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The Credibility Gap In Human Rights

The credibility gap in human rights is a term coined by my predecessor, Mr. Sean MacBride. He used it to refer to the gap between the standards with governments proclaim, or accept, or at least pay lip-service to, and the reality of their practice in enforcing or suppressing these rights.

The questions I would like to consider with you are the extent of this gap, the reasons for it, and what, if anything, ordinary citizens who care about human rights can do about it.

The standards, the internationally accepted standards, are those contained in the International Bill of Human Rights, i.e. the Universal Declaration and the two international covenants, the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights together with its Optional Protocol. The two Covenants have not yet come into force, but with the recent surge in ratifications only 8 more ratifications are required for the Covenants to become formally part of international law. The Optional Protocol, giving the right of individual petition or complaint, already has the requisite number of ratifications, so it will come into force as soon as the Covenant does. A number of western governments, including Canada, are believed to be coming shortly to the point of decision, whether or not to ratify the Covenants. It is of the utmost importance that they should, especially as the USSR and other eastern bloc countries are making much of the fact that they have ratified while most western powers have not.

International lawyers argue about the status of the Universal Declaration, whether it is still merely a general statement of principles recommended to governments by a resolution of the General Assembly, or whether it now forms part of the customary law of nations, and so imposes binding obligations in international law. Your Vice-President, Professor John Humphrey, argues cogently for the latter view. Whatever be its legal status, the

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1. This is the text of an address to the Canadian Human Rights Foundation, in Toronto on November 21, 1974.

Universal Declaration remains a very remarkable and significant document. That a declaration of this kind, identifying so many specific human rights, should be adopted and accepted, even in principle, by almost all governments of the world, of widely differing cultures and social systems, is a tremendous achievement. It sets standards against which the conduct of nations can be examined; it provides a basis for discussion, and a standard for judgment. It plays an important role in education. The ideals it proclaims are taught in all parts of the world. Many of the new nations have enshrined its principles in their Constitutions. Even if they fall short in their achievement, they nevertheless remain committed to these principles.

Whilst the Declaration is accepted universally, or almost universally, it must be admitted that it is regarded with varying degrees of enthusiasm in different parts of the world. In some quarters it is described as a western-orientated document. Certainly the articles relating to civil and political rights were framed largely by western or western trained lawyers, and are expressed in terms which are largely derived from western legal systems and western concepts of democracy. It would undoubtedly be a useful contribution to the understanding and acceptance of human rights if lawyers from other legal systems could draw up authoritative statements of human rights based upon their own legal tradition. For example, an Islamic Declaration of Human Rights could be a valuable document in helping to establish the truly universal character of these rights. But the fact remains that the development of the conception of human rights is one of the achievements of western civilzation and some of the principles stated in the Declaration are essentially western concepts.

One of these is the Rule of Law. The International Commission of Jurists exists according to its statute to promote the Rule of Law. For us, human rights and the Rule of Law are two sides of the same coin; we believe that neither can exist for long without the other. This is recognized in the Preamble to the Universal Declaration which says in words which sound a warning to authoritarian régimes:

> 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.

What do lawyers mean when they speak of the Rule of Law? There is, of course, a vast literature on the subject. The

International Commission of Jurists, in a series of international conferences held in Europe, Asia, Africa and Latin America between 1955 and 1967 brought together lawyers from all parts of the world to spell out as precisely as possible what is meant by the Rule of Law. In essence it means four things.

First and foremost, it means a system in which those who govern cannot do so arbitrarily but are themselves subject to the law.

Secondly, to make this subjection of the Executive to the law meaningful, there must be a genuinely independent Judiciary. And I think most of us would say that there needs to be an independent Legislature as well. When judges and legislators are dependent upon the Executive, they are liable to end up as little more that the tools of an authoritarian government.

Thirdly, the law must itself have a moral basis recognising the inherent dignity of every human being and his equal entitlement to the protection of his fundamental rights and freedoms without discrimination on grounds of race, religion, sex or other distinction.

Fourthly, the law must provide an effective and speedy system of judicial remedies to enforce these rights; this implies among other things a fair trial system, and an independent legal profession so organised as to provide the public with the service it needs for its protection.

