

People First, Human Rights Always

The United States must defend liberty and justice because these principles are right and true for all people everywhere. These nonnegotiable demands of human dignity are protected most securely in democracies. The United States government will work to advance human dignity in word and deed, speaking out for freedom and against violations of human rights and allocating resources to advance these ideals.

—National Security Strategy of the United States of America (2006)

Little more than a decade after a pattern of torture, killings, and “disappearances” focused worldwide attention on human rights violations committed by military regimes in Latin America and the Caribbean, there has been general improvement in institutional respect for human rights among the military and security forces of the region. With the return to democracy across the hemisphere has come a growing commitment to international humanitarian and human rights law, as well as a growing recognition that the safeguarding of human rights is not only a moral and legal imperative but an essential component of national security. Every citizen of the Americas has a moral obligation to uphold the principles of life, liberty, and human dignity; those of us privileged to wear a uniform have a legal obligation to do so as well.

U.S. Southern Command has played a role in nurturing this change in attitudes. Working with regional military and security forces in collaborative regional initiatives, we have endeavored to instill a culture of respect for human rights as a fundamental strategic objective. As testimony to our commitment to this process, the command has forged active partnerships with the international human rights community, bringing in the expertise and direct participation of experienced international and

nongovernmental human rights organizations—including those who are often critical of the role played by the United States military in the region. What had once been an all-too-frequently adversarial relationship has evolved into positive linkages of cooperation guiding us toward two primary common goals: 1) ensuring that past abuses are not repeated; and 2), understanding that human rights are an integral component of military training and military culture throughout the region.

All of the democratic governments in the region have enunciated policies of respect for human rights and initiated programs to promote and strengthen support for human rights within their civil and military institutions. The very act of recognizing this ethical and international legal obligation is itself an important step toward healing the deep schisms caused by past abuses. Clearly, however, much remains to be done to fully transform the human rights vision of the region's democracies into reality. Inefficient, overburdened, and sometimes corrupt judicial systems continue allowing perpetrators of human rights abuses to escape punishment. Inhumane prison conditions, arbitrary arrest and detention, and instances of brutality—mainly by ill-trained and under-resourced police and internal security forces—remain problems throughout the region. Even so, the situation today stands in sharp contrast to the widespread and institutionalized abuses committed by the region's Cold War-era authoritarian governments.

From our headquarters in Miami, Southern Command professionals focus their efforts on realizing the command's vision of a community of nations enjoying lasting relationships based on trust, shared values, and common interests. These relationships are critical to delivering the cooperative solutions so necessary to address the varied and transnational security challenges facing the nations of the region today. Our motto "Partnership for the Americas" underscores the importance of working together as partners toward common goals.

Respect for human rights and the rule of law is unequivocally the cornerstone of these partnerships, and Southern Command plays a role in helping to foster that respect. In response to the widespread human rights abuses that rocked many of the nations of Latin America in the 1970s and 1980s, the leadership at Southern Command launched a human rights program that focused on ensuring correct behavior by U.S. military personnel and on encouraging the institutionalization of a culture of respect for human rights in partner nation military forces. In the two decades of its existence, this unique program has proven invaluable

in strengthening support for human rights and helping to advance the Partnership for the Americas.

Human Rights: Concepts, Goals, and Role of the Military

As stated in the 1948 Universal Declaration of Human Rights, “All human beings are born free and equal in dignity and rights.” As an evocation of fundamental principles, the term “human rights” is a powerful appeal to the loftiest aspirations of mankind; by the same token, it is purposely a general, perhaps even vague term. In practice, it is a notion that has often led to considerable confusion over what exactly constitutes a human right and what its basis is. Not surprisingly, different governments, institutions, and organizations have, at times, sought to define the term in unique ways that suit differing interests or agendas. Even among legal scholars, the concept of human rights is constantly evolving as it is debated and revised.

Yet over the last half century, a broad consensus *has* emerged among legal experts, human rights organizations, and governments on the scope and compass of the key principles of human rights to which all states must give deference. Many of these principles, as well as specific enumerated human rights, have been enshrined in international declarations, treaties, and laws. Among the basic human rights clearly recognized by international law today are: life, liberty, and personal security; freedom from slavery, torture, and arbitrary arrest; and, freedom of conscience, religion, expression, and movement.

Although deeply rooted in moral beliefs about the dignity of the individual found in almost every society, human rights in their modern legal conception are distinct in that they are specifically deemed to be rights that are *universal*, *inherent*, and *inalienable* possessions of all mankind—rights that no state may legitimately abridge. These rights are *universal* in that all human beings are entitled to them, regardless of race, religion, sex, nationality, or any other distinction. They are *inherent* in that they are a part of what it is to be human. Because they are inherent, they are also *inalienable*, thus meaning no one can take them away, and no one can give them up voluntarily.¹

Human rights, accordingly, speak to how a state is obligated to treat its own people—regardless of the laws or customs of that state. Human rights are therefore distinct from civil rights, which are rights that citizens of a country enjoy because the constitution and laws of that country grant them. The government, and those who represent it, respect those

claims because they have a duty to uphold the constitution and the law. The upholding of human rights, however, constitutes a higher duty that transcends even national constitutions and laws. Many human rights, such as the right to life and liberty, are also enshrined as civil rights. However, when a state includes human rights in its laws or constitution, it is not “granting” these rights but merely “recognizing” them. The distinction is important and goes to the very nature and essence of human rights. An authoritarian government may try to do away with civil rights by changing the constitution, or suspending it, or simply ignoring it. Other governments may fail to provide what is necessary for its citizens to enjoy their civil rights—things such as police protection and impartial justice. However, no government can abolish a human right, because, quite simply, it does not have the power to grant it in the first place. As stated in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, human rights “derive from the inherent dignity of the human person.” In addition to a person’s safety and security, therefore, human rights include the social, political, and economic freedoms each person needs to realize his or her human potential.²

Because of this relationship between human rights and the state, in traditional human rights theory, only a state can violate a person’s human rights. For example, an individual who takes the life of another person is a murderer, not a human rights violator; conversely, if a state orders or condones a murder by one of its agents (the police, the military, etc.), it has committed a human rights violation. In practice, however, this distinction is not rigidly applied, and human rights violations are commonly attributed to guerrilla and irregular forces, including terrorist organizations.³

Legal theory also acknowledges that human rights are not absolute; that is, the state may limit or suspend rights under certain conditions. For example, states do not allow children to vote—a recognized human right—until they are old enough to make a mature decision. Similarly, in a national emergency, states can limit people’s freedom of movement to ensure public safety. However, as a general rule, such limitations must be as few and short-lived as possible, or they become abuses. Evidence of this premise can be found in Article 27 of the American Convention on Human Rights, which states that certain rights may be suspended in time of war, public danger, or other emergency, provided the suspension does not conflict with obligations under other international agreements, and is limited to the time and extent strictly required.⁴ However, the article goes on to state that the foregoing provision does *not* authorize any suspension of the preceding articles of the

Convention, namely: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government). The article also recognizes the fundamental importance of the judicial guarantees essential for the protection of such rights.

Moreover, the relationship between the state and the individual that underlies human rights is reciprocal. All people have certain duties to a state that ensures their rights. They must obey its laws, for example, and pay required taxes to support it. They have to do their duty to the state because only the state can make sure they enjoy their rights. Article 29 of the Universal Declaration of Human Rights (UDHR) states this clearly: “Everyone has duties to the community in which alone the free and full development of his personality is possible.”

Legal Underpinnings

The principle that certain fundamental rights of mankind are inherent and transcend the laws of any nation was definitively articulated in the United States of America’s 1776 Declaration of Independence and in France’s 1789 Declaration of the Rights of Man. Yet, it was not until the end of World War II that any international legal precedent or mechanism emerged to give effect to this ideal in practice. While traditional international law spoke to the relations between nations, it was virtually silent on what a nation did to its own people within its sovereign borders; each state decided the extent to which it would protect and respect the inherent human rights of its citizens, as well as which civil rights it would grant those under its power. There was no legal basis for any other state or international body to challenge these decisions.

