

The Development of Human Rights in Latin America and the Inter-American System

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RESÜMEE

Der Aufsatz behandelt die Entwicklung der Menschenrechte in Lateinamerika seit der zweiten Hälfte des 20. Jahrhunderts mit einem besonderen Schwerpunkt auf dem interamerikanischen System. Zunächst wird die institutionelle Entwicklung des interamerikanischen Menschenrechtssystems erläutert. Es folgt eine Untersuchung der Menschenrechtspolitik während der 1970er und 1980er Jahre. Daran schließt sich eine Analyse der Wandel, die in den 1990er Jahren stattfanden, an. Schlussfolgerungen zur derzeitigen Menschenrechtssituation in der Region schließen den Artikel ab.

Introduction

In regard to international human rights, the recent history of Latin America is linked closely to the development of the concept of such rights. The very general approach of this article attempts to provide an overview in regard to the historical development of human rights in Latin America in the second half of the 20th century with a particular focus on the inter-American system.

Following the United Nations categorisation of human rights into three generations, the classic human rights of the individual represent protection of the person from the state – for instance, the right to life, and the right to personal security and liberty – and constitute the political and civil rights of the first generation. The supporters of economic, social and cultural rights, or second generation human rights, request more protection rights from the state. In the second generation, for instance, the right to life evolves to the right to a basic standard of living, and the right to freely choose a profession becomes the right to employment. In Latin America especially, proponents of collective so-

cial, economic and cultural rights argumentatively challenged proponents of individual rights. The proponents of an understanding of rights as collective argue that the actual assurance of the rights of the individual must be accomplished through the realisation of the appropriate socio-economic context. In addition, aspects of the so-called third generation of human rights have to be taken into consideration. This generation refers to solidarity, the right to development and self-determination of peoples and ethnic groups and has an important significance in Latin America. Indigenous peoples aspire to self-determination while many proponents of the Third-World-movement have called the right to development the most elementary human right. In this view, rights as characterised by the first two “generations” could only follow the right to development, since the fulfilment of this right supposedly creates the proper conditions for compliance with other human rights. The present article mainly reviews the rights of the individual, but it will become evident that economic, social and cultural issues have also played an important role in the subcontinent. At least in theory, all three rights categories are interconnected and described as indivisible.

Furthermore, to understand the reality of human rights in Latin America, it is of particular importance to review the role of the state. Almost all national constitutions of Latin American states include a concept of *Rechtsstaat*, *Rule of Law* or *Estado de Derecho*¹ as well as the idea of human rights, which follows the North American-Western European ideal. In reality, however, this constitutional presumption sometimes lacks real world validity. The discrepancy between a State’s estimation of rights and actual constitutional reality in Latin America is extraordinary, especially in regard to human rights.² As a result, many general works on human rights in the so-called Third World marginalise Latin America, group them with Western countries (Western Europe, North America) or just give them a special space within the Western Hemisphere. The reason for this uncertainty of where to place Latin America, given its human rights practice, derives from this difference between constitutional rights and the real practice of complying with those rights.

Where does this kind of contradiction come from? From the perspective of intellectual history, human rights do not constitute an adopted notion in Latin America, as they do in other economically poorer regions. Nevertheless, the denial of those rights and the

1 The German *Rechtsstaat* refers to a more distinctive legal philosophy than the Anglo-Saxon *Rule of Law*. Though the Spanish *Estado de Derecho* seems to be a literal translation of the German expression, it means something different due to its legal history. The English term *Rule of Law* is often translated to Spanish as “*Principio de Derecho*”, principle of right/law. Maybe the expression *Imperio de la ley* which is a literal translation, describes the English term better but still lacks of an equivalent in Latin American law reality. However, the present article does not focus on questions of legal philosophy but this example shows that within the inter-American relations there are besides cultural problems also risks of misunderstanding the other’s legal system and philosophy.

2 F. Ermacora, *Menschenrechte in der sich wandelnden Welt*, Vol. III: Amerika, Österreichische Akademie der Wissenschaften, Philosophisch-Historische Klasse, Vol. 608, Veröffentlichungen für das Studium der Menschenrechte, No. 3 (Vienna 1994), pp. 118/119. But it has also to be mentioned that there are experts in international law who do not see a constitution as a concept to apply to reality, but as an idealistic guideline. Those lawyers define the constitution therefore as a sort of orientation help lacking of the urgency to apply it immediately; this is considered as the problem of “immediate application”.

massive and systematic violations of human rights by governments show how cynical the reality appears compared with normative standards.

According to common political science studies, the state in Latin America is a mythical creation, and it is expected to take responsibility for almost all sectors of life, in order to establish and guarantee order and security as well as economic and social progress. In reality, the state has not come close to fulfilling these inflated aspirations. The hierarchical structures of the monarchic centralised state, going back to Iberian colonisation, have long survived. However, recent historical research has led to a slight revision of such findings, since it rather focuses on the rivalries between the capitals and other cities as a factor for the state-building process.

Furthermore, national sovereignty has taken an almost sacrosanct position in Latin American foreign policies. Non-intervention in Latin America is both a product of the independence movements and a kind of protection against the almighty United States. The charter of the Organisation of American States (OAS)³ names human rights among its main goals, but it prioritises the principle of non-intervention in domestic affairs. Military dictatorships as well as relatively democratic states have used the principle of non-intervention as an argument to reject human rights complaints. The insistence on national sovereignty can be explained, in part, by considering the historical relations between Latin America and the United States. The US has often intervened directly or indirectly – with force, economically, diplomatically or through intelligence activities – in the national affairs of its southern neighbours. Accordingly, the non-intervention principle represents a sort of international law shield against this interference in internal affairs but it has also been used to respond to accusations regarding human rights violations.

Also of importance in the understanding of the human rights situation in Latin America is the preponderant role of the armed forces. Through the historical identification of the nation with its armed forces during wars of independence, the military became one of the most stable and powerful political actors.⁴ The military built parochial relationships with the political and economic elites and thus assured its influence on national politics. Further, after military professionalisation, the national militaries or contingents of militaries all over Latin America have attempted to guide the political and social progress of their respective nations. These attempts have constituted a clear violation of the democratic principle of separation of powers, and were usually accompanied by numerous human rights abuses.

Different currents of the Catholic Church also represented important actors in the struggle for human rights in Latin America.⁵ The question of how to deal with human

3 The Organisation of American States was founded by the 20 Latin American States and the US in 1948, but had previously existed as the Pan American Union, an organization which goes back to the first inter-American conferences in 1889/90. The creation of the OAS, however, meant a shift and an institutional change in inter-American relations toward a more binding commitment.

4 See, for example, A. Rouquié, *The Military and the State in Latin America*, Berkeley 1987.

5 "As regards the Ibero-American context, in the sixteenth century, after the famous "debate" between Bartolomé de las Casas and Juan Ginés de Sepúlveda, Spanish law officially recognized the indigenous population in their

rights violations committed by right-wing dictatorships or by leftist guerrillas almost led to a schism in the church. While the traditionally conservative church continued to maintain the status quo, which meant to support the regime in charge regardless of who it was, the so-called “popular church” chose to help the poor and oppressed. For instance, in contrast to large parts of the Argentine church in response to the Argentine military junta, the church in Chile opposed the dictatorship. The “popular church” developed the “theology of liberation” that prioritised an active role of the Catholic Church to overcome repression by the ruling regime. The protagonists of the popular church often used human rights to advance their cause in public debate, but they also advocated a change of the socio-economic conditions, which had caused the persisting violence. Due to this, many activists affiliated with the Church were accused of being Communists, even though Marxism-Leninism attracted few of them.

