A Critical Juncture for Security and Human Rights

BY LEANA D. BRESNAHAN

“Freedom means the supremacy of human rights everywhere,”
– President Franklin D. Roosevelt

In mid-April 2013, U.S. Southern Command (SOUTHCOM) sponsored a human rights seminar for Guatemalan military personnel. The seminar was one in a series of workshops, subject-matter expert exchanges, dialogues, and events that SOUTHCOM had sponsored in Guatemala since 2004, all under the auspices of a SOUTHCOM-sponsored regional process known as the Human Rights Initiative (HRI). HRI events focused on strengthening the Guatemalan military’s human rights performance in the areas of doctrine, education and training, cooperation with civilian authorities, and internal control mechanisms. Unlike previous HRI events, participation in the April seminar by local human rights activists, an indispensable component of all SOUTHCOM’s human rights promotion efforts, was minimal, but for a surprising reason.

That week many of the human rights activists were instead at the Palace of Justice, the seat of the country’s highest court, to witness an historic event: the trial of a former dictator who had both risen to and fallen from power by coup d’état. Guatemalan General Efraín Ríos Montt had come to symbolize one of the darkest eras in the country’s history. Now a frail-looking octogenarian, Ríos Montt had spent years benefitting from prosecutorial immunity due to his status as a member of Congress. But his place at the defendant’s table that April had come to signify one of the greatest human rights victories for Guatemala – and the hemisphere – in recent history. The trial represented the first time that a former Head of State was tried for the crime of genocide by his own country’s judicial system. It exemplified how rule of law was slowly taking hold in a country where impunity had reigned for decades. It also sent a powerful message to the international community that nobody is above the law in the commission of grave violations of human rights. The trial of Ríos Montt and the active participation of the Guatemalan military in HRI are

Leana D Bresnahan is the Chief, Human Rights office at the U.S. Southern Command.
two among other positive changes that have taken place in the past decades in a country with a troubled history.  

Guatemala does not stand alone as it grapples with a legacy of human rights violations against its citizens. Much of Latin America’s modern history involves decades of internal conflict, military dictatorships, and guerrilla warfare. Left in its wake were countless victims of kidnappings, forced disappearances, acts of torture, and massacres, the vast majority of whom have not seen justice delivered. As the internal conflicts and political violence came to an end in the final years of the 20th century, a process of democratization has taken hold. This transition to democracy brought with it the hope that respect for human rights would be institutionalized and protected in a comprehensive fashion. While the transition has brought with it greater political and economic stability for many countries, it did not automatically elevate respect for human rights to a national priority. The construction of a democratic state based on the rule of law and respect for human rights remains a work in progress in many countries. Democracy may be a necessary condition for the promotion of human rights, but it is not always enough to ensure their protection.  

United States Human Rights Policy: Promoting Human Rights  

For the United States, the advent of trials against former dictators highlights our own attempts to balance human rights concerns with national security interests and foreign policy objectives in the Western Hemisphere. Much as Guatemala and other countries in the region are demonstrating support to the rule of law and respect for human rights, our own concept of human rights and the role it should play in shaping our foreign policy has evolved—and progressed greatly—in the last half-century.  

This policy shift was years in the making. With the post-World War II emergence of the international human rights movement, which the U.S. played a leading role in creating, and the end of the Cold War, the U.S. Congress passed laws that led to significant changes in how we engage with, and provide assistance to, our partners around the world. These changes elevated the observance of and respect for human rights to a pre-condition for military and security assistance. One of the most far-reaching changes is the Leahy Law, first passed in 1997, which prohibits assistance to foreign military and security force units if there is credible information that a member of the unit has committed a gross violation of human rights with impunity. The law, which is written to apply globally to recipients of U.S. military and security assistance, is a culmination of efforts by successive U.S. Congresses since the 1970s to keep U.S. security and military assistance from supporting repressive regimes. The law directly impacts how the United States does business in the international security arena. It helps ensure that U.S. taxpayer dollars are not used to provide assistance to human rights violators and abusive regimes; that the United States not become complicit in those abuses; but also to give our diplomats a tool that can be leveraged to encourage respect for
human rights in countries receiving U.S. security assistance.