In seeking to prosecute members of the Nazi government for the atrocities they committed against their own people, the victorious Allies were thus forced to bring a wholly novel charge of *crimes against humanity* at the Nuremberg Trials.⁵ It was a precedent-setting step that helped establish the foundation for the modern system of international human rights law and treaties that have emerged in the 60 years since. As a result, the 1945 Charter of the United Nations became the first great international treaty to conceive of universal human rights as a practical matter rather than a vague ideal, calling on the UN to “promote universal respect for, and observance of, human rights and fundamental freedoms for all without

distinction as to race, sex, language, or religion.” In 1948, the United Nations set down these ideas in the Universal Declaration of Human Rights.⁶ Other international agreements on human rights followed over the next half-century as the nations of the world committed themselves increasingly not only to respecting them, but also to making them part of the bedrock foundation upon which governments throughout the world were based.

Although lacking the force of law, the Universal Declaration of Human Rights is arguably the most important of the international measures on human rights because of its broad international support and because its 30 articles cover the minimum rights and immunities to which every human being is entitled. A number of subsequent binding treaties—in diplomatic terminology, such measures that carry the force of international law are also called *covenants*, *conventions*, or *agreements*—have given substantial credence to the principles of the Declaration. Of particular importance are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, both of which went into force in 1976.⁷ Together with the Universal Declaration, these treaties are often referred to as the International Bill of Human Rights.

Besides international human rights law created by treaties, there is a growing body of what is termed *customary international law* that is based on precedents set by international tribunals and on widely accepted norms that states have declared and customarily followed.⁸ Needless to say, determining precisely what precedents and practices have become legally binding and customary law is a matter of considerable debate and differing interpretation. Generally, however, no practice becomes part of customary international law unless it has become so customary that most, if not all, nations have consistently adhered to it. Currently, binding and customary international law unquestionably considers seven specific crimes violations of human rights. Those crimes are genocide; slavery and the slave trade; murder and “forced disappearance,” in which a person is taken prisoner by the state and never seen again; torture or other cruel, inhuman, or degrading treatment or punishment; prolonged arbitrary detention; systematic racial discrimination; and a consistent pattern of gross violations of human rights.⁹

Categories of Human Rights

Legal scholars have divided all of the specific human rights that have been proposed, including those that are now generally accepted and those that are not, into three groups according to the era in which they first

appeared. These three groups are conventionally called the three “generations” of human rights.¹⁰

The *first generation* consists of fundamental rights; these are generally assertions of what the state must not do. It includes civil and political rights such as the individual’s right to life and liberty; freedom from slavery, genocide, and torture; and freedom of conscience and religion. Most of these freedoms were already generally accepted, at least in democratic countries, by World War II, and national governments have the authority to enforce them and punish violators.

The *second generation* of human rights covers social and economic rights. These are things a state must *do* for its people, such as seeing to it that they have at least the minimum diet and medical care needed to keep them healthy and access to education as well as adequate shelter. Most Western countries—the United States included—acknowledge second generation rights but do not consider them legally enforceable, regarding them rather as “aspirational” goals that states should progressively strive to attain.¹¹ Most other countries place economic rights on equal legal footing with civil and political rights—even if few have the means to in fact guarantee them.

The *third generation* of human rights is a mix of broader rights relating to the environment, culture, and development. In addition to the right to a clean environment, they include things such as the right to peace and the right to humanitarian aid. Few rights of that sort have yet appeared in international agreements or achieved very wide acceptance. However, some third generation rights are progressing toward possible espousal by the international community, such as the United Nations resolution on the Declaration on the Rights of Indigenous Peoples, adopted in September 2007, which is designed to protect the cultures and other group interests of indigenous peoples around the world.

Although the term “generations” suggests that human rights can be ranked hierarchically, most human rights advocates assert no right can be sacrificed to ensure another because all are equally important, and each one depends on the others. This remains an underlying tension between human rights theory and practice, because in practice human rights do follow a natural hierarchy: the right to an education, for example, means nothing without the right to life, whereas one can enjoy the right to life without access to education.

Human Rights versus International Humanitarian Law

The international law that governs the behavior of combatants in an armed conflict is called international humanitarian law. It is an ancient

part of the law of armed conflict, popularly known as the Law of War, which evolved into its present form beginning in the late 19th century.¹² It is contained throughout a number of international legal instruments, including the Hague Convention of 1907, which governs weapons and combat operations, and the four Geneva Conventions of 1949 and their First and Second Protocols, which deal with how to treat the people those operations affect, including prisoners and noncombatants. International humanitarian law covers all types of conflict, internal as well as external.

International humanitarian law derives from many of the same principles as legally binding human rights and covers much of the same ground. Both are based on the concept of human dignity, and both set minimum standards for preserving and protecting that dignity. Precisely because it is intended to be humane, international humanitarian law requires specific treatment of people that mirrors in many respects the requirements imposed upon the state under human rights law. However, it differs from human rights law in one key respect: *it applies only to combatants involved in armed conflict*. It applies equally to all combatants, whether they fight for a state or as part of a guerrilla or irregular force. In contrast, human rights apply to states and all those who represent a state, not just to those who fight for it. Moreover, international humanitarian law applies only during armed conflict, whereas human rights apply at all times across the entire spectrum of human interaction ranging from peace to war.

Role of the Military

Speaking to senior Latin American military officers in 1994, then-USSOUTHCOM Commander, General Barry McCaffrey, stated, “For military leaders, human rights entail practical responsibilities rather than theoretical exercises.”¹³ The foremost of these practical responsibilities, General McCaffrey pointed out, is to support democratic government and the rule of law. This statement and view were in stark contrast to the false belief that resulted from the Cold War era in which democracy had to at times give way to authoritarian rule—most often military rule—in order to ward off the greater tyranny of communism that threatened the Free World. Instead of helping the cause of freedom, repression by authoritarian regimes spawned legitimate grievances that could be (and were) exploited by those willing to form radical subversive movements. Throughout history, however, humanist, liberal, and democratic governments have proven better at rallying the broad public support essential for stemming the tide of the threat of internal subversion and insurgency than has any form of despotism or authoritarianism.

Military and security forces throughout Latin America and the Caribbean now recognize that a state is strongest and most secure when its people can count on all government representatives to respect and defend their human rights. This is particularly true for members of the state who are trained to use violent means in extreme situations. Above all, military and security services must obey their country's elected civilian leadership—subordination to civilian government is essential for military effectiveness. When all military and security personnel are unquestionably accountable to the people—when they derive their authority and power through the consent of the governed—the risks of widespread abuses that would otherwise undermine the people's confidence in those charged to defend and protect them, are broadly mitigated. Strong, confident, and competent civilian control of the military helps to ensure those who bear the awesome responsibility of using force and might in the name of a state always wield them on behalf of, rather than against, those they are charged to protect.