I propose to answer a set of questions: 1) How did the debate on human rights begin in Latin America and the inter-American system? Here, I will inquire into the origin of the human rights debate in the region and in the hemispheric context. In the beginning of this discussion, the role of non-governmental organisations (NGOs) was of tremendous importance, so I will also analyse the changing role of these groups; 2) Did the role of NGOs change? Furthermore, as the United States of America has always been a dominant player in the region, its impact on the human rights issue will be examined as well. 3) What was the position of the United States? In addition, a review of the difficult task to tackle past abuses in redemocratised societies will also highlight the role of the inter-American system in this regard. 4) Is the problem of past human rights abuses merely a national burden or a problem for the political development of the hemisphere? Finally, I will provide some concluding remarks on the prospects of human rights in the region. The periodisation implicitly provided in this article does not follow the institutional development of the inter-American system, but rather general political tendencies in the human rights policy concerning Latin America. The subsequent section describes the institutional history of the inter-American human rights system and shall provide a brief overview. The third part deals with the human rights situation in the 1970s, the fourth covers the position of human rights during the 1980s. The distinction between the 1970s and the 1980s is explained by the prevailing military rule in the Southern Cone during the seventies, followed by the Central American conflicts in the 1980s and also through different US administrations. The regional transformations and the changes in the course of the end of the East-West confrontation, which took place in the 1990s, are the subject of part five. Finally, I revisit the role of human rights in Latin America.

The genesis of the Inter-American system of human rights protection

After World War II, the years 1948-49 marked a turning point for the understanding and implementation of human rights across the entire world. Besides the creation of the United Nations (UN), the North Atlantic Treaty Organisation (NATO) was founded as a transatlantic defence pact, as was the Organisation of American States (OAS) in the context of the incipient conflict between East and West. Above all, Latin American governments supported the mention of human rights in the UN Charter of 1948. However, it is necessary to state that there was a gap between requests to include human rights in the draft presented at the international level, and the national reality regarding the human rights practice.

Human rights were also included in the charter of the Organisation of American States in 1948. At the same time, the Member States of the OAS signed the American Declaration on Rights and Duties of Man several months before the UN approved the Universal Declaration on Human Rights that same year.⁶ Since then, human rights have become an important issue in East-West, as well as in the North-South conflicts.

Bruni Celli divides the institutional evolution of the inter-American human rights system into four phases. The first phase consisted of the approval of the OAS Charter and the American Declaration of the Rights and Duties of Man in 1948 by the OAS Member States. This was followed by the second stage, which witnessed the creation of the Inter-American Commission on Human Rights (IACHR) in 1959. The consolidation of the system represented the third period, marked by the entry-into-force of the American Convention on Human Rights in 1978, the creation of the Inter-American Court of Human Rights in 1979, and the recognition of its jurisdiction by various OAS Member States. For Bruni Celli, the institutional and normative development of the system since 1980 constitutes the fourth phase. That period included the first Advisory Opinions of the Court, the expansion of activities taken on by the IACHR and, above all, the international codification of human rights in the regional system. The latter meant the approval of the Additional Protocols on the Convention, which referred to economic, social and cultural rights (Protocol of San Salvador, 1988), the abolition of the death penalty (1990) as well as the conventions on torture (1985), forced disappearances (1994), and on the prevention, punishment and eradication of violence against women (1994).⁷ I would suggest adding a fifth phase, concerning the 1990s, to the evolution of the inter-American human rights system. This proposed phase is described in Chapter V.

6 However, the American Declaration was not part of the OAS Charter through a determined decision of the Member States not to include it.

7 M. T. Bruni Celli, *Sistema Interamericano de Protección de Derechos Humanos*. Discurso del 29 de mayo de 1995 en el Seminario de la Fundación Konrad Adenauer en Quito; in: Konrad-Adenauer-Stiftung (ed.), *Serie de Publicaciones sobre Política Economía Derecho*, 1995, No. 2: M. T. Bruni Celli / A. de Zayas / J. Prado Vallejo, *Derechos Humanos y Administración de Justicia*, Quito/Ecuador 1995, pp. 59-60.

To understand the remarkable evolution of the inter-American human rights system, it is necessary to review the regional and international processes which influenced that development.⁸

During the 1960s, numerous guerrilla movements emerged in Latin America. Many of those groups fought mainly against the highly unequal distribution of wealth and land on the subcontinent, a holdover from colonial and postcolonial times. In 1959, rebel troops led by Fidel Castro and Ernesto “Che” Guevara were able to overthrow the US ally and dictator Fulgencio Batista, and later installed a socialist system in Cuba. The creation of the Inter-American Commission on Human Rights (IACHR) derived from the political atmosphere in the region characterised by instability and a growing awareness of the connection between human rights and the maintenance of democracy. Among the concrete reasons for the changed mood were the Cuban Revolution of January 1959⁹ and the subsequent invasion attempts in the region, in addition to the human rights situation in the Dominican Republic.¹⁰ The Fifth Meeting of Consultation of the OAS Foreign Ministers in Santiago de Chile (1959) founded the IACHR.¹¹ Created in 1959/60 as a sort of improvisation, this Commission, with its seat in Washington, D.C., was able to expand its powers in the following years through a very broad interpretation of its mandate. The Commission’s performance during the crisis in the Dominican Republic, in the mid-sixties in particular, and its role in the settlement of the four-days war between Honduras and El Salvador in 1969, contributed to its increasingly good reputation. As a result, the OAS Council increased the Commission’s powers. In 1970, in the context of the restructuring of the organisation, the IACHR was elevated to an OAS main organ through the entry-into-force of the Protocol of Buenos Aires of 1967. Before that date, the Commission had simply been titled an “autonomous organ” of the OAS, based merely on a conference resolution.

In 1969, the OAS Member States eventually agreed on an American Convention on Human Rights, which entered into force in 1978. The entry-into-effect required eleven instruments of ratification and the administration of United States president Jimmy Car-

8 On the development of the inter-American human rights system, see T. J. Farer, *The Grand Strategy of the United States in Latin America*, New Brunswick 1988; C. Medina Quiroga, *The Battle Of Human Rights*; Gross, *Systematic Violations and the Inter-American System*, Dordrecht / Boston / London 1988; T. J. Farer, *The Rise of the Inter-American Human Rights Regime: No longer a Unicorn, Not Yet an Ox*, in: *Human Rights Quarterly*, Vol. 19, No. 3, August 1997, pp. 66-98; and K. Dykmann, *Philanthropic Endeavors or the Exploitation of an Ideal? The Human Rights Policy of the Organization of American States in Latin America, 1970–1991*, Frankfurt a. M. / Madrid 2004.

9 D. J. Padilla, *The Inter-American Commission on Human Rights of the Organization of American States: A Case Study*, in: *American University Journal International Law & Policy* 95 (1993), reprinted in: Th. Buergenthal/D. Shelton, *Protecting Human Rights in the Americas, Cases and Materials*, Kehl/Strasbourg/Arlington 1995, 4th and revised edition, p. 293.

10 O. C. Stoetzer, *The Organization of American States*. Westport, Connecticut/London 1993, 2nd edition (1st edition 1969), pp. 45/46. See C. Sepúlveda, *The Inter-American Commission on Human Rights of the Organization of American States, 25 Years of Evolution and Endeavour*, in: *German Yearbook of International Law*, Volume 28, 1985, p. 67.

11 D. Forsythe, *Human Rights, The United States and the Organization of American States*, in: *Human Rights Quarterly*, Vol. 13, No. 1 (1991), p. 82.

ter pushed the decisive ratifications in 1977 and 1978. The US has never ratified the Convention itself.