Despite its reach and scope, the Leahy Law has not proven to be a panacea for all human rights woes. In 2013, the Government Accountability Office recommended the crafting of additional guidance to better define how the United States might encourage accountability and assist foreign governments in bringing those responsible for the human rights violations to justice. Just in 2015, the Department of Defense and Department of State first issued policy guidance outlining the specific steps a government might take in order for an ineligible unit to regain access to U.S. assistance, once credibly alleged human rights violations have been investigated and prosecuted. Furthermore, some security experts argue that cutting off assistance to a unit for human rights abuses does not necessarily bring about the desired change in human rights performance. Others note that denying U.S. assistance merely opens up the door for less scrupulous nations, who themselves have abysmal human rights records, to fill the void thereby handing them the opportunity to promote their own lack of regard for human rights protections.

The Leahy Law is complemented by Congressional conditions on security assistance for specific countries with problematic human rights records. These conditions have played an important role in advancing U.S. human rights goals in the region. Still,
conditions that are overly onerous or that have no connection to the human rights performance of a military can generate resentment among local leaders and be counterproductive to our human rights agenda.

There is recognition within the U.S. government and Congress that the Leahy Law alone cannot curb or prevent all human rights abuses. Our foreign policy and bilateral engagement also play major parts – the “carrots” to the Leahy “stick.” Over the past two decades, engagement by the U.S. military has aimed to support the development of professional military and security forces and to encourage greater regional cooperation. Today, the U.S. government, including the Department of Defense, openly champions respect for human rights as we work with Latin American partners to support their efforts to further professionalize their military and police forces. We likewise champion military subordination to civilian authority and encourage limiting military missions to external threats as part of our foreign policy aims in this hemisphere.

SOUTHCOM’s goal is to be the military partner of choice for defense and security forces within the hemisphere. We believe that in the long run our national values and adherence to and promotion of human rights and rule of law, through such programs as the Human Rights Initiative, will play an important role in our being considered as such, particularly as long as democratic governance continues to be the norm in the region.

At SOUTHCOM we are conscious as well that advocating strongly for human rights places a huge responsibility on our shoulders, to not only talk the talk, but also to walk the walk. To that end, SOUTHCOM maintains an office dedicated entirely to human rights promotion, requires annual human rights awareness education of all of its personnel, and integrates human rights into its activities, including its operational planning teams, strategy and planning documents, key leader engagements, and exercise program.

We believe that this sustained engagement, coupled with the critical commitment of regional political and military leaders, builds increasingly capable and accountable regional militaries, which are consistently ranked among their countries’ most trusted institutions. They serve honorably, including in United Nations peacekeeping and stabilization missions, where they are generally regarded as high quality, well-trained troops. There remains much work to be done, however, especially in the face of new challenges to human rights in the region.

Emerging Challenges to Human Rights in Latin America

Democratic transition has brought stability, basic freedoms, and greater protection of human rights to the citizens of most countries of the region. As a United Nations report recently noted, despite improvements, Latin America remains the most unequal and insecure region in the world.

Democratic transition has brought stability, basic freedoms, and greater protection of human rights to the citizens of most countries of the region. As a United Nations report recently noted, despite improvements, Latin America remains the most unequal and insecure region in the world.
Throughout Latin America, the major threats to human rights no longer emanate from military dictatorships nor are they produced as the unfortunate by-product of brutal internal conflicts. Rather, the threats to human rights stem from new sources, particularly in certain countries and sub-regions.

On the one hand, there is a troubling renewed trend toward authoritarianism: elected civilian governments that once in power, and under the guise of democracy, shun democratic standards, abuse basic human rights, primarily freedom of the press, expression, and due process, criminalize peaceful protest in order to suppress the political opposition, and consistently aggressively verbalize rejection of the admonitions of international and regional human rights bodies.