In his 1994 speech, General McCaffrey also articulated many of the ways fostering respect for human rights can promote military objectives. For example, respect for human rights keeps a unit focused on its mission, as violations can distract the commander's attention from the goals the unit has been assigned. Additionally, it strengthens discipline since a willingness to violate orders with respect to human rights may often show up later in refusal to obey other kinds of orders. A publicized policy of such adherence can undermine enemy resistance because fear of death or torture if captured motivates an enemy to fight to the death; conversely, an enemy who is sure of receiving good treatment is more likely to surrender or defect. Finally, a fundamental belief in the primacy of human rights increases local public support for military operations—if the government forces are able to establish or maintain a good relationship with local residents, and if they, in turn, sympathize with government forces, the populace is more likely to volunteer intelligence on enemy movements. Ultimately, it helps turn military victory into a lasting peace as the cycle of recrimination and the ceaseless quest for vengeance that occur if a defeated enemy and its supporters have suffered abuses and outrages during the course of the fight, can be avoided altogether.¹⁴

It is important to note that some human rights activists have expressed concern that any discussion of the practical "return on investments" that comes from respecting human rights may tend to debase the moral underpinnings which are their true foundation. If respect for human rights is justified purely on the grounds of expediency, the argument goes, it becomes all too

easy to rationalize ignoring those rights when it is equally expedient to do so.¹⁵ However, in a region where military commanders have historically viewed human rights to be at odds with military effectiveness, pointing out the practical military advantages of a policy of respect for human rights and international humanitarian law has been an important step in changing attitudes.

To help further develop this still-nascent paradigm shift, we draw heavily from our own history and foundational beliefs. Promoting observance of human rights and international humanitarian law has long been a fundamental objective of U.S. foreign and national security policy. In fact, human rights and individual freedoms were the very seeds from which our nation was born and have always been supported and promoted by a strong bipartisan consensus in Congress and the executive branch. All military forces have a responsibility to respect human rights, but as representatives of the U.S. Government, the U.S. Armed Forces have an additional responsibility to promote respect for human rights by other nations. As heirs to a long tradition of subordination to civilian authority, the U.S. military can also serve as a model for forces in other countries seeking to overcome a legacy of abuse. Also, by making military-to-military engagement contingent upon the continued progress of improving the support of human rights, our military can positively influence long-standing and emerging partners.

Military-to-military cooperation is a core strategic function of U.S. Southern Command. By demonstrating commitment, military-to-military cooperation reassures our allies and partner nations of U.S. resolve to help protect our shared home, deter potential enemies, and contribute to internal and regional stability. It also improves the ability of other countries' forces to operate with those of the United States. Finally, it encourages positive reforms in many sectors.

U.S. Southern Command pursues many security cooperation activities in support of human rights reform in Latin America and the Caribbean. For example, we provide instruction in Spanish, host seminars and conferences as forums for dialogue, and provide ongoing security assistance and training in numerous exercises, operations, and outreach programs. These activities serve as excellent opportunities to encourage colleagues in other countries and to help them consolidate early initiatives into systematic programs. Southern Command's ultimate goal is to help make these achievements permanent by enabling regional militaries to institutionalize new attitudes and practices, creating an organizational culture in which observance of human rights can never be in doubt.

Southern Command's adoption of an explicit human rights policy in 1990, and its subsequent establishment of a dedicated Human Rights Division within the command in 1995, grew directly out of the turbulent history of the region—in particular, patterns of human rights abuses by the region's military and security forces that drew international attention and condemnation.¹⁶ Events during the 1970s and 1980s in four countries—Guatemala, Chile, Argentina, and El Salvador—arguably had the greatest impact in raising international concerns about human rights abuses in Latin America and in catalyzing the new Southern Command policies and programs to help counter these abuses. These historic events thus form a critical backdrop to understanding Southern Command's current commitment to making human rights a core component of its military strategy for the entire region.

U.S. Response to Human Rights Violations

Promoting respect for fundamental human rights has been a principle of U.S. domestic and foreign policy since the Nation's founding. However, for most of the 20th century, the United States tolerated friendly dictators who could maintain stability and protect U.S. political, economic, and military interests, even if they resorted to repressive measures. This approach was rationalized by comparing it to the larger potential horrors, destructive results, and existential threat of the spread of communism. This was a tightrope to walk, and we eventually discovered such an approach devalued our fundamental ideals. In the words of Senator William Fulbright, "When we depart from these values, we do so at our peril. . . . If we are faithful to our own values, while following an intelligent, courageous, and consistent line of policy, we are likely to find a high measure of the support we seek abroad. But if we fail our own values and ideals, ultimately we shall have failed ourselves."¹⁷ Inevitably, the breakdown in respect for human rights in Latin America and the Caribbean that accompanied the Cold War forced the United States to adopt a new approach.

Southern Command and Human Rights as the Strategic Core

On March 19, 1990, U.S. Southern Command's Commander-in-Chief, General Maxwell Thurman, issued a policy directive that explicitly defined the human rights responsibilities of all Defense Department personnel who served within Southern Command's area of focus. In unequivocal terms, the new directive stated, "one of our most important and

universal foreign policy objectives is to promote the increased observance of internationally recognized human rights by all countries.¹⁸ This memorandum established the requirement for all U.S. military personnel to immediately record and report through the chain of command any instance of suspected human rights violations. To ensure U.S. military personnel were aware of exactly what constituted a human rights violation, General Thurman also instituted mandatory human rights training for all personnel deploying within Southern Command's area of focus.

Established in mid-1990, the mandatory training included instruction in four key areas: the laws of war and international humanitarian law; U.S. Government human rights policies, objectives, and directives at the national and international level; the responsibilities of military personnel to support these policies; and procedures for reporting suspected human rights violations. This predeployment training was supplemented by a wallet-sized, quick-reference Human Rights Standing Orders Card that personnel were required to carry at all times. The card, with minor revisions, remains in use today. It reminds personnel of "the five R's of human rights" (Recognize, Refrain, React, Record, and Report) and lists Southern Command's standing orders concerning respect for human rights.

The command was acutely aware that failure to help improve respect for human rights in the region would ultimately jeopardize the success of its missions and undermine public and congressional support for essential military-to-military cooperation programs. Consequently, shortly after initiating the internal training program, Southern Command also made human rights instruction an element of all training it provided to partner nations' military and security forces.

Over the course of the next decade, subsequent commanders built upon the strong foundation forged by General Thurman. For example, General George Joulwan, who succeeded General Thurman in late 1990, significantly expanded the human rights initiative in two visible manners. First, he supplemented the training materials developed by the Staff Judge Advocate's office with a 10-minute video presentation in which he unambiguously laid out the responsibility of all command personnel to recognize and report human rights violations. In the video, General Joulwan articulated Southern Command's vision of human rights, emphasizing that the "issue is not one of conflict between the mission and human rights . . . [but rather] the mission includes human rights."¹⁹ The content of the training video earned praise from the nongovernmental human rights community, although many in the community initially remained skeptical of the degree to which the command would be able to rapidly implement the policy as it was presented in the video.²⁰

General Joulwan also oversaw a dramatic development in military-to-military contacts aimed at promoting human rights. Under the policy developed by General Thurman, Southern Command was to incorporate human rights instruction in all of the training it provided to partner nation forces. Typically, this type of training was conducted by mobile training teams, which traveled to the host country and returned after providing the required training. However, the goal of human rights training is to instill a long-lasting culture of respect for human rights, and Southern Command believed the typical mobile training mission was too fleeting to accomplish this.²¹

Through the Staff Judge Advocate's office, General Joulwan thus instituted a new concept of "training the trainer" within the host countries. The idea was to thoroughly train a cadre of partner nation instructors who could then present the material in their own courses. Southern Command believed this new approach would not only provide the more sustained instruction needed to foster a culture of respect for human rights, but would also minimize the cultural and language barriers that tend to hinder instruction of foreign military personnel by U.S. forces. General Joulwan later described the essence of the "train the trainer" initiative and the new emphasis placed on human rights training as an effort to help "turn the corner" in a region emerging from a devastating decade of conflict and human rights abuse. He also believed it was imperative that human rights be fully integrated into how all of the command's missions were analyzed and assessed.

The Human Rights Division

Continuing along this innovative path, General Barry McCaffrey, who succeeded General Joulwan in February 1994, looked for new ways to further ingrain a culture of respect for human rights within the command and its mission. He focused on creating an organizational framework that would help integrate human rights directly into U.S. Southern Command's daily operations. The approach was guided by the principle that human rights could not remain merely a philosophy or an abstract legal principle; rather, it had to be fully operationalized in order to achieve the type of progress the command was hoping to, both within its own ranks and within its area of focus.