As a consequence of the entry-into-force of the Convention, the Inter-American Court of Human Rights was created in 1979. The Member States chose San José to be the Court's seat, thereby making San José and Costa Rica the inter-American equivalent of Geneva and Switzerland, as a traditional sanctuary for human rights. Since then, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have been the main enforcement mechanisms of the Convention. However, since 1978 the Commission has always had to distinguish between OAS Member States that are parties to the Convention and those Member States whose responsibilities in terms of human rights only derive from the American Declaration.

During its most prominent period, the reports of the IACHR with the farthest-reaching effects, which in most cases followed on-site visits to the countries concerned, focused on the human rights situation in Chile (1974), in Nicaragua (1978) and in Argentina (1980). The special report on Chile was the first human rights issue of controversial nature that led to a separate resolution by the OAS General Assembly. The report on Nicaragua in 1978 described the Somoza regime as a government of human rights violations. This report, authored without precedence, did not include recommendations since it was sceptical about any change within the Somoza government. It contributed to the victorious revolution by the oppositional Sandinistas in 1979. Finally, the 1979 visit to Argentina and the report on the country's human rights situation in 1980 supposedly had a major impact as well.¹² In the 1990s, the Commission eventually also dealt with the human rights situation in Mexico and Brazil in special reports, which had been problematic in the decades before.

The Inter-American Court has always depended on cases. The competition between Court and Commission, mostly generated by questions of competence, diminished during the 1990s. One of the most momentous judgments was made in the Velásquez Rodríguez case in 1988, when the Court requested the Honduran state to inform the relatives of a "disappeared" about his fate, and to pay compensations to the relatives of the victim. This judgment was interpreted as a precedent-setting case. The so-called "right to truth" took on a major role.

The 1970s: Military dictatorships and Carter's human rights policy

The 1970s were marked by old and traditional oligarchic regimes like those in Central America, and countries where a more democratic tradition turned to authoritarian rule.¹³ While the subcontinent had witnessed "moderate" military regimes (*dictablandas*) duri-

12 See Dykmann, *Philanthropic Endeavors* (note 8).

13 O'Donnell's concept of the bureaucratic-authoritarian State in South America has been a crucial contribution to the analysis of this new form of dictatorships. See G. O'Donnell, *Bureaucratic authoritarianism: Argentina 1966–1973, in comparative perspective*, Berkeley 1988.

ng the 1960s, violent dictatorships of a new type emerged. There are multiple reasons for the appearance of these brutal regimes in the 1970s. The economic crisis that followed the oil price shock of 1973 caused new, and aggravated many existing, socio-economic problems, which led to social unrest. Further, Latin America witnessed an increase in nationalism that was mostly directed against the United States. Additionally, during the 1960s, leftist, Marxist and national liberation guerrilla movements had evolved throughout Latin America as a result of the successful revolution in Cuba in 1959. Many of these rebel movements did not explicitly deny individual rights, but saw a priority in the improvement of the economic and social conditions in their countries, including a radical change of the economic and social system. As a response to this challenge of the growing guerrilla threat, military strategists of the famous Brazilian *Escola Superior da Guerra* elaborated the so-called “Doctrine of National Security.” Anti-Communism was the armed forces’ catechism; order and silence were considered the first duties of the civilian, to which human rights also had to be subordinated. In order to secure this doctrine constitutionally, the military regimes that had ruled since 1964 routinely declared states of emergency, siege or war, during which many rights were suspended. The governing armed forces justified the temporary suspension of several individual rights, arguing that they had to counter the terrorist subversion of rights and that it was necessary to suspend basic rights in order to lead this “war” effectively. Moreover, many military rulers violated the most elementary human rights through killings, torture, arbitrary arrests and the forced disappearance of individuals. Article 27 of the American Convention on Human Rights, for instance, confirms that these basic rights are not subject to a suspension during any state of emergency. The victims of oppression not only consisted of opponents of the regime, but also included suspects and any individual with (supposed) dissenting or critical opinions.

The right-wing military regimes in several South American countries also cooperated in the so-called “Operación Condor” in order to coordinate the joint battle against subversion and to exchange information on those considered to be terrorists. Ironically, the persecution and assassination of a regime’s opponents in another country could also be regarded as an interference of each state’s sovereignty.

In contrast to the ‘softer’ authoritarian rule of the sixties, the coup of 1973 in Chile brought an era of even more brutal military rule. In September of 1973, the elected Socialist president of Chile, Salvador Allende, was overthrown by contingents of the Chilean military led by General Augusto Pinochet. The killings, illegal detentions and cases of torture in the course of this coup in a traditionally democratic country provoked international attention and interest in the human rights situation in Chile. The 1974 report of the Inter-American Commission on Human Rights (IACHR) on the situation in Chile after the coup d’état led to the first resolution of the OAS General Assembly in 1975 in which a Member State was explicitly mentioned by name. In the foregoing years, the General Assembly had been acting under a kind of gentlemen’s agreement, which meant not discussing a particular member’s human rights situation. Above all, the US, which played a primary role during the mid- and late-seventies regarding the

human rights policy in Latin America, created the mood which facilitated the change of this procedure. It is possible the US did so in order to deflect the criticism in regards to the role the Central Intelligence Agency (CIA) played in the overthrow of elected president Allende. The difficult domestic situation in the US, caused by the aftermath of the Vietnam War, the Watergate affair and the strength of the civil rights movement, as well as the extraordinary media coverage of the Chilean case, mainly enabled this policy change.¹⁴

Furthermore, the *Putsch* of General Pinochet provoked an increasing activism in the field of human rights. In Latin America, especially in Chile, many human rights groups were founded that sought to defend victims of torture and the “disappeared”. Those Latin American human rights movements evolved from the immediate experience of massive violations of human rights. Unlike those groups directly affected, US human rights activists began to gather in organisations. This development in the United States emerged from the civil rights movement of the 1960s and also filled the moral-political vacuum left by the Vietnam War, the Watergate scandal and President Nixon’s resignation. US-based human rights groups felt responsible for the actions of their government and therefore reacted to the disappearances and cases of torture reported in Chile.

It is important to note that in comparison to other regions in Latin America, the population of countries like Argentina, Chile or Uruguay usually had more access to higher education. In addition, the ties to foreign countries in Europe or to North America were commonly much stronger than in the Andean region or Central America. This helps to explain why the human rights movement mainly focused on Chile: the opposition knew about international human rights instruments and used the power of international public opinion to blame its government for the numerous abuses. Also, many exiled Chileans influenced the public and the political classes in Europe and North America to pay attention to the events occurring in their country.

Kathryn Sikkink observes an evolution of a *human rights network*, which had been developing since the early 1970s and included governmental agencies as well as international institutions like human rights organs at the UN or the OAS.¹⁵ In the first stage, this network provided an information pipeline from the South to the North, since political decision-makers in the North could be influenced to accuse human rights violators in South America. The dictatorships in Uruguay (since 1973) and Argentina (since 1976) further induced human rights non-governmental organisations (NGOs) in the US to focus on their human rights practices. International NGOs like Americas Watch (today Human Rights Watch/Americas Division) or Amnesty International provided information to the United Nations, or the OAS, that enabled the preparation of resolutions condemning human rights violations in Latin America.

14 Dykmann, *Philanthropic Endeavors* (note 8), pp. 217-222.

15 K. Sikkink, *The Emergence, Evolution, and Effectiveness of the Latin American Human Rights Network*, in: E. Jelin / E. Hershberg (eds.), *Constructing Democracy. Human Rights, Citizenship, and Society in Latin America*, Boulder / Oxford 1996, pp. 59-84; M. Keck / K. Sikkink, *Activists beyond Borders, Advocacy Networks in International Politics*, Ithaca 1998, pp. 79-120.