Now, if we are honest, when we look around the world, we find relatively few countries where the protection of human rights under the Rule of Law, in the terms just defined, can be said to exist. Indeed, if they are subjected to close enough scrutiny, perhaps no country fully measures up. Those that come nearest are for the most part either western European countries or countries which have derived their legal and political systems from western Europe. However, before we start feeling too superior about this, let us remember that western European settlers have been responsible for the two countries which are perhaps the greatest of all violators of human rights, since they violate human rights not only in practice but in principle. I refer, of course, to the racist régimes of South Africa and Rhodesia.

In the 1950's and early 1960's when the tide of independence was at its height in the third world countries of Asia and Africa, and when there was a strong current flowing towards more democratic régimes in Latin America, great optimism prevailed about the future of human rights and the Rule of Law in those countries. Most of their statesmen and almost all their lawyers had been trained in

western schools or traditions, and those at least who had not accepted the marxist analysis of society, were determined to establish in their countries parliamentary democracies in the western style, with the basic freedoms of opinion, expression, association, assembly, freedom of the press, trade union freedom and so forth, guaranteed under the Rule of Law in multi-party democracies.

Now, only a decade or two later, there are very few of these countries in which there is any real freedom of political association and expression, and very few where opponents of the government cannot be arrested and detained for long periods without trial on the grounds that they are endangering national security or public order. In all too many countries, the security authorities, feeling themselves beyond the reach of the law, indulge in brutal torture and ill-treatment of suspects, especially under interrogation. And, as recent annual reports of the International Press Institute have shown, there are precious few countries in all the world where there is any real freedom of the press, about one in five of the 132 member states of the United Nations.

This is one aspect of the "gap". But let us look at the gap for a moment from another aspect. One of the Members of our Commission, a distinguished Professor of Law in one of the third world countries, said to me recently, "You must always remember that human rights" — and he was referring to civil and political rights — "human rights mean very little to a man on less than 3,000 calories a day". If that is true, and in general I fear that it is, it means that human rights mean very little to two thirds of the world's population. These rights are significant only for us, the remaining third, who consume two-thirds of the world's food resources. When *we* speak of human rights, what we usually have in mind are the civil and political rights in Articles 2 to 21 of the Universal Declaration. To the third world, the Articles which they would rather see achieved, if they have to choose, and which rank highest in their priorities, are Articles 22 to 28, which set out the economic, social and cultural rights, the right to social security, the right to work with just and favourable remuneration, the right to rest and leisure, the right to a standard of living adequate for the health and well-being of a person and of his family with the right to security in unemployment, sickness, disability, widowhood and old age, the right to education and the right to participate freely in the cultural life of the community.

For them the "gap" is the economic gap between the rich nations and the poor. The communist countries claim that they have gone further than the capitalist countries in realising the economic, social and cultural rights. It is a questionable claim but it is not one that can simply be dismissed. For example, are we sure that the general level of culture of the average worker in the west is higher than that of his counterpart in the soviet countries?

Against this backcloth, let us consider why it is that human rights in the western sense, civil and political rights, are not more effectively protected in the third world countries. I do not pose the question for the communist countries because, for all their adherence to the Covenant on Civil and Political Rights, they interpret it in their own way. Freedom of speech, freedom of association, freedom of assembly, freedom of movement and freedom of conscience and religion have limitations for them far beyond anything we would find acceptable. But most of the third world countries do subscribe in theory to human rights under the Rule of Law as we mean them. They do not accept the communist view of society. They aspire to political freedom. Where civil and political rights are suspended, it is usually said that this is due to a situation of national emergency in which the security or integrity of the state is threatened, and exceptional measures are needed. Or it is said that they are undergoing such revolutionary social changes that they cannot afford the luxury of these freedoms at the present time. But the doctrine remains, and this in itself is important. The subject of human rights is taught to students, and a very popular course it usually is. At the law schools the theory of the Rule of Law is still part of the curriculum. Why then is there such a wide gap between their aspirations and their achievements?

There are, of course, many different factors, but I would like to single out four which, as it seems to me, make the achievement of human rights exceedingly difficult in these countries, and we need to understand them before we pass judgment, and certainly before we try to influence them.

First, they have not had time to develop political and social systems adapted to their own traditions and needs. Looking back, the assumption that multi-party parliamentary democracy on the U.S. or British or French models would prove to be a viable political form for the newly independent states of the third world now seems rather extraordinary. It has taken us long enough to develop them and find the forms suited to our traditions and needs,

and in many cases it has been a painful process. In the western world itself democracy has not infrequently failed, as we have seen in recent years in Greece, and in Northern Ireland, not to mention the fascist régimes in Germany, Italy, Portugal and, still continuing, in Spain.