The first step in such a process was to transfer responsibility for the human rights program from the Staff Judge Advocate's purview to a dedicated human rights office. The primary reason behind this decision was to emphasize the need to do much more than merely report on legal developments

related to human rights and international humanitarian law. Instead, the mission would be to help inculcate human rights into the basic mindset of each member within the command, ensure consideration of human rights was taken into account in all aspects of the command's operations, and facilitate similar changes in regional military and security forces.

The new office was established within the Strategy, Policy, and Plans Directorate, a sector very adept in dealing with civilian and government organizations and the outside bodies who would ultimately be involved in the process of promoting human rights: the interagency community, non-governmental organizations, and foreign military and security organizations. This was deemed the optimum location and position to directly impact the larger, long-range command and theater strategic documents, thereby providing the best possible manner to start changing *attitudes* about human rights and not merely change *behavior*. This was the fundamental goal Southern Command was striving to achieve.

General McCaffrey also formed a senior-level human rights Steering Group to provide him advice on human rights issues and oversee policy implementation. According to General McCaffrey, the reason for creating the Steering Group was to ensure that fostering respect for human rights became the concern of all the command's various components.²² The Steering Group was chaired by the head of the Strategy, Policy, and Plans Directorate and included senior officers from all of the command's directorates, such as intelligence, operations, and command and control. The Steering Group was a visible symbol of General McCaffrey's commitment to fostering respect for human rights throughout Southern Command and impressed upon its members that he expected nothing short of a new mindset: respect for human rights and international humanitarian law was now an integral part of the command's mission. The Steering Group was instrumental in providing support and recognition to the fledgling Human Rights Division.

The Human Rights Division Today

Today, Southern Command's Human Rights Division is an institutional statement of the command's commitment to promoting, protecting, and preserving human rights throughout its region of focus. It remains unique across DOD, as Southern Command is the only combatant command with a separate office charged to monitor and coordinate human rights issues. The Human Rights Division has five primary responsibilities:

- Advise and report on human rights issues
- Establish and support human rights training programs

- Ensure that human rights are integrated into Southern Command exercises and operations
- Advance respect for human rights by supporting regional initiatives
- Serve as a liaison with other entities working human rights issues, such as the interagency community, international organizations, and nongovernmental human rights organizations.

In advising and reporting on human rights issues, the division monitors and analyzes developments in international human rights law. It ensures that personnel assigned to the Southern Command receive all the information they need to comply with DOD policies and directives and the command's own human rights policy. It prepares country-specific information for the commander's meetings with foreign dignitaries and supports congressional testimony by senior Southern Command personnel. The division also monitors allegations of human rights violations once they are reported, although it does not independently investigate such charges. Ultimately, it keeps the command's leadership abreast of important provisions in domestic laws related to human rights that affect many security cooperation activities. For example, the Leahy Amendment requires the termination of security assistance to any foreign military unit that either the U.S. Department of State or Department of Defense confirms to have engaged in gross human rights violations. There is a caveat that allows security assistance to continue if the Secretary of State finds the country in question "is taking effective measures to bring the responsible members of the security forces unit to justice."²³ To ensure compliance, each foreign unit receiving U.S. military assistance must submit to a vetting process overseen by the U.S. Embassy in that country.

In addition to the Leahy Amendment, U.S. laws impose other prohibitions on U.S. security assistance in certain areas where Congress has voiced concern over human rights issues. For example, the Secretary of State must periodically certify Colombia's progress in fostering respect for human rights before funding for bilateral security assistance can be fully released. Similarly, Congress currently imposes restrictions on security assistance to Guatemala because of concerns over the slow pace of human rights reforms. The Leahy Amendment and these other restrictions on security cooperation have further sharpened Southern Command's already intense focus on human rights in its area of focus and given even greater impetus to its robust and proactive human rights program.

In implementing its training responsibility, the Human Rights Division ensures all personnel assigned to the command or performing

temporary duty in the region receive initial human rights training and that permanently assigned personnel receive annual human rights awareness training. To facilitate access to the training materials, the division uses a computer-based training module, available over the Internet via its Web site. In addition, the division supports other countries' efforts to develop their own human rights and international humanitarian law training. It does this in close cooperation with the Western Hemisphere Institute for Security Cooperation (WHINSEC) at Fort Benning, Georgia, and other military schools that have developed rigorous human rights training programs. To integrate human rights awareness into all of Southern Command's operations and plans, personnel are exposed whenever possible to realistic situations during military exercises that test their knowledge and understanding of human rights laws and expectations. The Human Rights Division helps prepare and evaluate the human rights scenarios incorporated into exercises.

The last two responsibilities of the Human Rights Division, supporting regional initiatives and providing liaison with the human rights community, help build networks and partnerships throughout the region and open up opportunities to foster understanding of the issues and respect for human rights. It is in these areas of initiatives and liaison that Southern Command has helped lay a solid foundation for even greater cooperation and progress in the future.

Engaging Regional Leaders

One of the most important contributions the Human Rights Division has made to U.S. Southern Command's human rights program has been to organize and host a series of regional conferences on human rights issues. The conferences, in turn, set the stage for the groundbreaking Human Rights Initiative. The first conference, which took place in Miami in February 1996, capitalized on the momentum created by the 1995 Defense Ministerial of the Americas in Williamsburg, Virginia. Attended by representatives of all 34 democratic governments in the Americas, the Defense Ministerial of the Americas produced the "Williamsburg Principles"—six principles affirming the commitment of the region's armed forces to respect human rights and to subordinate themselves to civilian and constitutional authority.²⁴ The Human Rights Division followed up the ministerial by organizing a conference to address the obligations of military and security force personnel under international human rights and humanitarian law, and to discuss approaches to

human rights education and training. The conference was organized in cooperation with the Inter-American Institute of Human Rights (IIHR), marking the first time any U.S. military command had ever forged such a partnership with a private human rights organization.²⁵

The conference, entitled “The Role of the Armed Forces in the Protection of Human Rights,” brought together 186 participants and observers including human rights experts from throughout the hemisphere, 6 ministerial-level representatives, and 8 senior defense officials. General McCaffrey led the U.S. delegation and delivered the keynote address. The gathering provided a unique opportunity for senior defense officials and military officers to begin a dialogue with representatives of human rights organizations. In doing so, it helped break down deeply ingrained mutual suspicions. Initially, these profound divisions and feelings of mistrust were so strong that they led to self-imposed segregated seating. As the conference progressed, however, the participants gradually integrated and a growing amount of one-on-one dialogue began to overcome the perceived obstacles between what had seemed to be thoroughly incompatible organizations. In the end, the conference revealed a growing consensus on the importance of human rights and democratic governance and the crucial role of the region’s security forces in protecting them.

To continue the dialogue, in February 1997, Southern Command—under the command of General Wesley Clark—collaborated with the Inter-American Institute on a second conference, titled “Armed Forces, Democracy, and Human Rights on the Threshold of the 21st Century.” By the time it concluded, a consensus had emerged among the more than 190 participants from throughout the Americas that additional steps of a more concrete nature were now needed to keep the human rights agenda moving forward. Accordingly, General Clark invited the participants to join in a series of seminars intended to establish common criteria for measuring the progress made by military and security forces in respecting human rights.

The Human Rights Initiative (HRI)

The two human rights conferences, and the invitation to sponsor a long-term initiative of a series of regional seminars, marked a turning point in Southern Command’s human rights program. Generals Thurman and Joulwan had focused on laying the foundation of a strong human rights program, implementing critical improvements to training and doctrine, and pursuing bilateral initiatives with regional militaries. Under General McCaffrey, the human rights program matured institutionally via

organizational changes that brought respect for human rights and international humanitarian law more fully into the operational realm. Through the seminars proposed by General Clark, the program moved into an even more ambitious phase of promoting a multilateral approach to improving respect for human rights and international humanitarian law. As General Clark later recalled, the achievements made by the command's human rights program through 1997 had already changed human rights, in his words, "from an obstacle to a centerpiece" of the command's relationship with regional military and security forces.