Parallel to the development of the human rights movement, which evolved after the coup in Chile, the focus of the women's movement on human rights emerged more slowly. In the beginning, this focus was embodied by women in traditional roles who spoke out against the human rights violations of South American dictatorships. As mothers or wives of the victims of torture and murder, and particularly as relatives to the so-called "disappeared" (*desaparecidos*), those women demanded the right to truth about the whereabouts of their husbands, sons, brothers and other relatives. Those courageous women used the public in order to be protected to some extent against encroachments on their rights.¹⁶ In general, Latin American women have gone through gender-specific violations under repression. Thus, they suffered differently from the same massive human rights violations as men and not necessarily to a lesser extent.¹⁷ Later on, the women's movement in Latin America also started to demand particular rights for women in order to overcome their anachronistic role in the patriarchal social system.

In 1976, the armed forces in Argentina overthrew the weak government of Isabel Perón, the widow of former populist president Juan Domingo Perón. Besides the economic crisis, the existing threat of left-wing terrorism and the increasing right-wing terrorism apparently gave the military some reason for its intervention. Notwithstanding, the following years witnessed repression, human rights violations and thousands of "disappearances." The military junta followed a new trend: the non-personalised dictatorship. While almost everybody still recognises dictator Pinochet, the names of the Junta members in Argentina, Uruguay or Brazil are – in contrast to the dictatorships in Chile and Paraguay – almost unknown, at least outside of those countries. This non-personalised rule also resulted from internal struggles in the armed forces. A particularly brutal treatment towards opposition members and suspected regime opponents characterised the Argentine dictatorship. According to the report of the Argentine Commission on Disappearances, CONADEP, approximately 9,000 people were victims of forced disappearance during the so-called "dirty war" between 1976 and 1983. Human rights groups speak of more than 30,000 "disappeared".

The Democratic US President Jimmy Carter (1977–1981) elevated human rights to one of the most important issues on his foreign policy agenda. This encouraged many

16 One of the most famous examples is the women of the *Madres de la Plaza de Mayo*. Those women publicly called for justice and accused the military junta in a crowded plaza in the heart of Buenos Aires, whereby they expected to diminish the threat of being detained by security forces. Those defenders of human rights counted on the reluctance of the military to harm women. Following the traditional social role of women, it would have been dishonourable for the male armed and security forces to touch them – especially in public. Nevertheless, the *Madres* also were attacked and infiltrated, but they bravely fought their struggle on behalf of their relatives.

17 Besides typical gross human rights violations like murder, torture and "forced disappearance", women were also affected especially by (para-) state terror policy through sexual harassment, rape and sexual humiliation. Additionally, they were put under pressure due to their role as mother, daughter or wife. By the disappearance or definitive death of their fathers, husbands or brothers, and the physical and psychological fragility of their victimised relatives, those women were left a particularly important position in the family, which also meant – besides immediate suffering – a social burden. See J. S. Jaquette (ed.), *The Women's Movement in Latin America. Participation and Democracy*, Boulder / Oxford 1994.

human rights organisations in the United States and Latin America to expand the scope of their endeavours. In reality, Carter's pretension to install human rights as the "soul of US foreign policy" remained, in some aspects, only a lofty aspiration.

The Carter administration pushed a bilateral foreign policy based on human rights in international finance institutions, but also within the OAS, because there the US influence was greater than in the United Nations. The Inter-American Commission on Human Rights was diplomatically and financially supported by the United States, which also encouraged the Commission to name those states involved in massive human rights violations. The Carter administration even signed the American Convention on Human Rights – an event that, in the context of the unilateral tradition of US foreign policy, must be viewed as a significant move. In 1977, Carter invited all Latin American heads of state to celebrate the signing of the Panama Canal Treaties – a memorable step towards Latin America by Carter. Many dictators were also present – General Videla from Argentina, General Pinochet from Chile, El Salvador's General Romero and so on. The Carter Administration took advantage of their presence and confidentially discussed human rights matters. Furthermore, the US convinced some OAS Member States to sign and even to ratify the American Convention on Human Rights with the result that it finally entered into force in 1978. The Panama Canal Treaties provided another human rights issue: as part of a public campaign, the conservative US opposition against the Canal Treaties denounced Panama's government under General Trujillo as a dictatorship that violated human rights. Finally, Trujillo's regime invited the Inter-American Commission on Human Rights, which, at that time, was close to the peak of its recognition and reputation. Indeed, the IACHR found some abuses but no systematic pattern of human rights violations to confirm the treaty antagonists' argument to hand over the Canal to a brutal dictatorship.¹⁸

In general, the Carter administration seemed to have pursued a credible human rights policy towards Latin America in its first years in power, although this must be modified with regard to the countries that had more economic and political importance. In Latin America, Carter was able to demonstrate how his human rights concern took an effect on foreign and security policy. However, reproaches of "human rights imperialism" cannot be disputed easily. The notorious US American missionaryism plays a role, but there is also an instrumentalisation of the human rights issue to bear in mind: Carter's human rights policy was also directed against the Soviet Union and its allies in order to present the United States as superior in moral matters.

The Sandinista revolution in Nicaragua in 1979 marked a turning point in Carter's commitment to human rights in Latin America. The human rights violating regime of dictator Anastasio Somoza was overthrown by the armed opposition of the Sandinista National Liberation Front, thanks to the criticism and passivity of the United States towards the government of former US ally Somoza. The special report by the Inter-

18 When the final report on Panama came out, the public and US Senate had already taken their positions.

American Commission on Human Rights contributed to the weakening of the Somoza regime, which led to a historical decision of the OAS Meeting of Consultation of Foreign Ministers. This OAS conference approved a resolution, which called for the removal of Somoza – an unprecedented incident.¹⁹ In the US, this led to domestic reproaches from declared anti-Communists. Carter, facing remarkable domestic disagreement with his human rights policy, had preferred other alternatives to the revolution led by the Sandinistas. However through his ambivalent opposition to the Somoza regime, a dynamic developed which did not allow a solution that would have been considered a moderate one for the US. The US had prepared several alternative concepts for the time after the unavoidable fall of Somoza. The most popular was to establish a moderate government with the collaboration of former Somoza officials, which should realise a sort of “Somocism without Somoza.”

In October 1979, the US supported such a “solution” in El Salvador when it backed the overthrow of dictator General Romero by a civilian-military junta. Rapidly, the moderate elements of the junta were expelled and El Salvador began to witness the darkest period of its recent history. The US support for the “moderate” junta in 1979-1980 was an evident reaction to the Sandinista revolution. Carter did not want the Marxist guerrilla to win in El Salvador and consequently chose to give the *juventud militar* a chance. The decision to militarily support the questionable junta in January 1981, which then faced a large-scale guerrilla offensive a few days before Carter’s leaving office, indicates a turning point. In spite of the massive violations of human rights committed by governmental armed and security forces and linked death squads, the US continued its military cooperation with the Salvadoran junta. Carter had stalled the military support when members of the Salvadoran National Guard killed four US churchwomen in December 1980. Jimmy Carter’s activism could be explained with the simple fact that he did not want to become the president who “lost” El Salvador to the Communists after he was considered to be responsible for the “loss” of Nicaragua to the Sandinistas. His human rights concerns were subordinated under this fear. Carter’s initially benevolent human rights policy in external relations was reversed to such a degree that the transition to Reagan’s policy did not appear as abrupt as it would have been two or three years before.

