

CLOSING ADDRESS

DR. JOSÉ ZALAUQUETT DAHER

Inter-American Commission on Human Rights

CLOSING ADDRESS

COMMISSIONER JOSÉ ZALAQUETT

Inter-American Commission on Human Rights

In closing this Working Session, I would like to take a few minutes to review some of the general considerations that we have heard today. In this event, our Commission, together with the sponsorship and valuable collaboration of the International Justice Project, has brought together representatives of states, as well as distinguished experts, in order to analyze the implementation of international human rights protections. I should mention that this Working Session is intended to constitute one step in an ongoing process of consultation. In order to facilitate further discussion on the very important issues raised today, we will prepare a publication for circulation to all of you that will contain today's presentations and a summary of observations and proposed initiatives from the event as well as other useful materials.

Without doubt there has been important progress over the last 50 or 55 years in the process of the systematic internationalization of human rights. The inter-American system, which includes the Court and the Commission on human rights, has formed a part of this international trend of advancement and progress.

In the first stage of this process, from the late 1940's to the beginning of the 1960's, the main actors were governments, functioning through multilateral organizations - the United Nations, the Council of Europe, the OAS. They adopted resolutions, signed and ratified pacts and conventions, and created organs of protection.

During the second phase, which commenced in the 1960's, we saw the rise of what some commentators have called the "other world power" – organized world public opinion. Non-governmental organizations proliferated and, with their activism, injected life and energy into the theme of human rights: it is in the conscience of the people, in the headlines of the newspapers, and in the center of the political agenda. In this way, human rights began to emerge as a visible and important part of the world order; a normative, humanitarian and moral component of this order. In a third stage, which began at the end of the Cold War - the second half of the 1980's and the 1990's – it became clear that human rights had triumphed. This did not mean that human rights violations had ceased, but rather the concept of human rights earned legitimacy internationally as a component of political ethics.

The idea of democracy also prevailed. This produced, then, a major convergence between world governance and the human rights movement. It is not by coincidence that in recent years, individuals who participated in the human rights movement have come to occupy senior positions in governmental human rights organizations in Mexico, Argentina, Brazil, Peru and Costa Rica and have been elected to the Inter-American Commission and Court. Simultaneously, governments have begun dialogues with the organs of the regional system of protection, accepting their decisions (though not always implemented measures to the degree hoped) and have developed relations with non-governmental organizations, arriving, not infrequently, at friendly settlements in matters presented before the Inter-American Commission on Human

Rights.

All of the foregoing does not signify that there are no longer conflicts and divergent interests between the different actors, but it implies that there is a shared interest in affirming the values of democracy, human rights and principles of ethical politics: these are cardinal values that characterize a civilized society, without which politically organized life lacks a conscience.

If we observe this post-war historical development from the inter-American perspective, it is possible to see first the proclamation of the American Declaration of the Rights and Duties of Man of the OAS, shortly before the Universal Declaration of Human Rights. Years later the American Convention on Human Rights entered into force on our region, followed by other international instruments on the same subject. The Inter-American Commission, which formed a part of the OAS since its origins, did not receive the mandate to process individual cases until the 1960's when the nongovernmental movement, referred to above, began. In the 1970's, when harsh military dictatorships plagued our Hemisphere bringing with them massive political repression, our system began to extend, little by little and case by case, its human rights work. Subsequently, the functions of the Inter-American Court of Human Rights began, which during its initial years consisted almost exclusively of issuing advisory opinions at the request of regional governments and, later, extended to its contentious jurisdiction in considering cases referred by the Commission.

Following the period of military dictatorships, at the end of the 1980's, and the election of democratic governments, there was an explosion of expectations for justice, truth and reparations concerning past crimes. With this came expectations on the entrenchment of the rule of law, for protecting civil and political rights, as well as hopes that the new democratic systems would bring advances in economic, social and cultural rights. This was accompanied by a professionalization and diversification of civil society; promotion of judicial reform; incorporation of norms that human rights protection in national constitutions; the creation of new state institutions such as ombudsmen, constitutional courts, and public defenders offices; and the creation of human rights departments in certain ministries. At the same time there have been developments in the law at the international level, including the ratification of treaties of a humanitarian nature and the recognition of the international jurisdiction of organs of protection like our Commission and Court.

One U.S. commentator referred to this period at the end of the 1980's and the 1990's as our "vacation of history" – referring to the end of the Cold War, when public opinion in North America formed the view that the great political problems of a bipolar world had been left behind, and implying that the public had been awakened from this illusion by September 11, 2001. In recent years, however, this hope has declined abruptly in many of our countries. The return of democracy has not fulfilled all of the aspirations that it had raised. Moreover, in several countries, the quality of the democracy and its viability and sustainability has begun to be placed in doubt. In this sense, we see today a new stage of vacillation and uncertainty.

