*, done at New York, December 16, 1966

"No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."

Article 5(2), *American Convention on Human Rights*, done at San Jose, November 22, 1969

"Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

Article 4, *African Charter on Human and Peoples' Rights*, done at Banjul, June 26, 1981

¹⁴The following distinction is made between conventional international law and customary international law. With *conventional international law*, nations that are parties to a treaty or convention explicitly agree to be bound by certain rules. With *customary international law*, consent is implicit and founded in international practice. See Janis, pp. 5-6.

¹⁵Papers of the U.S. Army Judge Advocate School, 1993.

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacefully to assemble, and to petition the Government for a redress of grievances.”

First Amendment to the *Constitution of the United States*, ratified December 15, 1791

NATIONAL SOURCES

Constitutions and the U.S. Bill of Rights. Although internationally recognized human rights are found in documents such as the U.N. Charter and international conventions, many countries have incorporated human rights in their domestic legal system. Several nations have constitutions, meaning “a fundamental or organic law that establishes the framework of government of a state, assigns the powers and duties of governmental agencies, and establishes the relationship between the people and their government.” Constitutions may be written (e.g., U.S. Constitution) or unwritten (e.g., English model). The U.S. Constitution has the honor of being “the oldest and most successful written constitution in history.”¹⁶

The *Bill of Rights* (the first ten amendments to the U.S. Constitution) contains a listing of the rights that U.S. persons enjoy that cannot be infringed upon by the government. Included are freedom of religion, freedom of speech, the right of the people to be secure in their persons and houses against unreasonable searches and seizures, and other rights commonly taken for granted by U.S. citizens.

Declaration of Independence. The *Declaration of Independence*, adopted by the Second Continental Congress on July 4, 1776, also makes reference to certain “self-evident” truths such as the equality of all men, natural rights, government by consent, and so forth. Unlike the Bill of Rights which is incorporated into the U.S. Constitution, the Declaration does not have any legal effect today. Nonetheless, it is recognized throughout the world as a basic statement of the American creed.¹⁷

Human Rights and the Foreign Assistance Program

Foreign Policy Goal. As noted in Chapter Three of this text, human rights are addressed in Section 502B of the Foreign Assistance Act of 1961, as amended (FAA). This statutory provision states that the United States

“shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the U.S., promote and encourage increased respect for human rights and international freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of U.S. foreign policy shall be to promote the increased observance of internationally recognized human rights by all countries.”

The use of the word “countries” (nation states) in the FAA is significant and goes back to the point, made at the beginning of this chapter, that human rights involves a relationship between individuals and *governments*. U.S. “human rights policy is concerned with the

¹⁶Plano, Jack C. and Greenberg, Milton. *The American Political Dictionary*, Ninth Edition, Fort Worth: Harcourt Brace Jovanovich College Publishers, 1993, pp. 33-34.

¹⁷*Ibid.*, pp.36-37.

limitations on the powers of government that are required to protect the integrity and dignity of the individual.”¹⁸

Sanctions for Human Rights Violations. The term “gross violations of internationally recognized human rights” is defined in Section 116(a) of the FAA to include:

Torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction and clandestine detention of those persons, or other flagrant denial of the right to life, liberty, and the security of the person.

Section 502B, FAA, provides that any security assistance recipient nations engaging in a “consistent pattern of gross violations of internationally recognized human rights” risk a combination of statutory and policy-based suspensions of U.S. military and economic assistance, including FMS and DCS transfers of defense articles and services. Any exception to the Section 502B policy requires a Presidential certification to the Congress “that extraordinary circumstances exist warranting provision of such assistance.”

Roles and Responsibilities

DEPARTMENT OF STATE ROLE

Section 624(f) of the Foreign Assistance Act of 1961, as amended, vests in the Assistant Secretary of State for Human Rights and Humanitarian Affairs “overall policy responsibility for the creation of United States Government human rights policy.” The Assistant Secretary is responsible for the following: gathering detailed information regarding humanitarian affairs and the observance of and respect for internationally recognized human rights; preparing the annual country reports, discussed below; making recommendations to the Secretary of State and the Agency for International Development (AID) Administrator regarding compliance with FAA, Sections 116 and 502B; and performing other responsibilities which serve to promote increased observance of internationally recognized human rights by all countries.

REPORTING HUMAN RIGHTS VIOLATIONS AND CONDITIONS

State Department Country Reports. In accordance with Sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961, as amended, and Section 505(c) of the Trade Act of 1974, as amended, the Department of State submits an annual document regarding *Country Reports on Human Rights Practices* to the U.S. Congress. The reports cover the human rights practices of all nations that are members of the United Nations as well as a few that are not. They are submitted to assist members of Congress in the consideration of legislation, particularly foreign assistance legislation. The reports are published as a Joint Committee Print of the House Committee on Foreign Affairs and Senate Committee on Foreign Relations, and are available for purchase by the public from the U.S. Government Printing Office.