The 1980s: The conflicts in Central America and Reagan’s human rights approach

During the 1980s, the manner with which the human rights issue was dealt with underwent a change. A significant policy change at the White House and remarkable developments at the regional and international levels also influenced the human rights situation in Latin America. The Latin American debt crisis, which officially took hold in 1982, was accompanied by a partial re-democratisation of South American countries. The sub-

19 In his memoirs, Somoza confirmed that above all the decision of the OAS led to his fall.

sequent economic dependence on international finance organisations, particularly the International Monetary Fund, limited the sphere of influence of many governments. The US refocused on bilateral relations and was able to set up more conditions for their assistance.²⁰ On the other hand, the Reagan administration revived the Cold War and thus needed allies for its crusade against real and perceived Communism in the Western Hemisphere. This enabled authoritarian anti-Communist rulers to negotiate the conditions as well. The 1980s could be sharply described as an era of hypocrisy, but for certain it was the decade of an accelerated politicisation of the human rights issue.

In 1980, the Democratic US President Carter was defeated in the presidential elections by his Republican challenger, Ronald Reagan. Under Reagan, the US human rights policy became the object of a new orientation. The division in authoritarian and totalitarian regimes could be viewed as the theoretical basis of the new government's position. Jeane Kirkpatrick, who later became Reagan's ambassador to the United Nations, had designed a theory of categories. Her concept distinguished between traditional authoritarian and totalitarian regimes. While human rights violations committed by "friendly," anti-Communist authoritarian regimes could be tolerated and brought to democracy with some pressure, totalitarian regimes, – which meant Communist governments – had to be combated because Communism itself was seen as the institutionalisation of structural human rights violations. The primary region in which those attitudes were put into practice was Central America. In Nicaragua, the Sandinista government stirred up dread in Washington that the Cuban-Soviet influence could spread in the "backyard" of the United States. US policy interests focused mainly on Nicaragua's neighbours El Salvador and Guatemala, which were the most acutely threatened countries according to the fashionable Domino theory. Accordingly, the Sandinista government was combated by the US through economic sanctions, propaganda measures, Secret Service activities by the CIA and, last but not least, the formation and support of the right-wing Contra rebels. Furthermore, human rights converted into a propaganda tool as well: At the time of the revived Cold War, human rights were applicable only to those who had turned to the "right" side. The US and its allies continuously accused the Nicaraguan government of human rights violations. In fact, the Sandinistas committed numerous human rights abuses but it is also true that the accusations from the US always tended to be exaggerated in regard to the amount and seriousness of such violations. Similar to the situation in Nicaragua, human rights played a crucial role in the violent civil war in El Salvador where authoritarian and semi-democratic regimes and their brutal military and security forces fought against the left-wing guerrillas, the FMLN. The US supported all Salvadoran governments, although their agents were responsible for atrocities and murder.²¹ With its counterinsurgency concept, the United States tried at least to notably weaken

20 For instance, the IMF requested liberalisation of the markets, devaluation of the currencies, privatisations of many public companies and obliged the governments to reduce drastically the public spending.

21 The administration of the Christian Democrat José Napoleón Duarte (1984–1988) – himself a victim under the dictatorship of the early seventies – did indeed achieve an improvement but was at no time able to control the "falcons" in the armed and security forces.

the guerrillas militarily, and at the same time, to gain the “hearts and minds” of the population for the government by implementing reforms.

Unlike in the 1970s, especially during the Carter era, in the 1980s human rights enjoyed little attention within the Organisation of American States. This could be explained by US influence, but also by the changed atmosphere that developed as a result of Reagan’s election in 1980. The Reagan administration re-focused on the traditional US unilateralism and abandoned Carter’s approach to seek more multilateral arrangements.²²

Under the new conservatism, human rights protests against US allies generally aroused suspicions of sympathy for communism. Accordingly, the efforts to humanise and pacify the bloody conflicts in Central America had to be approached from levels outside the US-dominated OAS: the Contadora group efforts and the Esquipulas peace process were initiated and supported by Central American and South American States that, at the same time, were Members of the OAS. Symptomatically, the twelve-year civil war in El Salvador was settled not through mediation by the OAS, but by the initiative and commitment of UN Secretary General, Javier Pérez de Cuéllar, and the arduous work of the UN missions in that country.

It is necessary to mention that in Argentina initially, and later also in El Salvador during the early 1980s, the number of victims was extremely high – about 10,000 killings or disappearances per year. After several years the number of victims decreased remarkably during the different periods of repression. This was interpreted as the creation of a mood of fear and intimidation in which just a few exemplary murders were sufficient to renew the threat and to remind possible opponents of the brutal beginning of the so-called “dirty wars.” Additionally, the real or suspected opponents to the regime were decimated or fled their countries. Therefore, the number of potential victims decreased as well. In this article, I try to avoid dealing with statistics of murder because – especially during the Reagan administration – they became a contested issue in the human rights controversy. Basically, any statistical decline in grave human rights violations was viewed as an improvement by the government concerned and also by its allies. For instance, the Reagan administration tried to portray any statistical improvement as a sign of correction of the human rights record of a “friendly” government – particularly in the Salvadoran case.²³ Due to the revival of the Cold War, the US routinely praised any improvement of its allies and fiercely condemned abuses in Cuba and Nicaragua.²⁴ On the other hand, the

22 Other factors for the deterioration of East-West, as well as North-South, relations were the events which took place in 1979: the second oil price shock, the Islamic revolution in Iran, the Soviet Union’s intervention in Afghanistan and the election victory of conservative Margaret Thatcher in Great Britain. After Reagan’s victory at the polls, in the US public Latin America was increasingly perceived as “anti-Yankee”, “pro-socialist” or territory of drug-traffickers. See D. Boersner, *Relaciones Internacionales de América Latina, Caracas 1990* (4th edition), pp. 18/19.

23 See K. Dykmann, *El Salvador – Die Menschenrechte im Visier: Die Auseinandersetzung vom Beginn des Bürgerkrieges bis zum Amnestiegesetz (1980–93)*, Hamburg 1999.

24 In 1962, the Cuban government was expelled from the inter-American system after pressure from the US, as Communism was considered as contradictory to the principles of the OAS. Nevertheless, the IACHR has continued to report on Cuba’s human rights record, though the regime of Fidel Castro refused to cooperate with the

Sandinistas blamed the US for its war of low intensity against Nicaragua and criticised the human rights record of US auxiliary El Salvador. Interestingly, in the Salvadoran case, Venezuela's government did not act as committed to human rights as it had done during the 1970s. This is readily explained by the personal ties between Venezuelan President Rafael Caldera and his Christian Democrat friend José Napoleón Duarte, the President of El Salvador.

The renowned organ of the OAS, the Inter-American Commission on Human Rights, lost its impact in the Central American civil wars. This was also a result of the lack of support by the Reagan administration, which sought to emphasise bilateral relations. Also, the debt crisis in Latin America and the financial and political crisis of the OAS in general contributed to the decreasing influence of the Inter-American Commission. Despite this, it is still remarkable that the Commission did not publish any country report on the devastating situation of human rights in El Salvador, in particular in the early 1980s.²⁵ To be fair, the Commission also worked on several human rights conventions and Additional Protocols to the American Convention on Human Rights during the 1980s and it accomplished its task concerning the challenging refugee problem which originated from the Central American conflicts. Additionally, the Human Rights Commission observed the situation in special reports above all on Haiti, Guatemala, Chile, Paraguay and Suriname.

To compensate for the Commission's loss of influence, the role of non-governmental human rights organisations in Latin America and the United States became crucial. The actions of human rights NGOs like Amnesty International, International Commission of Jurists, Lawyers Committee on Human Rights, Americas Watch, Washington Office on Latin America and so forth, cannot be overestimated. So-called solidarity groups also employed the human rights issue as an instrument to fight against US anti-Communism in Central America. In general, though, the overwhelming majority of NGOs dealing with Latin America were impartial and committed to human rights of all victims. The fact that NGOs had to work more, due to the lack of power of intergovernmental institutions, also resulted in another problem. Governments and the US administration attacked the NGOs even more for being partial. One of the main problems consisted of focusing on governmental human rights violations and leaving out abuses committed by irregular guerrilla forces. The accusation of partiality did not weaken the reports of the Inter-American Commission as much as the NGOs because the Commission was a body created by the Member States themselves; furthermore, it was an organ that already had proven its seriousness and credibility.