Secondly, these countries are still at the stage of nation building. In Africa, in particular, their boundaries were artificial creations imposed on them from outside, cutting across tribal areas, and grouping together tribes often with a long history of rivalry and mutual suspicion. For a parliamentary democracy to work, there must be a basic sense of national unity, a broad consensus of agreement about the nature of the political and economic system, and a spirit of mutual tolerance within this framework. There also needs to be a sound and impartial administration, a capable civil service. These conditions are not easy to achieve, and in most third world countries they are still lacking.

A third factor in some countries is a tendency towards violent extremism in political opposition. When the opposition feel that they have no means of attaining power by lawful means, they have resort to violence, either direct physical action by terrorism, or by inflamatory propaganda seeking to stir up mob violence and unrest. Terrorism has done untold harm to human rights. Generally, this is a matter of indifference to the terrorists. They regard the whole edifice of civil and political rights as a hypocritical bourgeois facade designed to conceal a system of economic class exploitation, which they want to destroy. None of them has succeeded in getting rid of an economic system by these methods, but they have certainly succeeded in getting rid of what they regard as the bourgeois facade.

A fourth factor is the understandable, but in my view usually mistaken belief of soldiers that they can make a better job of running their country than the politicians. The military mind and the political mind are poles apart, and the rigid sense of discipline and order which is the very essence of military organisation is seldom the right recipe for solving difficult political questions. But when politicians are signally failing to solve a country's problems, there is a great temptation for soldiers to take over power and try their hands. And if the politicians are threatening to make revolutionary changes in the power structure of the country, and if the soldiers are encouraged and assisted by powerful influences from within or from outside, the temptation may become irresistible. The one country which seems to have drawn the logical conclusions from this is

Costa Rica, probably the most democratic country in Latin America. It has safeguarded itself against military coups by the simple expedient of abolishing the armed forces. It should of course, be said that there have been military coups or counter-coups aimed at restoring democracy. We saw one in Ghana when Nkrumah was overthrown. But Busia's democracy did not survive for long. More recently we have seen the military overthrow of the dictatorship in Portugal, and await its final outcome with anxious concern.

These four factors I have mentioned, as well as others, have led some of these countries to try to devise new forms of democracy, which they believe are better adapted to their situation. For example, Tanzania and Zambia have opted for the one-party state. Before we dismiss this too readily with a cynical smile, let us remember that in most African countries parties have divided largely on a tribal basis. If the objective is to create national unity and a national loyalty that is stronger than tribal loyalty, it may well be that a multi-party system is a luxury which cannot be afforded for the time being. Both President Nyerere and President Kaunda are men with a fervent belief in freedom and democracy, but they have both opted for the one-party state. The interesting question is how much capacity for criticism and resistance there is within the single party. Let me give two examples for Tanzania which illustrate the point.

A few years ago, President Nyerere, who is a known abolitionist, introduced a measure in parliament to abolish capital punishment. The almost unanimous reaction was hostile and the Bill was thrown out. President Nyerere accepted their decision. Last year, the government in their Finance Bill proposed to raise increased taxes in ways which were likely to be unpopular. The members of parliament, perhaps feeling that if they supported the measure they had little chance of being re-elected, voted down the tax increase. (Although there is a single party, there are multiple candidates nominated by the party for each constituency; the electors do, therefore, have some choice, and some promising ministerial careers have been terminated or interrupted through the verdict of the electors.) But to return to the Finance Bill: for a government to have its tax proposals voted down is a serious matter. There has to be some give somewhere, and on this occasion it was not President Nyerere who did the giving. He firmly announced that he would reintroduce the Bill, and that if it was defeated again he would call a

general election. The word went round that any member who voted against the Bill this time, would not be nominated again as a candidate. When the Bill was re-presented, its former opponents found the President's speech overwhelmingly persuasive, and the Bill passed without debate and without a vote. That may be an exteme case, but it is not the first time that parliamentarians have been influenced in their voting by a threat of dissolution.