Each country report follows a standard format, consisting of a brief introductory statement followed by a more detailed discussion of human rights practices and concerns under the headings listed in Figure 2.

¹⁸U.S. Congress, Joint Committee Print. Report to the Committee on Foreign Relations, U.S. Senate, and the Committee on Foreign Affairs, U.S. House of Representatives, by the Department of State. *Country Reports on Human Rights Practices for 1990*. Washington DC: U.S. Government Printing Office, February 1991, p. xi.

While the State Department takes care to make its country reports as objective and uniform as possible in both scope and quality of coverage, it readily acknowledged in its February 1993 *Country Reports* publication that, "It is often difficult to evaluate the credibility of reports of human rights abuses. With the exception of some terrorist groups, most opposition groups and certainly most governments [that commit gross violations of internationally recognized human rights] deny that they commit human rights abuses and often go to great lengths to cover up any evidence of such acts."¹⁹

FIGURE 2

U.S. Department of State Country Reports on Human Rights Practices Format Headings

- Respect for the integrity of the person, including freedom from:
 - Political and other extra judicial killing
 - Disappearance
 - Torture and other cruel, inhuman, or degrading treatment or punishment
 - Arbitrary arrest, detention, or exile
 - Denial of fair public trial
 - Arbitrary interference with privacy, family, home, or correspondence
- Respect for civil liberties, including:
 - Freedom of speech and press
 - Freedom of peaceful assembly and association
 - Freedom of religion
 - Freedom of movement within the country, foreign travel, emigration, and repatriation
- Respect for political rights: the right of citizens to change their government
- Governmental attitude regarding international and non-governmental investigation of alleged violations of human rights
- Discrimination based on race, sex, religion, language, or social status
- Worker rights
 - The right of association
 - The right to organize and bargain collectively
 - Prohibition of forced or compulsory labor
 - Minimum age for employment of children
 - Acceptable conditions of work

Role of International and Nongovernmental Organizations. Section 502B(b)(1) of the FAA recognizes the contributions of international organizations and nongovernmental organizations (NGOs) within the area of human rights. Accordingly, this statutory section mandates that "consideration shall be given to . . . the relevant findings of appropriate international organizations, including nongovernmental organizations, such as the International

¹⁹This extract from the State Department's *Country Reports* should not be interpreted to indicate that "most" governments in the international community of nations commit human rights abuses.

Committee of the Red Cross" relative to the preparation of statements and reports concerning human rights conditions in other countries.

Some nongovernmental organizations (e.g., Amnesty International, Human Rights Watch) publish their own human rights reports. The State Department customarily acknowledges the inputs provided by nongovernmental organizations as well as other sources (e.g., private citizens, officials of foreign governments) in the development of its annual *Country Reports on Human Rights Practices*.

In-Country Member Reporting Responsibilities. The Secretary of State, in a speech given in June 1993, stated: "We will insist that our diplomats continue to *report* accurately and fully on human rights conditions around the world." Moreover, the reporting responsibility extends to other USG personnel who have knowledge of suspected human rights violations. As an illustration of how such policy has been implemented at the unified command level, in this instance the United States Southern Command, reference is made to the "USSOUTHCOM Human Rights Policy" memorandum (which applies to all U.S. military personnel assigned or deployed to the USSOUTHCOM theater). The following is an excerpt from that memorandum:

REPORTING: U.S. military personnel deployed to the theater will report all instances of suspected human rights violations immediately through the chain of command to the Commander of the SAO (or senior U.S. Defense Representative) in the HN [host nation], who will immediately report such allegations to the Ambassador and maintain a record of all reports. When allegations of abuse involve a member of the U.S. Armed Forces, the Commander of the SAO (or senior U.S. Defense Representative) will inform USCINCSO immediately as well as the Ambassador. Appropriate action to investigate each allegation will be taken in concert with the Ambassador.