Commission at all due to Cuba's ejection from the OAS. Many Latin American OAS Member States have argued that the fact that Cuba was not allowed to participate in the OAS would deprive the Organisation from the right to accuse Cuba of its poor human rights record.

25 The IACHR did not publish any special report on the human rights situation in El Salvador between 1978 and 1994. However, it prepared three special reports on Guatemala (1981, 1983, and 1985) and two reports on Nicaragua (1981, 1983). See Dykmann, *Philanthropic Endeavors* (note 68), pp. 391-424.

The transition to democracy in Chile began surprisingly. After General Pinochet had lost a referendum on the extension of his presidency in 1988, Chile started its democratic transition in 1989/90. However, Pinochet and the armed forces continued to possess influence towards governmental politics. The conflicts in Central America were settled in the 1990s: in 1990, the Sandinistas lost the elections in Nicaragua; in 1991/92, the Salvadoran government and the FMLN guerrillas agreed on a peace treaty; and in 1996 the parties in conflict in Guatemala also reached a peace agreement.

The East-West conflict and consequently the proxy wars and wars of low intensity were put to an end, but the human rights violations of the past still have an impact on the societies of Latin America today.

The 1990s: The burden of the past and the refinement of the inter-American system

After the end of dictatorships and civil wars, the wound of impunity (*impunidad*) still gapes in Latin America. While the former Argentine President Carlos Saúl Menem, representing other democratic successors of authoritarian regimes, preferred not to open the wounds of the past by examining it, this burden still seems to weigh on many societies. Indeed, there have been attempts to investigate human rights crimes of past days and punish the perpetrators, but almost everywhere those efforts failed due to the powerful position of the armed forces. Every attempt to deal with atrocities of the past prompted a sort of automatism that resulted in the approval of an amnesty law for the perpetrators.²⁶ This problem also must be considered in regard to the persisting fundamental weakness of the judicial system in many countries.²⁷

In 1993, the UN Truth Commission in El Salvador presented its report on the acts of violence committed by armed and security forces, guerrilla troops and paramilitary death squads. The fact that perpetrators were named in that report, which was prepared by foreign Commissioners, can already be seen as progress. However, considering the lack of legal obligations in the report and the amnesty law approved one week after the report's release, the naming of the violators must merely be viewed as a minimal achievement. In addition, the benefit of dealing with the past in El Salvador is to be questioned, if a climate of violence still exists. This seems to be a subject for human rights education, though its fruits could not be expected before the next generation.

In Guatemala, a civil war lasting several decades was put to an end in 1996. The report of the UN Truth Commission for Guatemala, however, does not mention the names of the individuals who committed human rights violations. Unlike that international commission, an independent commission of the church agreed to name the perpetrators.

26 Amnesty laws were approved during the last days of dictatorial rule as well as in the transition period to democracy.

27 See, for instance, J. E. Méndez/G. O'Donnell/P. Sérgio Pinheiro (eds.), *The (Un)Rule of Law & the Underprivileged in Latin America*, Notre Dame (IN) 1999.

In April 1998, Archbishop Juan Gerardi, who had presided over the alternative clerical commission, was murdered. Many courageous bishops, priests and nuns of the Catholic Church had to pay for upholding human rights with their lives.

Unlike the situation in Central America, the military dictatorships and likewise the massive human rights violations in South America date back to an earlier decade. In 1990, Chile returned to democratic rule, Argentina (1983), Uruguay (1984), Brazil (1985) and Paraguay (1989) had walked ahead.

Raúl Alfonsín, a renowned human rights advocate, became Argentine President in the first free elections after the dictatorship and could succeed in putting the junta members on trial; however, he had to make many concessions due to the pressure of the armed forces, as did his successor, the Peronist Carlos Menem. The law of due obedience (*ley de obediencia debida*), the law of the “full stop” (*ley de punto final*) and additional pardons adopted under Menem²⁸ clarified that the military still possessed great power, though its internal influence had diminished as a result of the lost war on the Falkland islands against Great Britain in 1982. A main factor in the tendency to pardon human rights criminals can be highlighted by examining the dialectic between longing for accountability and the necessity to seek a national reconciliation. Another source of impunity might be found in the entanglement between business sectors and the military, whereby the former could have helped to reach amnesties for its accused partners in uniform by putting pressure on the new government.

However, the situation in Argentina changed slightly in the mid-1990s, when General Martín Balza acknowledged human rights violations and Horacio Verbitsky published a book based on the testimony of Adolfo Francisco Scilingo. This book, called “The flight” (*El vuelo*), was published in 1995 and revealed the violent practices and assassinations of the military. The book renewed the discussion on how to deal with the human rights violations of the dictatorship, and spurred more testimonies by high-ranking members of the armed forces who were in charge when human rights violations occurred. Furthermore, at the academic and executive level, many entities dedicated to human rights emerged in Argentina.²⁹ In Argentina’s society, nowadays, it seems to be politically correct to distance oneself from the military dictatorship and its representatives. Recently, the laws awarding practical impunity to the perpetrators that were issued during the Alfonsín presidency (full stop and disobedience laws) were repealed by the Argentine Congress in 2003 and even definitely declared as unconstitutional by the Supreme Court in 2005.

28 “It should be remembered that Menem often associated ‘memory’ with subversion, thus ‘criminalizing’ attempts to make sense of and come to terms with the past.” A. Barahona de Brito, Truth, Justice, Memory, and Democratization in the Southern Cone, in: id./C. González-Enríquez/P. Aguilar (eds.), *The Politics of Memory. Transitional Justice in Democratizing Societies*, Oxford / New York 2001, p. 153.

29 As Argentine universities possess special chairs of human rights, the Ministry of Justice counts with a Subsecretariat for Human Rights, for instance.

Unlike Argentina, Chile still faces uncertainty with regard to how to view the past.³⁰ The situation in Chile is very different, since the repression during the years of military rule is still present in contemporary society. The so-called Rettig Report, which dealt with violations during the dictatorship, could not achieve concrete results, either in regard to the longing for the truth or considering the national reconciliation. The debate on South America's dark past, however, was extended to an international arena in October 1998 when General Pinochet was arrested in a London hospital. His temporary detention was preceded by an international warrant of arrest, issued by the Spanish Chief prosecutor Baltasar Garzón. Since then, the discussions on accountability for past crimes have seen a renaissance. Besides questions of international law, diplomatic immunity and protests attempting to reinforce the principle of national sovereignty, the international interest and the disputes in Chile demonstrate that the violent past cannot be resolved through a sort of ordered pseudo-reconciliation. In Chile, there still exist two "realities": one which sees the Pinochet regime as the worst human rights violator; the other which perceives it as the salvation from Communism and economic decline.³¹ Therefore, the massive violations of human rights urge a new way of dealing with the past, which has to include symbolic penalties in order to give the victims a sense of satisfaction and justice. No doubt, after his return to Chile, it was better, though in the end in vain, to attempt to bring Pinochet before the court in his own country than in Europe where he could have earned a martyr's reputation if any court had punished him. In addition to the problems of past violations, a serious structural problem must be taken into account while considering this issue: the chronic fragility of many judicial systems.