On the other hand, sky-rocketing violence and the spread of powerful criminal organizations pose severe challenges to regional stability and are major sources of human rights abuse. Transnational criminal organizations threaten citizen security, undermine basic human rights, cripple rule of law through corruption, erode good governance, and hinder economic development.

Although no country is totally immune, Central America – specifically the “Northern Triangle” of Honduras, El Salvador, and Guatemala – is at the epicenter of the citizen security crisis. Murder rates in these countries are among the highest in the world. The Northern Triangle offers a unique case study in the intersection of citizen safety, the use of regional militaries in domestic security missions, and the role the U.S. can play in protecting the region’s hard-won progress.

The sub-region is awash in weapons and street gangs and has been a primary corridor for U.S.-bound cocaine since around 2006. It is fair to say that the right of the individual to security – a fundamental and universal human right – is under full-fledged attack in these specific countries. In many cases, justice systems and police forces are incapable of reining in the violence. Central American police forces, particularly in the Northern Triangle, are outmanned, outgunned, and out-financed not by petty criminals, but by sophisticated business-savvy entities. In desperation, to protect their children from the violence, tens of thousands of parents in the Northern Triangle entrust their children to strangers to undertake a perilous journey in the hope of their reaching a new life of safety in the United States. In desperation as well, democratic governments have deployed their militaries to support overwhelmed and largely corrupt police forces, in an effort to provide protection to their citizens. The effectiveness of these efforts has yet to be determined, but in the meantime, the decision to employ militaries in domestic security roles has many critics.

The Militarism Issue and its Criticisms

The concern about security in Latin America is so widespread that 23 of 31 countries in the SOUTHCOM area of responsibility (AOR) have ordered their armed forces to support law enforcement agencies, including in the fight against transnational organized crime. There is real cause for concern when the military of any country is deployed domestically to carry out law enforcement activities. In the United States, we have a long tradition and strict laws to prevent the employment of the military to provide law enforcement except under certain well-defined conditions. However, there are times of emergency even in the U.S. when defense support to civilian authorities is necessary, legitimate, and appropriate, always on a
temporary basis. We have only to think of the presence of the military in U.S. streets and airports immediately after September 11, 2001, to remember the security and the sense of security their presence provided. Nor is this phenomenon unique to the Americas. As an example, the French government deployed 10,000 troops in the streets of France’s large cities after the January 2015 terrorist attacks on satire magazine Charlie Hebdo, and plans to keep 7,000 troops on the streets indefinitely according to news reports.11

Given the sheer magnitude of security challenges in Central America, it is at least understandable that governments turn to their militaries to help curb the rising tide of violence. Even if statistics show that this hardline approach has historically not had the desired effect, it offers Central American governments time to strengthen civilian law enforcement forces and fortify judicial reforms.12

The use of the military in domestic law enforcement, particularly in a region that has only recently succeeded in transitioning away from military dictatorships and internal conflicts, is not a viable, permanent solution. It evokes strong concerns and passionate responses among many observers and regional experts alike. The only long-term solution to criminal violence that threatens much of the region is through the creation of effective, responsive police forces, accompanied by reforms to promote economic development and good governance.

U.S. government policy in the region has focused for years has on supporting governmental efforts to build effective, well-trained, adequately armed, ethical police forces. It is
hoped that the mix of security, governance, and economic reforms outlined in the Alliance for Prosperity program announced by the presidents of Guatemala, El Salvador, and Honduras in March will provide the right blueprint for effectively addressing these countries’ ills. Their political will as well as their willingness to work together are critical components to the success of their plan, which should not be underestimated.