In June 1997, Southern Command and the Inter-American Institute cohosted the first of the seminars. The meeting was held in Panama City, Panama, and included a small group of approximately 20 representatives of regional military and security forces, Southern Command, and the non-governmental human rights community. Its theme was "Measuring Progress in Respect for Human Rights." The format, which remained the same for subsequent seminars, was designed to encourage dynamic interaction, allowing the participants to reach consensus on difficult issues by engaging in small group dialogue.

The seminar succeeded in its primary objective, which was to produce a draft "Consensus Document" identifying human rights standards and objectives for military doctrine, education, and training; effective internal control systems; and, cooperation by military forces with external control systems. The process of finalizing and ultimately implementing the Consensus Document became known as the Human Rights Initiative (HRI). The meeting also succeeded as a confidence-building exercise that helped diminish the initially high level of mutual suspicion between the human rights community and the regional military and security forces, which helped lay a solid foundation of trust for subsequent meetings.

From 1998 to 2002, Southern Command sponsored five additional hemispheric seminars to develop plans of action, objectives, and performance measures. By the conclusion of the final seminar in March 2002, military and/or security-force officers from all 34 democracies in the Western Hemisphere had participated in drafting and finalizing the consensus document. Prominent nongovernmental organizations (NGOs), international organizations, and academic institutions sent representatives to serve as advisors. The final wording can truly be said to represent agreements reached between the hemisphere's military forces and the human rights community, writ large.

Overall, the Human Rights Initiative proved to be an excellent tool for engaging both military forces of the hemisphere and the human rights community in a collaborative effort to ensure that improved performance on

human rights continues into the future. Southern Command's role has been instrumental in facilitating its progress. The Consensus Document embodies the principles of Southern Command, as well as those long espoused by human rights activists and NGOs. These include: fostering a culture of respect for human rights in the region's military and security forces; introducing rigorous human rights awareness training; establishing effective means of internal control, such as conducting investigations; sanctioning human rights offenders; prohibiting collaboration with illegal groups that commit human rights violations; and finally, encouraging full cooperation with civilian authorities. The Consensus Document also demonstrates an unprecedented degree of cooperation and dialogue on human rights, both among the region's military and security forces, as well as between the security forces and representatives of the human rights community. Merely achieving consensus among such a diverse group of participants on the points laid out in the Consensus Document, and on concrete measures to evaluate progress toward their implementation, was by itself a remarkable accomplishment.

The Consensus Document is the watershed final product of the first phase of the Human Rights Initiative, representing a broad consensus among the region's military and security forces and the human rights community that respect for human rights must be an integral part of their mission and their institutions. It establishes two ambitious goals for those services: fostering an institutional culture of respect for democratic values, human rights, and international humanitarian law; and measuring progress toward developing that institutional culture. To achieve the first objective, the participants agreed upon four broad consensus points in regard to military and security forces:

- Their doctrine should incorporate human rights and international humanitarian law principles and awareness.
- Their education and training should include human rights principles and principles of international humanitarian law.
- They should have effective systems of internal control.
- They should cooperate fully with civilian authorities.²⁶

However, the Consensus Document is simply a means to an end—helping to solidify a culture of respect for human rights throughout the region—rather than an end in itself; much work still needs to be done. With the completion of the final draft Consensus Document, the Human Rights Initiative entered a new phase, implementation. Participants in the final seminar expressed the strong desire that the Consensus Document

not become “just another document that sits on the shelf,” but that it be implemented and deliver a “real world” impact. In a statement entitled “The Conclusions of Guatemala,” participants specifically requested that Southern Command continue to support the HRI, focusing on three initial priorities during the implementation phase: 1) securing high-level support from the participating nations’ ministries of defense and security; 2) maintaining the involvement and support of credible and influential nongovernmental and international human rights organizations; and 3) creating an executive commission to oversee implementation and a technical secretariat to support the process.

Implementation

In July and November 2002, the first two meetings specifically addressing implementation plans were held in Bolivia. By September 2003, the technical secretariat was established. It is administered by the *Centro de Estudios, Análisis y Capacitación en Derechos Humanos* (CECADH), known in English as the *Center for Human Rights Training*. Work began in earnest as CECADH and the Southern Command human rights team designed a strategy for approaching the countries of the region to promote participation in HRI Phase II. The first step of the process is a visit to each nation to inform the nation’s military and government leaders about the history, goals, and objectives of HRI, and to invite them to make a formal commitment to implement HRI within their military and security forces. Following a visit, the partner nation’s minister of defense typically informs Southern Command, through its military security cooperation office in the U.S. Embassy, when it is ready to move ahead with a formal commitment to implement HRI. That formal commitment is made through the signing of a memorandum of cooperation with the HRI secretariat. This emphasizes the important distinction that participation in HRI is not a commitment to the U.S. Government, but rather a commitment to uphold principles and standards agreed upon within the community of nations of the Western Hemisphere.

The second phase of the Initiative, now under way, is to implement the points contained in the Consensus Document within the military and security forces of the participating nations. The Human Rights Division, working in a unique partnership with the Center for Human Rights Training, will support the military forces of each nation in the region whose Ministry of Defense chooses to formally commit to implement the Consensus Document. As of the date of this writing, Bolivia, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Panama, and Uruguay have all signed the document and are moving ahead with the Initiative.

Additionally, the *Conferencia de Fuerzas Armadas Centroamericanas* (Conference for Central American Armed Forces, or CFAC) is a participating constituent and includes militaries from member nations who have not yet signed the Consensus Document. Southern Command expects several other countries to join the group in the near future. The Human Rights Division will continue to sponsor periodic hemispheric meetings in which militaries participating in the Initiative can come together to report progress, share ideas, and discuss specific human rights topics.

Following the signing of the memorandum, Southern Command stands ready to sponsor a leaders' seminar and an implementation conference. The leaders' seminar familiarizes the small number of military officers and civilians charged to lead the implementation process with the Consensus Document and the methodology to develop unique national versions. The implementation conference is a larger event in which officers from all the military services, representatives of other government agencies, and representatives of civil society, including academia and human rights organizations, adapt the regional Consensus Document model to national realities. Conference participants produce a comprehensive plan showing timelines, institutions, offices responsible for execution, and measures of effectiveness for each specific action plan.

The core objectives of the document cannot be changed except by consensus in a future hemispheric conference. Participants in the national HRI events therefore work only with the specific action plans that affect actual implementation within their institutions. In this way, the Consensus Document both supports regional agreements on human rights and encourages innovation and appropriate activities that respond to the real needs of the military forces in each nation.

As of this writing, the HRI team has conducted 20 visits to 15 countries, concentrating primarily on Central America and the Andean Region. Eight nations have signed memoranda of cooperation and one has begun implementation independently. In November 2005, the Conference of Central American Armed Forces became the first regional organization to join HRI. For the years ahead, the focus will be on approaching the remaining Southern Cone nations, followed by the island nations of the Caribbean.

During the implementation phase, the HRI secretariat and Southern Command stand ready to provide technical assistance to the implementing militaries when requested. Some of the most noteworthy action plans have included printing and distribution of human rights manuals for soldiers, printing and distribution of new national security doctrine with a human rights component, human rights training courses for officers and soldiers

in units throughout a national territory, and a 16-nation regional conference on human rights as the basis for combating terrorism.