The inter-American system did not achieve much politically from a regional perspective, as it seems, although some advances can be pointed to in particular cases, such as the Court's judgment on the Velázquez Rodríguez case in 1988³² or the adoption of the Inter-American Conventions against Torture (1987) and against the Forced Disappearance of Persons (1994). Furthermore, the IACHR and the Court decisively strengthened the right to truth. However, there was no inter-American truth commission that investigated past human rights abuses in OAS member states.³³

In June 1991, the Organisation of American States also reacted to the changed regional situation and the *de facto* end of the East-West confrontation by approving the Resolution 1080 at the General Assembly in Santiago de Chile. That resolution limited the non-intervention principle to a historically unprecedented extent. This principle – one

30 Unlike in Chile, the Argentine military lost a war in 1982 and also contributed decisively to the deterioration of the Argentine economy. Conversely, in Chile an economic progress reached during the seventies and eighties is even recognised by some enemies of the dictatorship.

31 However, the vast majority is supposed to be quite indifferent towards the issue.

32 In that judgment, the Court ruled that the state of Honduras had the responsibility to identify the actions that led to the disappearance of Manfredo Velásquez Rodríguez and to punish the perpetrators. Further, the state must pay compensations to the relatives of the victim. This judgment is still a reference point in relation to the "right to truth".

33 See K. Dykmann, Impunity and the right to truth in the inter-American system of human rights, in: *Iberoamericana*. Nueva Época Año VII (junio 2007) No. 26, pp. 45-66.

of the most fundamental aspects of the original OAS Charter – was used by many Latin American governments against claims regarding human rights violations by calling those an interference in domestic affairs. Resolution 1080 emphasised representative democracy and human rights and offered sanction options if the democratic process in a country was interrupted. The OAS Member States agreed on a special mechanism with which the Organisation should react collectively to military coups.³⁴

This new democracy and human rights-strengthening mechanism was applied for the first time in September 1991 in response to the military coup in Haiti. Again in 1992, the so-called self-coup (*autogolpe*), actualised by Peruvian president Alberto Fujimori, made the lists of the OAS, as did the coup attempt in Guatemala in 1993. In contrast to its reluctance during the 1970s or 1980s, the inter-American Organisation reacted quickly to violations of constitutional principles.³⁵ In 1992, the OAS Member States approved the Washington Protocol. This resolution reiterated the Organisation's formal dedication to democracy and human rights. Throughout the 1990s, the OAS could gain some respect with its electoral observation missions in the region. The democratic purification of the organisation culminated in the adoption of the Inter-American Democratic Charter in 2001, a document that emphatically strengthened the position of democracy and human rights in the inter-American system.

Furthermore, since the end of the East-West conflict, the human rights question has become less politicised, but it would be a naïve mistake to conclude that human rights work has logically become easier. Democratically-ruled countries do not lightly accept the interference of non-governmental organisations or international institutions like the Inter-American Human Rights Commission of the OAS. Because they are considered democratic countries, some governments argue that there is no need to investigate human rights abuses because a democracy can fix its own problems and further allegations would be instrumentalised by the opposition. In addition, the work for NGOs and bodies like the IACHR has become more legal and time-consuming. In 1976, the IACHR published a 29-page annual report; in 1999, the annual report of the Commission contained more than 1500 pages and consisted of three volumes. This shows that individual cases and thereby legal aspects have become more and more important. However, this also means that it takes years to process a single case, which could be an obstacle for the efficiency of the Commission's functioning. Topics like women's rights, children's rights and rights of indigenous people, migrant workers, and freedom of expression have gained more attention in the IACHR's work than ever before. Furthermore, the country

34 S. J. Schnably, *The Santiago Commitment and the New World Order: Preliminary Thoughts on their Implications for Democracy and Human Rights in the Americas*, in: ILSA (ed.), *Sistema Interamericano para la Protección de los Derechos Humanos: Aportes para una evaluación*, Santafé de Bogotá 1994, pp. 248, 253, 262.

35 The Uruguayan dictatorship first experienced international pressure from the OAS in 1978, five years after the military takeover. In contrast, the "self-coup" by President Alberto Fujimori, who suspended the Peruvian congress in April 1992, provoked a significantly faster reaction. Already a week after the *autogolpe*, the OAS sent a fact-finding mission to Lima in order to investigate the situation. Nevertheless, the reactions were not as determined and influential as some observers had hoped. See Sikkink (note 15), 60.

reports have become very well structured and detailed. They include an analysis of the political system, special references to women's rights, indigenous rights, and the right of free expression. Also, those reports regard the economic, social and cultural rights and the issue of impunity. The third report on Colombia also contains a remarkable reference to violent acts committed by dissident armed groups (guerrilla) and refers to international humanitarian law.

The example of the IACHR shows that the human rights work has broadened and became more open to rights that may have previously been considered "luxury rights." In general, this led to a sort of sophistication of the system, which means that the highly political issues became more legalised. The Inter-American Commission on Human Rights has re-gained importance and influence since the mid-1990s, due to the changed situation in the Hemisphere, but also as a result of personal dedication of its members.

The relations between human rights NGOs and the IACHR also changed during the 1980s and 1990s. The personal relations between NGO activists and members as well as lawyers of the Commission have significantly improved. In 1998-99, a former human rights activist chaired the IACHR, while an ex-lawyer of the Commission's Secretariat headed the Human Rights Watch Americas Division. Furthermore, the creation of the NGO Center for Justice and International Law (CEJIL) contributed to a better functioning of the system. CEJIL works closely with the IACHR and provides cases to this OAS organ in order to create precedents. These examples demonstrate the institutional and personal connections between NGOs and intergovernmental human rights institutions in the 1990s. However, these close links at the institutional as well as at the personal level have caused criticism from governments and also within the OAS. Some voices consider the Commission not anymore an intergovernmental actor, but as an NGO itself. Those accusations have to be taken seriously because they are based on the tight connections between Washington-based NGOs, the IACHR and the academic sector, particularly the Washington College of Law at American University.

Nevertheless, it is also necessary to use these links between NGOs and the academic arena because the IACHR must somehow compensate for its notoriously understaffed Secretariat. So, instead of equivocally and tactically accusing the Commission for its supposed lack of independence, the governments could opt to endow it with substantial and adequate funds to equip it with the appropriate number of human rights experts, although the existence of human rights organisations will always remain a valuable source of information and judgement for the Commission.

Moreover, the inter-American system of human rights has also reacted to the changed international scenario after the terrorist attacks in the United States of September 2001. After a unanimous declaration of solidarity with the government and the people of the United States, the OAS further adopted a Convention against Terrorism in June 2002. In December 2002, the Inter-American Commission on Human Rights published a report on "Human Rights and Terrorism," which shall serve as a guide for governments of how to carry out anti-terrorist measures without disregarding human rights. Both, the

OAS and the Commission, have called to put the fight against terrorism into practice by strictly respecting the provisions of international humanitarian and human rights law.³⁶ To summarise, achievements have been made but due to the legalisation of the system, the new situation sometimes turns out to be quite difficult, if not as dramatic as in preceding decades.

Conclusions

First of all, the questions brought up in the introduction shall be answered:

1) *How did the debate on human rights begin in Latin America and the inter-American system?* The human rights debate became an important issue particularly through the military dictatorships that emerged in the early 1970s. The Chilean coup in 1973 was a turning point in attracting attention and catalysing action and organisation, although on the continent there had previously been gross human rights violations. The inter-American system became more important through the admirable efforts of the Inter-American Commission on Human Rights, with regard to the Chilean case in particular.