Still, citizens’ legitimate demands for improved security now mean that governments are likely to continue to use their militaries to help address domestic security threats as they take the time required to build more transparent, respectful police forces and to implement other institutional reforms.\textsuperscript{13}

The support to law enforcement comes with new responsibilities for the military forces, as they must adapt to a new operating environment while ensuring that human rights remain the center of gravity in their mission. Failure to do this will put at risk continued popular support and trust, and therefore the legitimacy, of military institutions.\textsuperscript{14}

The sharp differences between the military and police in terms of training, functions, power, and mindset will make this a challenging task. The military is trained to confront and defeat an enemy with force, but the foundation of police work lies elsewhere – in the prevention of crime, arrest and detention of suspects for prosecution, and maintaining public order and safety. Soldiers carrying out public security functions must therefore fundamentally “shift” their way of thinking in carrying out these new missions,\textsuperscript{15} something that, without proper training, clear rules of engagement, well-defined military and civilian functions, and accountability to civilian legal authorities will bring with it a greater risk of human rights violations.

The role of military leaders and commanders in constantly re-enforcing the message that human rights is at the center of their mission cannot be overestimated. Soldiers need to hear that message clearly and unequivocally stated over and over again to ensure the message sticks.

Numerous human rights groups and members of Congress fear that increased U.S. assistance to Central American armed forces will encourage governments to “militarize” domestic security, undermining the still-developing democracies, and “walking back” progress made in the period of democratic transition.\textsuperscript{16} As Congress debates the Administration’s one billion dollar assistance request for Central America, it will consider how to help the countries confront these violent security threats within a strengthened human rights framework.

From the perspective of SOUTHCOM, there is no appetite within the Command for its partner nation militaries to remain in the streets. SOUTHCOM will support the U.S. inter-agency community in any way requested to improve security in the region and it will continue to do everything in its power, given the resources available, to build strong partnerships and strong military human rights programs in those countries that choose to partner with us.

The Military and Human Rights: A Contradiction in Terms?

Given today’s security realities, continued discussion and introspection are needed to ensure U.S. policy – and the advocacy efforts that help shape that policy – is not only consistent, but also supportive of the broadening and
deepening of respect for human rights with its military partners in the region. At SOUTHCOM, a unique effort began in 1997 with the establishment of the first-ever Department of Defense initiative specifically aimed at strengthening the human rights performance of militaries in a Command’s AOR. Neither a carrot nor a stick approach to influencing change, the Human Rights Initiative (HRI) was envisioned by SOUTHCOM’s then-commander General Wesley Clark USA, as an appeal to common values shared by all democratic governments and their institutions, and as an offer to support their efforts to live up to those common values.

HRI has been supported and developed by every subsequent SOUTHCOM commander to the present day. In fact, current SOUTHCOM commander, General John Kelly, USMC, has made human rights a centerpiece of the Command. General Kelly regularly meets with human rights groups in Washington, D.C. and in the countries of the region when he travels, and includes a discussion of human rights in meetings with his regional counterparts. He has become known for his oft-repeated phrase within DOD circles and events with partner nation military forces alike: “Everything we do at SOUTHCOM begins and ends with human rights.”

HRI began as a regional process that brought together military and security force officers from 34 nations of the hemisphere to develop the Consensus Document, a document that outlines a model human rights program for military forces serving democracies. Academics, NGOs, and representatives of regional and international organizations...
provided their expertise and advised throughout the process. Writing the Consensus Document required six hemispheric conferences over six years (1997-2002).

Once completed, participants requested that SOUTHCOM support their implementation efforts, so that the Consensus Document “didn’t become just another report on the shelf” as one participant expressed. So, beginning in 2004, SOUTHCOM worked bilaterally through HRI conferences to support the efforts of military forces whose governments had chosen to implement the Consensus Document. Each HRI conference brings together representatives of military, security forces, civilian government, and civil society, including NGOs, in a particular country to develop action plans for that country’s military forces focused on four areas: doctrine, education and training, effective internal control systems, and cooperation with civilian authorities. Periodic follow-up events are sponsored during which the same participants evaluate accomplishment of the action plans and develop new ones.

Currently, eleven Partner Nations have made the formal commitment to implement HRI. By joining the initiative, a partner nation military receives direct support from SOUTHCOM through a series of implementation conferences, follow-up seminars, subject matter expert exchanges in human rights, train the trainer programs, and other HRI implementation events. Since 2004, SOUTHCOM has conducted close to 200 HRI events, involving thousands of participants, in 19 different countries.