On this point, I wish to recall the words of Mariclaire Acosta, who spoke to us earlier today. She reminded us that the Commission has a political dimension as well as a necessary juridical dimension. Political in the highest sense of the term; not in a partisan or ideological sense, but in the sense of a mission of service to the states and governments of the region. This dual juridical-political dimension has existed, in practice, since the very beginning of the internationalization of human rights. For in reality, human rights are a matter of political ethics. The grand international ethical consensus culminated, at its height, in its infusion into norms of international law. But even before the moral sense of world public opinion crystallizes into

treaties, conventions and resolutions of international organizations, it can have an undeniable influence. For example, the conscious objection has not generally been accepted as a manifestation of freedom of conscience and religion that must be respected, offering objectors alternate possibilities to public service. However, the force of nongovernmental human rights organizations has been generating a progressive rethinking in several countries of this legitimate option. Nevertheless, in order to advance effectively toward a greater respect for ethical proposals that emerge in response to the progress of a shared moral sense of humanity, it is necessary to act in the social and political arena. This does not mean that we need to reduce or dilute the principles that we seek to expand, nor is it to say that we adopt a merely pragmatic position; but rather it is necessary to be aware of the changing reality that is conditioning the achievement of our ethical objectives.

It is in this sense that we are faced with an important challenge in this new historical phase that began at the level of international relations and that touches our region. We have to think of how to strengthen state and nongovernmental human rights institutions, as well as the international and regional systems, paying due attention to the challenges and the political considerations that form part of the framework in which we must work to realize our ethical aspirations; to realize those aspirations in a way that they can, eventually, be embedded in national and international legal norms, in institutions, procedures and new systems of protection.

Today, we are able to step back and evaluate the development of the inter-American system of protection. In our Inter-American Commission, there has been great progress in the organization, experience and professionalization of its human resources. We have a series of thematic rapporteurships, a proven case system that is engaged with a growing number of petitions, and procedures for seeking friendly settlements. We also have an urgent procedure for situations of imminent and irreparable harm through precautionary measures, as well as a system of reports, a mechanism of *in loco* visits and other contacts with governments. All of this has gone to strengthening, and perhaps legalizing, and giving more rigor, professionalism and efficiency to our work. But this legalization must not occur in a manner that duplicates the juridical functions of other organs, nor should it neglect the responsibilities for promoting human rights and dialoging with governments and civil society organizations.

How do we prepare for the challenges that are already arising and will, without doubt, expand in the future? All of this must take place in a spirit of interaction between all of the participants in the inter-American system. This interchange and reflection must include the OAS, the governments, and representatives of civil society and human rights organizations. Certainly this dialogue will not be free of tensions, but hopefully by starting with a confrontation of interests and opinions, we can begin to find constructive solutions that will permit us to reach understandings, and avoid a dynamic that leaves us distant and wary of contact.

In this sense, one of the major challenges now facing us is how to remain aware of the changing reality and how to keep pace with it. We, at the Commission, have produced a Report on Terrorism and Human Rights, of which, as our former President Juan Méndez properly said, we are justifiably proud, not simply as a boastful reaction, but because we undertook enormous efforts, with the invaluable assistance of professional staff, to recall the legal pillars necessary to confront the new challenges to security as perceived by the world community. At the same time, we know that this task is not finished and that we have to be thinking in light of the conditions and types of changes that are occurring in the world order in these new times. This is to say, we have to constantly reflect upon our political role in the service of ethics and a legality in favor of the protection of the fundamental rights of the person; this is a great challenge.

Finally, I wish to summarize several conclusions that can be drawn from today's discussions.

- First, it is important that the international system maintain its independence, legitimacy and ethical principles and the legal norms that form its work and that it not be politicized.
- Second, it is necessary to improve the capacity of states to implement their international obligations, and to overcome the hesitations of political will or cultural barriers that can provoke suspicions before the international norms and systems of human rights.
- Third, as we have heard from many of the speakers today, the judiciary could make significant advances if judges had a greater capacity. Judges, who are also human beings, are aware of developments in national and international public affairs, national and international, of things that are happening in the world and the ethical and humanitarian exigencies that emerge in the heart of society. They are sensitive to national and international public opinion that calls for fighting impunity and confronting the past, the desire to construct a coexistence based upon decency and the rule of law; they are also sensitive also to the opinions of their peers, judges and jurists of their country and other countries. Arising from this have been important advances in the corpus of justice, advances that could grow and multiply if we give judges those tools that will allow them to move forward.
- Also of necessary concern is the capacity of new generations, especially through university education. Today, those of us who were at one time the cadets of human rights (which still does not seem that long ago), and now I fear we are becoming the grandparents, are pleased to see new a generation taking charge of the cause. In our Commission we are proud of the professional participation of these new generations.
- We must also place greater emphasis upon follow up on compliance with the recommendation and decisions of the inter-American system. Many times our system has attempted to complete the matters before it through its established procedures and states have failed to follow through, and therefore it is necessary to develop more effective follow up mechanisms. There must be brought about guarantees of compliance at the local level and forms of agreements that permit the execution of judgments and the application of international recommendations in a direct and immediate manner.
- And finally, but certainly with a high priority, it is necessary to find the resources necessary for the system to function.

In closing, I would like to highlight that the objective that has moved us in convening today's event has been to engage with member states on the implementation of human rights, not only because we need to take part in a dialogue with governments day by day, but we want to emphasize that we are in a mutual, constructive relationship, even though we have naturally differing positions. It is in that spirit that I would like to close this meeting. I would like to thank you all for your participation, especially the panelists who

have so brilliantly enlightened us on the topic of this Working Session.