In total, U.S. Southern Command has conducted over 60 HRI-related events involving thousands of participants. For those military and security forces who have implemented the HRI for a minimum of 2 years, Southern Command sponsors strategic progress assessment seminars (SPAS), thus completing the “plan-execute-assess” feedback loop. The SPAS provide a forum for partner nation action officers to assess progress made on the comprehensive implementation plan, to identify successes and obstacles, and to formulate follow-on action plans. In this way continuity of the process is ensured and real world achievements can be measured.

Collaborative Efforts and Continual Learning

A major objective of Southern Command’s human rights program has been and continues to be the identification and cultivation of areas in which the command can work together with the human rights community on ways to achieve the mutual goal of ending human rights violations in the region. The task is particularly challenging because, in many cases, human rights activists and organizations harbor deep suspicions about the commitment of the U.S. Government, and especially the U.S. military, in promoting human rights. The divisive struggle in the 1990s over the U.S. Army School of the Americas is an example of how difficult it can be to reach common ground, as well as how counterproductive an adversarial relationship between the U.S. military and the human rights community can be. Southern Command therefore seeks to maximize opportunities to work with the human rights community and to leverage their expertise and experience to meet common goals.

The Human Rights Initiative has been the most visible collaborative endeavor between Southern Command and the community of human rights experts, and it represents a possible model for future efforts. Southern Command’s involvement, and especially the personal commitment of visionary leaders like Generals Thurman, Joulwan, McCaffrey, and Clark, gave the effort legitimacy in the eyes of many regional military and security forces and encouraged their participation. In turn, the representatives of human rights groups brought a new perspective and valuable expertise, as well as organizational assistance, to supplement the limited staff and resources of the Human Rights Division. Partnerships with the nongovernmental organizations to manage the large conferences and seminars were the key to success. But perhaps most importantly, both Southern Command and the nongovernmental groups involved were able to formulate a common vision

in which they would facilitate consensus among regional military and security forces while also giving them “ownership” of the process.

The focus of Southern Command’s human rights program has always been both internal and external. Its responsibilities in the internal realm center on institutionalizing human rights within Southern Command and integrating human rights training and practices in all of the command’s activities. It accomplishes this by ensuring its staff and Department of Defense personnel deploying into its area of focus receive human rights awareness education; working to incorporate human rights principles into command-sponsored exercises, training, conferences, exchanges, and operations; and advising the command’s leaders on human rights issues. Its external focus involves building collaborative relationships with the human rights community and promoting a culture of respect for human rights within the military and security forces of the partner nations in its area of focus.

Military and security forces throughout the hemisphere have accepted their obligation to observe human rights and international humanitarian law, and they have begun to adopt and institutionalize a culture of respect for human rights with initiatives such as creating human rights offices, revising doctrine, and improving training programs. Although there is still room for improvement, the fundamental shift in institutional attitudes among the region’s military and security forces regarding human rights has laid a solid foundation for continued progress.

The success of the first phase of the HRI has resulted in a concrete mechanism—the Consensus Document—that has the potential to move the region forward. The plans of action contained in the Consensus Document point the way ahead, and the accompanying performance measures of effectiveness provide a yardstick for objectively measuring progress. Moving the Human Rights Initiative ahead in its implementation phase will require broadening “ownership” of the Initiative across the interagency community, to draw upon a greater pool of both resources and expertise to assist with implementation. An additional aim will be to muster additional support in helping to gain approval for the Initiative among the senior ranks of the region’s ministries of defense and security. Navigating the Consensus Document’s implementation plan through the higher level ministerial offices throughout the region without reopening its consensus points to an entirely new round of negotiations will be a significant challenge.

Since its inception, Southern Command has regarded forming and strengthening partnerships with organizations that promote human rights as an integral part of our mission and as a force multiplier to our own

efforts. Representatives of human rights organizations and academia contributed their valuable perspectives on the regional and historical human rights context as well as extensive technical expertise. The pivotal role played by the Inter-American Institute of Human Rights, among others, contributed in a decisive manner to the success of the early stages of the Human Rights Initiative. The Center for Human Rights Training provides invaluable technical expertise as the Secretariat in the second phase of the Initiative to the military and security forces of the region who commit to implement the Consensus Document within their institutions.

The Human Rights Division has benefited from strong leaders within U.S. Southern Command who have maintained the promotion of human rights as a central component of the command's mission, despite an environment of scarce resources and periodic budget cuts. Southern Command's human rights program is a product of the commitment and vision of a succession of leaders from the early 1990s to the present day—it is not a legislatively mandated program—and we remain the only regional combatant command that has such a formal human rights policy and a specialized office to administer it.

Finally, to continue making progress, U.S. Southern Command will also have to maintain its underlying commitment to fostering human rights through training, dialogue, and cooperation as an integral part of its overall regional strategy. This fundamental precept, adopted when the human rights program was launched, remains essential to the program's future success. The unique process of the HRI has yielded a wealth of experiences and lessons. The first lesson is the power of dialogue and collaboration between people of diverse backgrounds working toward a common goal based on shared values. Here, the Americas have a strong advantage. All of its member nations, save one, are democracies. This fact does not guarantee, in and of itself, that human rights are upheld to the same standard by all the different variations and practices of "democracy"; in fact, many of the most egregious violations of the basic tenets of human rights were carried out in the *name* of human rights. However, this *does* provide a powerful common framework within which to work. Even the mutual suspicion and distrust between military officers and civilians from human rights organizations, palpable during the first hours of every event, eventually wears away. By the end of every event, camaraderie and a sense of shared purpose prevail—such is the sense of mission, dedication to task, and enthusiasm for the projects developed in the HRI conferences held to date.

Additionally, the basis for forming a true Partnership for the Americas comes from an attitude based on genuine mutual respect. Human

rights are an extremely sensitive subject in many, if not most, nations of the world. No nation has a perfect record, and the level of sensitivity toward any hint of criticism relates directly to how recently those abuses occurred and how severe they were. The HRI has continued to move forward—even in the polarized political atmosphere of the past few years—because the work is based on respect for all participants, whether they come from human rights organizations, the military forces, or other institutions of the partner nations. The message is twofold: 1) all participants are stakeholders working toward common goals based on shared values; and 2), all who participate and contribute have valuable insights to share. It is a message HRI team members take care to communicate consistently, in thought, word, and deed. Throughout, partner nation participants take the lead; Southern Command and secretariat personnel support and assist as requested.

The third and final lesson is that we must focus on the way ahead while understanding the past provides the context in which the HRI takes place. Events must not focus on seeking justice for previous human rights violations—that is the work of other organizations. Instead, HRI's objective should be to facilitate the creation and institutionalization of processes that will prevent future abuses.

Nontraditional Challenges to Human Rights

Advances toward worldwide recognition of universal human rights principles moved ahead rapidly in the second half of the 20th century, beginning with the Universal Declaration of Human Rights in 1948 and the conclusion of the Geneva Conventions in 1949. This continued through the ratification of numerous regional and international human rights treaties, the inclusion of respect for human rights in national constitutions and legislation in many countries, and the establishment of national and international human rights institutions. The role of nongovernmental organizations has also grown as these groups exert more influence over national legislation, the texts of international treaties, public opinion, and government policies.

Having made great progress in democratization, however, the countries of the region now face a daunting crisis of weakening economies, growing crime, and endemic corruption. Violations of human rights and international humanitarian law still persist. Thankfully, such abuses are much less frequent. More importantly, they no longer reflect official government policy, as they did in the 1970s and 1980s when dictatorships systemically tortured and murdered political opponents. On the contrary, countries throughout the region have adopted human rights legislation

and begun to reform civilian and military judicial systems explicitly to protect the rights of their citizens. The efforts of the U.S. Government, with support from U.S. Southern Command, to help the region's military and security forces institutionalize a culture of respect for human rights and overcome a legacy of abuse, made an important contribution.