HRI engagements often attempt to answer the questions of how and why protecting the inherent dignity of the individual is central to protecting national security. From SOUTHCOM’s perspective, there is no greater gift to hand to a criminal or illegal actor than an act that erodes the public’s faith in government institutions, in particular the institution with the monopoly on the lawful use of force. Exploiting violations, such as extra-judicial killings and sexual assaults by state actors, is a tactic and technique employed by the adversary that helps to fill its ranks. It also helps to justify its own acts of violence against innocent civilians.

From SOUTHCOM’s perspective, there is no greater gift to hand to a criminal or illegal actor than an act that erodes the public’s faith in government institutions, in particular the institution with the monopoly on the lawful use of force.

No human institution is perfect, despite serious efforts to prevent misconduct or criminal actions. When human rights violations by state actors do occur, how the institution responds – whether with transparency and accountability, or by “circling the wagons” and defending the conduct of the individual rather than the honor of institution – will ultimately define its legitimacy in the eyes of the public. And, as witnessed throughout the region today, history will ensure that misconduct or extra-legal actions taken in the name of defeating an enemy are not forgotten.

Through HRI, SOUTHCOM advocates for institutions to acknowledge and address abuses of human rights, whether committed long in the past or more recently. Some HRI partners struggle to shed the darkness left by the reprehensible acts committed decades prior. These partners are often still judged in the international community and by advocacy groups for the sins of their predecessors,
without recognition of the progress that has been made to improve their human rights performance. Other partners, in particular those who have been ordered to support police in public security missions, fear that a mistake during a mission will subject them to a judicial system that has proven itself too weak – or too corrupt – to provide true justice. As such, some HRI members have shared the perception that human rights and rule of law protect only the “bad guys,” and that those who defend the cause of human rights are their enablers. This line of thinking not only underscores the urgent need to accelerate police and judicial reform efforts in the region, but also the importance of re-doubling efforts to bridge the divide between human rights groups and militaries.

While much work remains, the dialogues have demonstrated that a strong will exists on both sides to improve civil-military cooperation efforts on human rights

To build confidence and trust between the civil and military sectors of society, HRI seeks to incorporate local civil society groups and human rights activists in all HRI engagements. Their participation unlocks opportunities for collaboration, and helps to foster a better working relationship on issues related to citizen security and human rights. Most recently, SOUTHCOM supported a series of dialogues in a number of countries between human rights groups and partner nation military leaders aimed at re-initiating direct and constructive dialogue, reconciling long-standing divisive issues due to past abuses, and addressing grave security concerns that confront these countries. While much work remains, the dialogues have demonstrated that a strong will exists on both sides to improve civil-military cooperation efforts on human rights, and that they share common values and objectives to improve citizen security efforts.

What have been some of the concrete human rights advances achieved by military and security forces in the region? First of all, including all of the Western Hemisphere, and as noted previously, 34 nations contributed to the Consensus Document. While eleven nations have formally committed to implement HRI, many more participate in hemispheric and regional HRI conferences. In those events, there is widespread acceptance of military responsibilities to respect human rights. Other nations have implemented human rights training, doctrine, and institutional structures independent of HRI. Across the hemisphere, ministries of defense and military services have established human rights offices. Human rights doctrine has been developed and soldiers and officers receive human rights training. Three countries have established military human rights schools, and all of them (Colombia, Peru, and the Dominican Republic) offer themselves as regional training centers, welcoming students from their neighboring countries, often tuition free. Under the United States Colombia Action Plan (USCAP), the Colombian military offers human rights training to Central American militaries. As the lead on human rights for the Conference of Central American Armed Forces (CFAC), the Dominican Republic sends mobile human rights training teams annually to its Central American counterparts. The Western Hemisphere Institute of Security Cooperation (WHINSEC) and the Perry Center for
Hemispheric Defense Studies both offer human rights courses which fill up immediately and place would-be students on long waiting lists. Neither can meet the demand for human rights training, due to resource constraints. In the same way, SOUTHCOM cannot come close to meeting all the demand signals from partner nation militaries for support on human rights, again due to resource constraints.