Another country which is seeking to find new forms of democracy is Peru. In this case, there is the unusual picture of a military régime carrying out a left-wing social revolution, with a strong nationalist flavour. Earlier this year, they passed a somewhat remarkable press law, under which all the six national newspapers were taken over, but instead of being transferred to state ownership, they are each, within a period of one year, to be transferred to a board comprising representatives of a particular section of the society. One each is to go to the rural, industrial, professional, cultural, educational, and service sectors. Meanwhile, the newspapers are administered by temporary committees. The Act guarantees press freedom, and President Velasco expressly authorized the press to criticize the government. The editors took him at his word and mounted a massive campaign against police brutality, aimed in particular at the Chief of the Security Police of Lima. The campaign was successful to the point that the police chief was removed. It remains to be seen how the representatives of the different sectors who are to control the national press will be chosen — whether they will really be freely elected and represent the views of their sector, or just be government nominees. It also remains to be seen how much freedom of expression will be allowed to the press. But at least, this initial campaign shows that it may be possible to reconcile press freedom with forms of public ownership.

When all allowances have been made for the difficulties facing some of these countries, the fact remains that in all regions of the world serious violations of human rights are occurring daily, for which there can be little or no justification or excuse. In a great arc extending from Latin America across Africa and Europe, the Middle East, the USSR and Asia, say from Chile to Korea, hundreds of thousands of people are being held in jails and prison camps for years simply because of their political views and activities, often with no charges against them, no trials, no access to lawyers, little or no contact with their families, and in atrocious conditions. In Indonesia alone there are estimated to be between

30,000 and 40,000 political prisoners, most of whom have been held now for eight years without trial, and no prospect in sight of release. In Cuba, a much smaller country, there are a similar number. In the USSR, perhaps 10,000 mostly dissident Ukrainians, Latvians, Lithuanians and other nationalists. In many countries persons under interrogation have been subjected to excruciating tortures, administered with scientific refinement, to leave no trace on the victim.

What can one do about it? This is a question which is constantly facing non-governmental organisations like ourselves and Amnesty International, and others who work in this field. It is constantly facing the churches, who are probably doing more than anyone in the field of human rights. It faces every individual who cares about these things and wants to do something to help.

There have been some remarkable individuals who have achieved a great deal acting on their own, but most of us can be more effective working together in groups and organisations. Our objective must be to bring pressure on governments to mend their ways, because it is governments who are the principal violators of human rights, and governments who have the power to end violations if they are spurred or shamed into doing so. The first task is to inform ourselves, to know what is going on, and as far as possible why it is going on. Then we have to use all means available, including the mass media, to spread the information to as many people as possible, so as to stir up and arouse public opinion. This is the principal, and sometimes the only, weapon we have at hand. It may seem at times a feeble one, but there is no government, no matter how totalitarian which is not sensitive about its public image and which cannot be influenced to some extent by the force of public opinion. Naturally, this opinion is likely to be much more effective if it is weighty enough to operate through the governments of other countries, particularly those on whom an offending government is dependent for aid and support.

Let me give an example. Early in 1973 we learned that seven lawyers had been arrested in Athens as a result of acting for political prisioners, and that they were being brutally tortured in the notorious military police headquarters. A mission of three very eminent lawyers, Morris Abram, former U.S. representative on the United Nations Human Rights Commission, your own Professor John Humphrey, and Mr. William Butler of the New York Bar

Association, flew out on behalf of our organisation and the International League for the Rights of Man to make representations to the government. The government refused to see them, but the mission attracted a great deal of publicity within Greece and abroad. As I learned later, one of the consequences was some very heavy diplomatic pressure by the United States Government on Greece and shortly afterwards the lawyers were released. It was as a result of the action taken by people of this standing that the U.S. Government was able to say to the military Government in Greece "We do not wish to interfere in your internal affairs, but when your activities provoke a reaction like this, it becomes an internal affair for us, and it affects our relations with you".

This is a barrier that frequently has to be overcome — the reluctance of governments to interfere in each other's internal affairs. Sometimes, they refer to Article 2 (7) of the Charter of the United Nations which says that nothing in the Charter shall authorize the U.N. to intervene in matters essentially within the domestic jurisdiction of any state. The answer to that is very simple. Gross violations of human rights, wherever they may occur, are matters of international concern, not only because they may threaten the peace, but because they violate one of the objectives for which the United Nations exists, the promotion of human rights, Every member state is pledged under the Charter to take joint action under Articles 55 and 56 to see that human rights are observed. The United Nations has recognized this by the procedures it has instituted to enable complaints of gross violations of human rights, wherever they may occur, to be received and examined and investigated by the U.N. Human Rights Commission and its Sub-Commission.