Military and security forces throughout the region also have taken concrete steps to institutionalize a culture of respect for human rights among their members. Many have, for example, established human rights offices at ministries of defense and high-level military commands, and they have integrated education in human rights and international humanitarian law into basic training, professional military development courses, and the curriculums of military academies. These institutional improvements by regional military and security forces have enabled the United States over the last few years to focus needed attention on helping to improve other areas critical to human rights, such as reforming overburdened and corrupt judicial systems.²⁷ Although many human rights challenges clearly remain, no other region in the world, taken as a whole, has made as much progress in respect for human rights over the past decade. As Dr. Martin Luther King, Jr., once wrote, "We must be able to accept finite disappointment, but we must never lose infinite hope."

While helping to overcome the legacies of past abuses throughout the region, we must also remain vigilant against new threats to human rights. Today, the region specifically—and the international community as a whole—confronts a host of nontraditional challenges to the further development and entrenchment of respect for human rights. These challenges and threats come in the form of international terrorism, narcotrafficking, and dangerously high levels of violent crime, together with more long-standing issues, such as endemic poverty, lack of economic development, income inequality, ethnic tensions, discrimination, and growing popular frustration with democracy's failure to provide solutions to these problems. We must also guard against any resurgence of old threats, such as instability and internal conflict, that could threaten the region's fragile democracies and pose persistent challenges to the safeguarding of human rights in the region.

In our shared home, many Latin American and Caribbean democracies face an uphill battle, not only due to the previously mentioned long-standing social and economic problems, but also because of the growing lack of confidence in the respective governments' ability to overcome these challenges. There is increasing popular dissatisfaction with some democratic governments, resulting in social tension, popular unrest, political instability, and a growing tendency to govern from the streets. Irregular

changes of government have occurred in some countries in our region in recent years, and there are disturbing trends toward undermining or simply overriding the democratic process altogether in other areas. If the democratic governments of the region fail to develop effective solutions to these multiple crises, some observers fear a return to authoritarianism or a swing to the political left and away from democracy. The implication for human rights in the region is clear: true egalitarian democracy is a prerequisite for the full protection of human rights.

The nations of Latin America and the Caribbean suffer the highest violent crime rates in the world, and studies show a dramatic increase in the 1990s that continues unabated today. Aggressive and hostile youth gangs are the primary perpetrators of violent crime in the major cities of some countries. The ill-equipped, ill-trained, out-numbered, and poorly paid police and security forces have been unable to control the crime. Judiciaries that suffer from the same ills are similarly unable to investigate crimes and prosecute criminals effectively and efficiently. The problem is only exacerbated by the stench of corruption that is perceived to exist in some of these organizations and institutions. Citizens live in fear; polls show that violent crime ranks as one of the top three concerns across the region. The inability of police and judiciaries to control violent crime by legal means has produced serious setbacks in human rights, as frightened publics call for *mano dura* (“firm hand”) policies to restore public security. In the process, overzealous legislation can abridge due process rights of criminal suspects, and aggressive political rhetoric can be interpreted as an invitation to police brutality. A related problem arises when governments order military units to support the embattled police on law enforcement missions. Military forces are not typically trained or equipped for law enforcement duties, nor for control of large crowds and public demonstrations. Governments must urgently invest in adequately manning, equipping, and training—particularly in human rights—security forces in order to avoid widespread human rights violations.

Additionally, numerous terrorist incidents culminating in the unprecedented attacks on the United States on September 11, 2001, have demonstrated that terrorism is one of the most significant threats to the protection of human rights, democracy, and international security in the region.²⁸ Following the terrorist attacks, governments throughout the region responded with renewed cooperation and solidarity. In June 2002, the General Assembly of the Organization of American States adopted the Inter-American Convention against Terrorism, in which member states reaffirmed the “need to adopt effective steps in the inter-American system to prevent, punish, and eliminate terrorism through the broadest cooperation.”

The terrorist threat and the way states respond to it pose unique challenges to the protection of human rights. From a legal perspective, terrorism does not fall neatly into existing categories of human rights or international humanitarian law. Terrorist attacks may take place during times of peace, when all human rights laws are fully applicable. They may occur during times of crisis, when states have the legal right to suspend observance of some rights temporarily to ensure the safety of their citizens. They may even occur in the midst of open conflict, in which case the principles of international humanitarian law would apply. To further complicate matters, states often have difficulty determining the legal status of people accused of perpetrating terrorist acts. Some terrorists may be classified as civilian criminals, and others as lawful combatants entitled to the same protections as any other prisoner of war. Still others may be deemed unlawful combatants and, as such, be legitimately denied many basic legal protections. Until international law evolves to deal more effectively with terrorism of the sort that delivered the blow to the United States in September 2001, such controversy is likely to continue.

While terrorism poses many challenges to respect for human rights, it also showcases military and security forces as the guardians of democratic societies. The U.S.-led war on terrorism demonstrates the need for strong, disciplined, and professional armed forces to protect the democratic institutions that terrorists seek to undermine and destroy. At the same time, military and security forces must always remain aware of the broad range of human rights that may be affected by perfectly legitimate antiterrorist initiatives, among them freedom of assembly and association, freedom of conscience and religion, and property and privacy. Especially in countries where respect for human rights is not firmly entrenched, extra security measures necessary to combat terrorism may also erode confidence in judicial protections and the right to humane treatment during interrogations and confinement. Democracies have a particular interest in honoring their legal obligations under national and international law to respect these rights, all the more so when called upon to deal with a great national or international crisis. For these reasons, Southern Command has adopted its strategy of seeking multifaceted security cooperation activities (exercises, small unit training, academic forums, and visionary initiatives like the Human Rights Initiative) to help mentor military and security forces of the region to attain and maintain good standing in the international community. U.S. Southern Command reaffirms its commitment to ensure its own troops are

trained on human rights and to maintain its policy of zero tolerance for human rights violations by U.S. personnel or members of partner nation military forces.

Democracy is indispensable for the effective exercise of fundamental freedoms and human rights in their universality, indivisibility and interdependence, embodied in the respective constitutions of states and in inter-American and international human rights instruments.

—Inter-American Democratic Charter (2001)

The role of the military in a democratic society is clear: a military exists to ensure the security of the nation while obeying legitimate civilian authority and respecting the rights of citizens and noncitizens. Secondary missions include, among others, contributing to peaceful regional military cooperation and participating in peacekeeping operations around the globe. However, resource constraints drive some governments to assign their military forces nontraditional missions such as disaster relief, environmental protection, riot control, special weapons and tactics operations, and support to traditional law enforcement. Indeed, some of these are even written into national constitutions and law. However, by their very atypical and nontraditional—and thus, not adequately or appropriately trained—nature, these mission areas increase the potential for confusion and mistakes. Strong human rights programs are especially vital when conducting military responses in these types of complex and continuously evolving environments.

The Human Rights Initiative's success can be attributed to the strong desire of regional military forces to move forward in history, establishing better training, inculcating human rights into operational missions, and making a positive contribution to their societies. The abuses of the recent past remain fresh in military and civilian minds. The HRI is an essential tool for achieving the Americas' common vision for a better tomorrow—a tomorrow defined by security, stability, freedom, and prosperity.

U.S. Southern Command is committed to working together with all our neighbors in our shared home who possess these same desires. An important aspect in this process is continuing to support HRI implementation. The command can provide technical support, training, conferences, seminars, and exchanges with human rights organizations, participating

national governments, NGOs, and the private sector. In addition, Southern Command is working to strengthen interagency coordination with other U.S. Government agencies and exploring ways to branch out to achieve broader participation from partner nation security forces. To prescribe, adhere to, and enforce when required, laws intended not to restrict human liberty, but rather to enforce human rights, these governments and their agencies will find their strength, their legitimacy, and ultimately their broad-based faith and confidence from the populace in the faithful discharge of these vital yet basic and fundamental duties.