**Conclusion**

We may be at a critical juncture for security and human rights in the hemisphere. General Rios Montt has been tried. Military officers and NGOs sit down to dialogue respectfully about the past, present, and future. In the recent cases when partner nation soldiers have been accused of illegal acts, military forces have generally turned the accused soldiers over to civilian authorities for investigation and prosecution. High-ranking officers and soldiers convicted of human rights violations from earlier years are serving prison sentences. SOUTHCOM, WHINSEC, and the Perry Center struggle and fail to keep up with the demand for military human rights education and training.

And yet there are critical needs that are going unmet. There are tremendous backlogs in human rights cases languishing in inefficient judicial systems, in which alleged perpetrators can wait a decade or more for a final sentence. Many cases still end in impunity. Violence is rampant; stability, progress, and democracy itself may be threatened. And of this there is no doubt: thousands of innocent people are suffering horrific abuse, almost always at the hands of gang members, drug traffickers, and violent criminals, and, importantly, fewer and fewer at the hands of soldiers and the police.

Reinforcing the regions’ progress on human rights over the last two decades – and preventing the evolving security threats in the region from undermining these advances – will require a continued commitment from governments in the region as well as from the United States. Programs like HRI can help to support continued progress by militaries on human rights, but it must adapt to the changing realities and threats facing the hemisphere today and it must be expanded. Paradoxically, human rights may be one of the issues that can unite the hemisphere, or at least its militaries, once again under one banner. Police and security forces need added support and assistance on human rights, including a parallel Human Rights Initiative. Likewise, both policy and advocacy aimed at supporting the implementation of human rights ideals must not only acknowledge the security realities the region faces today, but also be careful to ensure the tools at governments’ disposal are intelligently and consistently applied. As General Kelly stresses, the true measure of the region’s security successes must begin and end with human rights. **PRISM**
Notes

1 Begun in 1997, the Human Rights Initiative is a means by which SOUTHCOM conducts conferences, exchanges and dialogue events to support the strengthening of military human rights programs in the SOUTHCOM Area of Responsibility (AOR).

2 Rios Montt was convicted of genocide and crimes against humanity in 2013, and was sentenced to 80 years in prison. Just days after the ruling, the conviction was annulled by the Constitutional Court on procedural grounds. In January 2015, the trial re-opened, only again to be suspended on procedural grounds. In August 2015, a Guatemalan court ruled that Rios Montt must stand trial, but that if found guilty, he will not receive a prison sentence due to his failing health.


7 Director of National Intelligence, James R. Clapper. *Statement for the Record: Worldwide Threat Assessment of the US Intelligence Community*. Senate Select Committee on Intelligence, March 12, 2013.

8 With a homicide rate of 66.4 per 100,000 in 2014, Honduras – once the most violent country on the planet – has now been surpassed by El Salvador. If current trends continue, El Salvador’s homicide rate may reach 90 per 100,000 people by the end of 2015. August was the most violent month in its history, with 911 murders, and the murder total for the first 8 months of the year (4,246) is greater than the total for all of 2014 (3,942). Sources: official government figures from Honduras and El Salvador.

9 The right to security of the individual is an internationally recognized human right, included, for instance in the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights, and the American Convention on Human Rights, among others.

10 Seven of the remaining eight countries do not have armed forces.


13 Police reform, a long-standing U.S. government priority in Latin America, is an extremely complicated and long-term process, in part due to high levels of corruption present in many police forces throughout the region. Political will and functioning judicial systems are an essential part for any meaningful reform to succeed. Also see Johnson, Stephen, et al, “Police Reform in Latin America: Implications for U.S. Policy,” Center for Strategic and International Studies (February 2012) http://cis.org/files/publication/120228_Johnson_PoliceReform_web.pdf.


Open sewer in Cidade Estrutural, a popular neighborhood in Brazil’s capital city