2) *Did the role of the NGOs change?* Although there have been some NGOs which tried to instrumentalise the human rights issue, particularly in the context of the East-West confrontation, it is fair to say that the achievements by human rights NGOs at the local, regional and international level are impressive and of tremendous value. It was mainly Pinochet's coup and the subsequent human rights abuses in Chile that emboldened the developing local, regional and international human rights groups to dedicate their interest to the subcontinent. Human rights organisations in Latin America, the US and Europe deserve the honour of having brought the fundamental rights to worldwide attention. This produced international pressure and led to an advancement of the inter-American human rights system, which prevented other human rights abuses. The local groups in Latin America were the most courageous ones, as their members often were themselves victims of murder, torture and intimidation, but this did not lead them to abandon their commitment to human rights. While the 1970s witnessed the emergence of human rights groups, the NGOs developed more professional procedures and an institutional framework in the 1980s. Since the end of the East-West conflict, activists for the cause of human rights in Latin America face developments that make their work significantly more difficult: first, the end of the Cold War bipolar system has caused less media interest for many regions of the Third World, because the superpowers are no longer involved. Second, it has become much more difficult to accuse those (re-) democratised countries and societies, in transition to democracy, of human rights violations. The fact that those countries see themselves as plain democracies leads them to deny

36 See K. Dykmann, Die Organisation Amerikanischer Staaten und der Menschenrechtsschutz im Angesicht des Kampfes gegen den internationalen Terrorismus, in: Lateinamerika Analysen, No. 8, June 2004. Institut für Ibero-Amerika-Kunde, Hamburg, pp. 39-69.

accusations concerning human rights violations.³⁷ Moreover, the 2001 terrorist attacks in the United States have shifted international politics: now, there is a clear and pressing risk that a government may inappropriately declare human rights violations against the opposition as necessary anti-terrorist measures.

In general, a certain professionalisation of the human rights network, made up particularly by NGOs and governmental or international agencies, can be confirmed. The results of this professionalisation were displayed through the rapid action taken, for instance, by the NGOs as a response to the actions of Mexican armed forces against uprising insurgents of the Zapatista movement in Chiapas.³⁸

Many observers as well as participants of the inter-American system of human rights describe the interpersonal relations between IACHR, NGOs, other individuals and the academic sector as a “human rights mafia” – with a sense of humour. Naturally, this useful network offers ammunition for critics of the Human Rights Commission; therefore the Commission needs to establish more transparency – possibly through the creation of the position of a professional public relations officer.

3) *What was the position of the United States throughout the evolution of human rights?*

As a response to leftist guerrilla movements, the Cold Warriors in the United States accompanied military dictatorships, especially during the 1970s, in neglecting human rights concerns by giving priority to the maintenance or re-establishment of order and national security. Between 1974–76, US policy towards human rights in Latin America changed. This was also a by-product of the domestic situation in the United States. US Congress members focused on human rights issues in Latin America and the topic became a main policy under the Carter administration, which also strengthened the OAS Human Rights Commission.

The authoritarian rulers in the region perceived Carter’s human rights policy as a typical US domination strategy. The reference to national sovereignty and the non-intervention principle finds application even today, and is mostly a reaction to the interventionist-missionary-based attitude of the US towards its Southern neighbours. Initially, Carter’s commitment to human rights raised expectations, but his approach was watered down, at least since the revolution in Nicaragua, through the return to a categorisation of the resuscitated East-West conflict. During the 1980s, democratisation took place in South America, in contrast to the civil wars in Central America. Under the Reagan administration’s black and white scheme, Central America had only “bad guys” (Communists), and allies – allies that often did not comply with minimum human rights standards. Accordingly, the situation in El Salvador and Nicaragua was handled very differently. While the US observed a constant “progress” of the Salvadoran centre-right government’s human rights record, the left-wing Sandinista regime in Nicaragua was always fiercely criticised. This has willingly been described as the typical US “double standards.” In contrast to

37 For example, the Mexican government that had seen itself as one of the strongest advocates in human rights matters became target of human rights accusations in the 1990s.

38 E. L. Clearly, *The Struggle for Human Rights in Latin America*, Westport/Connecticut 1997, pp. 159/160.

Kissinger's support for abusive regimes from a *Realpolitik* perspective, Reagan's policy was shaped more by ideological convictions.

In the 1990s, the situation became more relaxed after the end of the Cold War, and through the Clinton administration's declassification of confidential documents, but also because of a moderate apology for the co-responsibility for human rights crimes in the region. Double standards in US human rights policy, however, remain today.

4) *Is the problem of past human rights abuses merely a national burden or a problem for the political development of the hemisphere?* The end of the Cold War certainly played a role that must not be underestimated, but the reasons for the return of the majority of the Latin American societies to, at the least, a sort of formal democracy has to be sought mainly in those countries themselves. Thus, the opinion emerged that the (economically) "lost decade" in Latin America, which began in 1982 with the debt crisis, was a decade of consolidation and transition to rule of law with regard to democracy and human rights. However, the wounds of past crimes, especially in the second half of the 1990s, have been an issue in the countries of the subcontinent and all too obviously reflect a social polarisation which still has to be overcome. The crimes of the past are still widely present as a heavy mortgage for the societies' transitions to democracy.

It would be very helpful to consider transitional justice as a regional task rather than as a national problem. The inter-American human rights system could play a decisive role in establishing procedures and assistance in regionally coordinated efforts to deal with the violent past.

At the beginning of the 21st century, it is obvious that human rights have become an object of increasing public interest and a factor in business manoeuvres and political decisions. In the US, there is a human rights sector, which not only includes human rights NGOs, international institutions and governmental offices, but also the media and colleges. This will definitively affect future decisions on human rights issues in the US and Latin America.

Further, the growing Latin American population in the US as well as the continuing immigration of Latin Americans to North America contributes to an increasing influence of the Hispanic community in the United States. Maybe it will take a generation, but US foreign policy regarding human rights issues in Latin America could also be co-determined by Latin Americans living in the US.³⁹

In a contemporary context, the re-democratisation of Latin America seems to be under challenge. The chronic political crisis in Colombia, the fiercely criticised populist project of Venezuela's Hugo Chávez, the situation of the opposition in Cuba, as well as the unclear and unstable situations in other countries, have been only the most obvious reasons for doubts. It will be the task of the Inter-American Commission and human rights

39 However, certain local human rights problems probably are too distant to become issues that inspire a forceful and united Latin American opposition to dominating US passivity or complicity. Furthermore, national resentments between different groups of immigrants may also constitute an obstacle for a strong Latin American position in the United States.

NGOs to observe the human rights environment in the region and to bring possible shortcomings to public attention.

Since the abominable terrorist attacks in New York and Washington on September 11, 2001, the new item of “international terrorism” has also affected worldwide attention to human rights. It has become a highly delicate task for human rights entities to continue emphasising violations in view of the proclaimed struggle against terrorism. Not only the region, but also human rights activists in general, fear being marginalised by Washington’s new foreign policy priorities focusing on international terrorism and fear they may be reduced to a welcomed, albeit indirect, argument justifying the battle against the terrorist foes. In addition, as a reaction to the new emphasis on a somewhat idiosyncratic national security, the release of confidential documents, as those regarding the past US human rights policy towards Latin America, has been fundamentally questioned in the United States. This would constitute a considerable setback to the reconstruction of the contemporary history of Latin American countries.

Finally, it is fair to state that human rights in Latin America have continuously gained importance. The present problems of realisation do not necessarily have to do with the accepted regime type, because the overwhelming majority of Latin American countries have at least formally become representative democracies, defined mainly by open elections and a broad catalogue of fundamental rights in their constitutions. The reality of human rights is – besides serious problems with the judicial systems – without any doubt also the product of the economic liberalism model that, applied in non-western, economically poorer societies, structurally tends to exclude major parts of the population, at least in an initial phase. For the acceptance, protection and realisation of the classic human rights of the individual it is important to keep in mind the economic basics, which are at least as crucial as political (ruling model/political culture), social (dealing with the past) and educational (human rights education) aspects. This means to reiterate the co-responsibility for human rights held between the industrialised world and the new democracies.