This is another field of action open to organisations such as ours — the existing machinery for the international implementation of human rights. The procedures tend to be very slow, some of them are new, and still largely untried, and none of them are armed with real teeth. Nevertheless, they are vitally important to the development of international law and it is up to all of us, through non-governmental organizations and through our own governments to bring what pressure we can to see that they are used and developed. This year the International Commission of Jurists submitted a fairly detailed report on the reign of terror in Uganda under General Amin, and according to a Reuter press report (it is all supposed to very confidential), we understand that this has been

referred by the Sub-Commission to the Human Rights Commission which will consider it at its meeting in Geneva in February 1975.

There are other inter-governmental organisation apart from the United Nations which will receive complaints of human rights violations and enquire into them, in particular the Human Rights Commissions of the European Convention and of the Organisation of American States. The latter body sent a mission to Chile this year which made public some admirable recommendations for improving the legal protection of human rights in that country. This is particularly important since most of the members of the mission were delegates of other latin-american countries.

Ours is a lawyers' organisation and we naturally work primarily through lawyers. We sent a mission to Chile this year to study the system of military justice in force there. We have been glad to learn recently that our report has been cited by one of the leading lawyers in Chile, Dr. Eugenio Velasco, a former Dean of the Law Faculty in Santiago, and one of the leading opponents of the Allende régime, in an appeal which he has made to the Bar Association of Chile. He has pleaded with them to show the same determination in standing up for human rights now as they did when those rights were threatened, to a much lesser degree, under President Allende. Over 1,000 copies of his letter have, I understand, been distributed among lawyers in Chile. We find this very encouraging, though I regret that he is now being threatened with prosecution if he does not retract his statement. I must say that I would like to see more solidarity shown by professional lawyers' associations for those lawyers who are suffering for their courage in standing up for human rights in these countries.

There is also considerable scope for action by members of other professions acting through their national or international organisations. There can be no doubt that the action taken by the international psychiatrists organisation at their conference in Moscow has had a useful effect in helping to secure the liberation of some political detainees confined in Soviet asylums. The protests by other medical organisations earlier this year helped to secure the release of doctors who had been arrested in Uruguay. I am convinced that there is scope for much greater solidarity of this kind.

The trade unions, of course, play a major part in the fight for human rights. The International Labour Organisation, owing to its tripartite status, including representatives of workers and employers

along with governments, has far the most effective machinery of any international organisation for the implementation of human rights. There is a lesson to be learned here — of the need for the participation of non-governmental organisations in international machinery for the enforcement of human rights.

But at the end of the day, probably the most effective action we can take is to push and cajole our own governments to intervene with governments who are defying the most elementary human rights. Clearly one needs to concentrate on those countries with respect to which one's own government has some leverage.

There has been an encouraging upsurge in interest in human rights issues throughout the world in the last year or two. The work of non-governmental organisations is partly responsible for this, by helping both to form and to express public opinion on these issues. Largely as a result of political pressures, governments in democratic countries are becoming concerned about violations of human rights in other countries, particularly those with which they trade or have alliances. They are more ready to make interventions with respect to them, often privately but not necessarily less effectively on that account.

The striking change of tone in recent speeches of Mr. Voster and other South African ministers, the flow of immigrants who have been permitted to leave the Soviet Union and the much greater number who, it seems, may be permitted in future, the collapse of the dictatorial régimes in Portugal and Greece, the return to civilian government in Argentina, some hopeful signs of a possible move towards greater liberalisation in Brazil, all these are encouraging developments which at least in part are attributable to external pressures. Of course, there have been other factors at work, not least internal pressures within these countries. One claim, however, can certainly be made. The active concern of people outside these countries has given hope, encouragement and assistance to those inside them who have striven to bring about greater respect for and observance of human rights. Non-governmental organisations active in this field have had many moving expressions of gratitude for the actions they have taken.

Canada is a country which can, I believe, play an important role in this field. Whilst belonging to the western world and deeply respecting its traditions, Canada, like Australia and New Zealand, has the advantage of being a younger country which has itself gained its independence, and which has succeeded in winning the

confidence and friendship of many of the third world countries. We have been greatly encouraged both by some of the initiatives your government has taken in the international field and by the very striking concern of ordinary citizens in your country about human rights issues in many parts of the world.

I know the Canadian Human Rights Foundation is primarily concerned with the field of human rights within your country, but the fact that you have invited persons such as Mrs. Sipela and myself to this Conference shows that you realize that, like peace, human rights are indivisible. Concern for one's fellow human beings cannot stop short at national frontiers. It is a great privilege to have addressed you, and I hope we may find opportunities to continue working together in the cause which unites us, safeguarding the rights of the individual everywhere in dignity and liberty under the law.