Geography, history, trade, extended families, cultural ties, common threats, and even environmental conditions tie the nations of the hemisphere together and all point to a single, shared destiny. People are central to everything we at U.S. Southern Command do—protecting our nations' citizens is the reason we as military and security forces exist, and ensuring their security in a manner consistent with democracy and respect for human rights is our common mission. As Senator William Fulbright remarked in an address on the Senate floor in 1964, "Foreign policy cannot be based on military posture and diplomatic activities alone in today's world. The shape of the world a generation from now will be influenced far more by how well we communicate the values of our society to others than by our military or diplomatic superiority." Today, we are living in, and are the personal embodiment of, that "generation from now"; as such, we must continue to communicate and uphold the fundamental values of liberty and individual freedom. U.S. Southern Command's intent is to remain at the forefront of human rights training, which will be fully integrated in everything it does. The Human Rights Initiative will be a key component of that training, as it is key to the Partnership for the Americas and essential to fulfilling our common mission.

Notes

¹ Jack Donnelly, *International Human Rights* (Boulder, CO: Westview Press, 1993), 177, n. 1.

² Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell University Press, 1989), 17.

³ It has become common to refer to "human rights violations" committed by guerrilla or other irregular forces, such as terrorist organizations. To be precise, when one refers to abuses committed by these groups he or she is referring to violations of international humanitarian law or ordinary crimes. The distinction between ordinary crimes and state human rights violations may be a definitional difference, as the substantive acts may be the same.

⁴ The American Convention on Human Rights, also known as the Pact of San José, was adopted by the member nations of the Organization of American States at their meeting on Inter-American Specialized Conference on Human Rights in San José, Costa Rica in 1969. It has since been ratified by

24 of the 35 members, although Canada, the United States, and several Caribbean nations have not ratified it or the two additional protocols.

⁵ Donnelly, *International Human Rights*, 6–7.

⁶ The Universal Declaration of Human Rights was adopted without dissent but with abstentions by the Soviet bloc, South Africa, and Saudi Arabia. The Soviet Union and its allies abstained because they believed the UDHR placed insufficient emphasis on economic and social rights; South Africa abstained because it objected to the provisions on racial discrimination; and Saudi Arabia abstained because it perceived the references to gender equality to be at odds with Islamic law. Donnelly, *International Human Rights*, 177, n. 2.

⁷ The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) were originally envisioned as a single document that would codify the rights contained in the Universal Declaration of Human Rights (UDHR). Cold War politics delayed the adoption of the documents for a decade after they were drafted, from 1966 to 1976. The reluctance of the United States to afford the same degree of legal protection to economic and social rights as civil and political rights proved the primary obstacle. In the end, the United States signed but never ratified the ICESCR.

⁸ For a norm to become part of customary international law, states must not only uniformly and consistently practice it over a prolonged period of time, but also do so *out of a sense of obligation*. This “sense of obligation” is often expressed by states in their official pronouncements in international forums.

⁹ Restatement (Third) of the Foreign Relations Law of the United States (1987) § 702, Customary International Law of Human Rights.

¹⁰ See Makau Mutuna, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania Press, 2002), 177, n. 30, and Jeffrey F. Addicott and Guy B. Roberts, “Building Democracies with Southern Command’s Legal Engagement Strategy,” *Parameters* (Spring 2001), at: <<http://carlisle-www.army.mil/usawc/Parameters/01spring/addicott.htm>>, n. 4.

¹¹ Most who argue that economic and social human rights should only be viewed as “aspirational” in nature make an exception for the right to private property: an economic right that is so ingrained in the liberal democratic tradition that few separate it from basic civil and political rights. See Donnelly, *International Human Rights*, 28.

¹² The law of armed conflict has both humanitarian and functional purposes. Humanitarian purposes include protecting combatants and civilians from unnecessary suffering, protecting the human rights of people captured by armed belligerents, and facilitating the restoration of peace. Functional purposes include “maintaining the humanity” of those involved in armed conflict, preventing the deterioration of order and discipline within the armed forces, and maintaining the support of the public during a conflict. Jeanne M. Meyer and Brian J. Bill, eds., *Operational Law Handbook* (2002) (Charlottesville, VA: U.S. Army Judge Advocate General’s School, 2002), 8.

¹³ General Barry R. McCaffrey, transcript of keynote address at the conference entitled “The National Armed Forces as Supporters of Human Rights,” U.S. Army School of the Americas, August 10, 1994.

¹⁴ Adapted from McCaffrey.

¹⁵ Professor Michael Reisman, former chairman of the Inter-American Commission on Human Rights, summed up this danger as follows: “I am concerned about [the military] viewing human rights as pragmatic. The moment troops begin to take casualties because they respected human rights, all of this will be down the tube.” Quoted in Bruce B. Auster, “Lessons in Killing and Kindness,” *U.S. News and World Report* (October 3, 1994), 18.

¹⁶ Richard S. Hillman, John A. Peeler, and Elsa Cardozo Da Silva, eds., *Democracy and Human Rights in Latin America* (Westport, CT: Praeger, 2002), 217.

¹⁷ Senator James William Fulbright, *Address on the Senate Floor*, June 29, 1961.

¹⁸ United States Southern Command, *Policy Memorandum 5–90*, March 19, 1990.

¹⁹ U.S. Southern Command training video, quoted in Washington Office on Latin America (WOLA), *Human Rights Education and Training in U.S. Policy Toward Latin America*, June 15, 1992, 12.

²⁰ See WOLA, *Human Rights Education and Training in U.S. Policy Toward Latin America*, 12–13.

²¹ Jeffrey F. Addicott and Andrew M. Warner, "JAG Corps Poised for New Defense Missions: Human Rights Training in Peru," *Army Lawyer* (February 1993), 80.

²² McCaffrey interview.

²³ The "Leahy Law" is codified in Public Law 108-447, Section 551 of the Fiscal Year 2005 Foreign Operations Appropriations Bill and Public Law 108-287, Section 8076 of the Fiscal Year 2005 Department of Defense Appropriations Bill.

²⁴ The six Williamsburg Principles were: "1) Uphold the promise of the Santiago Agreement that the preservation of democracy is the basis for ensuring our mutual security; 2) Acknowledge that military and security forces play a critical role in supporting and defending the legitimate interests of sovereign democratic states; 3) Affirm the commitments of our countries in Miami and Managua that our Armed Forces should be subordinate to democratically controlled authority, act within the bounds of national Constitutions, and respect human rights through training and practice; 4) Increase transparency in defense matters through exchanges of information, through reporting on defense expenditures, and by greater civilian-military dialogue; 5) Set as a goal for our hemisphere the resolution of outstanding disputes by negotiated settlement and widespread adoption of confidence building measures, all of this in a time-frame consistent with the pace of hemispheric economic integration, and to recognize that the development of our economic security profoundly affects our defense security and vice versa; and 6) Promote greater defense cooperation in support of voluntary participation in UN-sanctioned peacekeeping operations, and to cooperate in a supportive role in the fight against narco-terrorism." See "The Defense Ministerial of the Americas" at: <<http://www.summit-americas.org/Williamsburg-spanish.htm>>.

²⁵ The Inter-American Institute was founded in 1980 under an agreement between the Inter-American Court of Human Rights and the Republic of Costa Rica, and is based in San José, Costa Rica. The IAIHR is an autonomous international academic organization dedicated to the promotion of human rights through education and research.

²⁶ Final Consensus Document language adopted at Seminar 2002 held in Guatemala City, Guatemala, March 10-16, 2002.

²⁷ Danika Walters, Foreign Affairs Officer for Colombia, Central America, Mexico, and the Caribbean for the U.S. State Department's Bureau of Democracy, Human Rights, and Labor, telephone interview with author, April 17, 2003.

²⁸ Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, October 22, 2002, at: <<http://www.oas.org>>.