EDUCATION AND TRAINING

Concurrent with the above emphasis on human rights reporting, there is a parallel effort to insure that both U.S. and international students receive appropriate education and training concerning human rights. In an August 1993 message, the Defense Security Assistance Agency (DSAA) stated that the Security Assistance training community is facing a new challenge brought on by a renewed emphasis on democratization, civilian control, and human rights which will influence the way the USG manages the training of international students under the security assistance training program, particularly the IMET program. International student training programs must fully support the direction of the Administration and heed the concerns of Congress. This can be accomplished by insuring that DoD training courses contain sufficient coverage of *human rights, military justice, civilian control of the military, and democratization* themes in their curricula when appropriate, or that these themes are sufficiently covered via the informational program when course coverage is not appropriate. The suggested scope of topics and themes is listed in Attachment 3. The DSAA message further noted, "At the same time, while the U.S. military downsizes and prepares for a post-cold war mission, it is now recognized that efforts to ensure the applicability of these themes for international students should not necessarily exclude the U.S. student."²⁰

The need for human rights familiarization is also addressed in the aforementioned USSOUTHCOM Human Rights Policy memorandum, as follows: "All U.S. military personnel deployed to the theater, either in permanent or temporary status, will receive human rights training. The objectives of the training are to: increase human rights awareness; acquaint

²⁰DSAA-PLANS-PGM message DTG 191814Z Aug 93, reprinted in *The DISAM Journal*, Fall 1993, pp. 93-96.

personnel with U.S. human rights policies and objectives; and, inform personnel of reporting requirements.”

Summary

A solid understanding of internationally recognized human rights policies is of key importance to members of the U.S. security assistance community, particularly those who conduct educational and training programs for international students as well as SAO personnel who interface on a day-to-day basis with host country personnel. Human rights are not just a matter of U.S. emphasis; rather, human rights policies are grounded in multiple international conventions, including the United Nations Charter.

The human rights conditions within each country are documented in an annual report prepared by the State Department. SAO personnel and U.S. military personnel deployed to unified command theaters need to be aware of their responsibilities for reporting human rights violations. To provide further focus on the importance of human rights, military justice, and civilian control of the military, the DoD education and training establishment is tasked with providing appropriate instruction on these topics to international students.

Recommended Readings

Janis, Mark W. *An Introduction to International Law*. Second Edition. Boston: Little, Brown and Company, 1993.

Lawson, Edward. *Encyclopedia of Human Rights*. New York: Taylor & Francis Inc., 1991.

U.S. Congress. Joint Committee Print. Report to the Committee on Foreign Relations, U.S. Senate, and the Committee on Foreign Affairs, U.S. House of Representatives, by the Department of State. *Country Reports on Human Rights Practices for (Year)*. Washington DC: U.S. Government Printing Office.

Weston, Burns H., Falk, Richard A., and D'Amato, Anthony. *Basic Documents in International Law and World Order*. Second Edition. St. Paul: West Publishing Co., 1990.

<p>The Author wishes to acknowledge the assistance of Thomas K. Plofchan, Jr., of the Bureau of Human Rights and Humanitarian Affairs, U.S. Department of State, in reviewing and offering numerous helpful suggestions during the development of this chapter.</p>

Attachment 1

Clinton Administration's Policy Regarding Human Rights

My country will pursue human rights in our bilateral relations with all governments—large and small, developed and developing. America's commitment to human rights is global, just as the U.N. Declaration (Universal Declaration of Human Rights) is universal.

As we advance these goals, American foreign policy will both reflect our fundamental values and promote our national interests. It must take into account our national security and economic needs at the same time that we pursue democracy and human rights. We will maintain our ties with our allies and friends. We will act to deter aggressors. And we will cooperate with like-minded nations to ensure the survival of freedom when it is threatened.

The United States will promote democracy and protect our security. We must do both—and we will. We will insist that our diplomats continue to report accurately and fully on human rights conditions around the world. Respect of human rights and the commitment to democracy-building will be major considerations as we determine how to spend our resources on foreign assistance. And we will weigh human rights considerations in trade policy, as President Clinton demonstrated last month.

We will help new democracies make a smooth transition to civilian control of the military. And we will assist militaries in finding constructive new roles in pursuit of peace and security—roles that respect human rights and contribute to international peace.

Working with the U.N. and other international organizations, we will help to develop the public and private institutions essential to a working democracy and the rule of law. And we will continue to support America's own National Endowment for Democracy in its mission to help nourish democracy where it is struggling to grow.

The international debate now turns less on *whether* human rights are appropriate for discussion and more on *how* to address them most effectively. The debate turns less on *whether* democracy best serves the needs of people everywhere and more on *how soon* their democratic aspirations will be met.

Source: Excerpt from Secretary of State Warren Christopher's speech to the U.N.'s World Conference on Human Rights, Vienna, June 14, 1993, reprinted in *Foreign Policy Bulletin*, Sep/Oct 1993, p. 60.

Attachment 2

Universal Declaration of Human Rights Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental and human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

*Now, Therefore,
The General Assembly,*

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples and territories under their jurisdiction.

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional, or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3. Everyone has the right to life, liberty, and security of person.

Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5. No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.

Article 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9. No one shall be subjected to arbitrary arrest, detention, or exile.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11. (1) Everyone charged with a penal offense has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. (2) No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.

Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13. (1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14. (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15. (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17. (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.

Article 18. Everyone has the right of freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom, either alone in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

Article 20. (1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.

Article 21. (1) Everyone has the right to take part in the Government of his country, directly or indirectly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality.

Article 23. (1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27. (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancements and its benefits. (2) Everyone has the

right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author.

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of this rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society. (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30. Nothing in this Declaration may be interpreted as implying for any State, group, or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Attachment 3

Educational Topics and Themes

Scope: To better define the areas of human rights and related themes that need to be emphasized in DoD educational programs, the Defense Security Assistance Agency (DSAA) compiled the following list of topics and themes during a DSAA-hosted Conference on Human Rights Training for International Students in June 1993.

HUMAN RIGHTS

- The international and national authorities for human rights, e.g., the Universal Declaration of Human Rights, the Constitution of the United States.
- The role of international law and the law of war, and the protection of human rights under the Geneva and Hague Conventions.
- The history of efforts made by governments, the United Nations, and non-government organizations to achieve internationally recognized human rights.
- Women's rights, ethnic relations, conflict resolution, and sexual harassment.
- Human rights protection through the proper application of rules of engagement.
- The operational importance of protecting human rights from the military standpoint.

MILITARY JUSTICE

- Rights and responsibilities of military personnel.
- The role of the military commander in military justice.
- Effective military justice systems and how they ensure accountability for deterrence from human rights abuses by military personnel.

CIVILIAN CONTROL OF THE MILITARY

- Organization of the U.S. government, the Defense Department, and chain-of-command.
- Civil-military relations that reinforce democratic governments.
- Proper roles of the military in a civilian-led government.

DEMOCRATIZATION

- The democratic system and democratic institutions.
- The role of democracy in protecting human rights.
- The impact of non-democratic forms of government on the protection of human rights.
- U.S. Constitution and Bill of Rights, description and application of individual provisions that protect human rights.
- Proper role of the military in fostering democratization.

Attachment 4

The "Five R's"

U.S. military members' responsibilities (particularly those permanently assigned or temporarily deployed to a foreign country) with respect to human rights can be summarized by the "five R's." The "Five R's" are guidelines extracted from educational materials developed by the U.S. Army Judge Advocate School. The following is applicable:

1. **Recognize** human rights violations. This involves recognizing unlawful action by a government official, or someone acting under the color of government authority, and distinguishing gross violations of human rights from other violations. One must also be mindful that not all "bad" conduct constitutes a human rights violation.

2. **Refrain** from committing human rights violations. Each soldier or military member is a government official, and government officials must not commit or aid in the commission of violations. Moreover, military members may be responsible for the acts of subordinates and possibly the acts of fellow soldiers. Upon encountering apparent violations in foreign countries, visiting military members should generally disengage from activity and leave the area, provided they can disengage without impairing their mission.

3. **React** to human rights violations. If observed conduct of a government official involves a "gross violation," intervention to protect a victim may be appropriate in certain limited cases:

- The threat to life or limb is clear and compelling (e.g., without the soldier's intervention, a death, dismemberment, or rape will almost certainly occur).
- No other government officials or military personnel are able to intervene.
- Intervention is possible without serious threat to the U.S. soldier's safety, unit security, or mission.
- Intervention involves no force or absolute minimum force to protect the victim (for example, shouting -- not shooting at perpetrator). The objective is to restore the status quo; not to punish the perpetrator.

If an official's conduct does not involve a gross violation, the soldier follows the "report" procedures outlined below and secures the consent of higher authority before intervening or notifying others of the apparent violation.

4. **Report** human rights violations.

- Report all instances of suspected human rights violations immediately to higher authority; use the most secure communications means available.
- Indicate what official appears to be committing an offense, describe victim(s), and state whether any U.S. military or civilian personnel were involved in any way.
- As appropriate, provide recommendations as to what the commander should do to protect the victim(s), restore the status quo, and preserve evidence of these events.

5. **Record human rights violations.**

- Subject to requirements of personnel/unit safety and of mission requirements, use available means to preserve evidence and record other details of any apparent violation of human rights. Such means may include photography and tape recordings as well as written notes and diagrams.

- As the location may be later examined by professional investigators from the proper host nation authorities (or other international investigators -- United Nations, regional, or perhaps U.S.), be cautious about entering the area where events took place and collecting items of evidence without clearance from higher authority.

ABOUT THE AUTHOR

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ACKNOWLEDGEMENT

The author expresses appreciation to Mr. Paul Porter, DSAA/COMPT/IRM, for his helpful contributions and constructive comments during the preparation of this article.