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Introduction

This working paper represents the collective product of the 1997-98 cohort of Junior Scholars. The Junior Scholars Training Program provides a research and training opportunity in the United States to mid-level scholars or practitioners from Latin America involved in public policy issues. The objective of the program is to contribute to the design and practice of public policy in Latin America. Grantees spend one semester at a major university in the United States, under the guidance of a mentor known for his or her excellence in the chosen field of study. The grantees also are exposed to research facilities, international financial and policy institutions, and government bodies in Washington, D.C.

The scholars whose work is represented in this document, as well as their respective placements and mentors, are:

Arturo Alvarado, El Colegio de México: The restructuring of federalism in Mexico: reforms and proposals for decentralization; Professor John Coatsworth, David Rockefeller Center for Latin American Studies, Harvard University;

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As this Working Paper is published, Junior Scholars from Argentina, Brazil, Costa Rica, and Mexico have research well underway at Georgetown University, University of Notre Dame, University of Texas at Austin, and Columbia University and Rutgers University. Applications are under consideration for a fifth class that will arrive in January 2000.

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Unravelling From Above
A Reexamination of Mexican Federalism:
From One Party Presidential Dominance to
A Partisan Federalism?

Arturo Alvarado¹

Introduction

This paper will address the present status of federalism in Mexico. I develop a diagnosis of the current conditions and the potential of state level government (the executive and legislative branches) in restructuring federalism in Mexico. Specifically I will address the consequences of five major processes underway:

- (1) Decentralization reforms and proposals for restructuring of federal-state and local relations (at fiscal, administrative, social, public policy dynamics and political levels), and
- (2) Increased alternance in local governments and its impact on the construction of a more participatory public process.
- (3) I will also set up a theoretical frame to understand the significance and impact of these changes. This frame considers two apparently competing positions about the “new” role of federal and state institutions. One states that in order to reorient development and democracy it is necessary to strengthen federal (national) institutions, and the other, based on the devolution theory and the “new federalism”, proposes a minor central government and stronger local institutions. In this context I will also consider several analytical alternatives to explain the present debate (like the systemic, the functional and the legislative theories of federalism).
- (4) Given the set of options and providing an analysis of the present status of Mexican federalism, I will dedicate part of this work to explore the probability of implementing a new strategy of “autonomous” economic development based on state level efforts that will enhance local welfare.
- (5) In addition to these, I will also explore its impact on the crucial problems of governance and recovering sustainable economic growth.

In this paper I propose to understand the present status and potential of the decentralization and “federalization” process as a new form of “partisan federalism”. By analyzing the status of federalism I will explain the political changes and their consequences for the future of federal institutions. I analyze the major features emerging in the state and national arena, that is the disappearance of presidential dominance and

¹ This report was developed with a grant from the Latin American Program of the Woodrow Wilson Center. I would like to thank the Center and its staff for giving me this opportunity to research and visit here at the Center as well as in leading Latin American programs in U.S. Universities. Also I was a fellow at David Rockefeller Center for Latin American Studies at Harvard University and I would like to thank John Coatsworth for his support and help.

the political realignment that are taking place both at national and state levels. The unraveling of presidential dominance is providing a new partisan arrangement that will transform the federal balance. The political actors, the conditions of governability, the relationship with citizens and the policy process will be affected by this new partisan federalism.

1. Towards a change in the federal balance.

Like its Latin American counterparts, the Mexican Federal Government has been implementing decentralization programs targeting state and local governments for more than ten years. Today, the federal administration calls this process the “New Federalism” as initiated by President Zedillo. This proposal was accepted by the leaders of the opposition parties and by several state governments. The contents of this reform can be briefly described as a search for a new equilibrium between federal and state governments, and a reduced role of the national government in providing services for citizens. The proposal implies transferring significant resources to state and municipal governments, but the transfer of functions is still pending.

Although the financial crisis that started in 1995 has been accompanied by unusual political turmoil which has threatened the programs, the mere idea of reforming the federal government has won popularity and become a central issue for all political forces. Until now, decentralization has mostly targeted health and education services and in 1997 there was an additional decentralization of municipal funds. Indeed the process has affected transfer of funds as well as personnel and other resources formerly under federal authorities. The strategy initiated by the government to redefine its relations with the states is certain to have broader consequences than anticipated. The present federalism as well as Mexican presidentialism have been affected institutionally, as have relations with citizens and with other levels of government.

All political factions assume that decentralization policies will produce economic and social benefits for the population; from the left to right, from “estatistas” to “neoliberales”. State and municipal authorities pursue this policy to appropriate resources for their constituencies. This assumption implies a radical shift of the role of all federal – state – and local governmental functions, which I will address later. I will however start by introducing some data.

In contrast with the enthusiasm of the authorities, relevant available data is not very encouraging (table 1); the allocation of funds is still extremely unbalanced in favor of the center and the governing party. While more than 1/3 of the national population is now governed by opposition parties, the total public budget allocation in 1997 was distributed this way: close to 80% was still under the control of the federal government; and nearly 20% went to the state authorities, leaving only 5% to the municipalities.² By July 1998 8 state governments and over 275 major municipalities and state capitals were

² The evolution has not changed that much. In 1991 81.1% of income was from federal sources, 15.5% from states and 3.4% from municipalities. Sobarzo and Sempere, 1996, p.171, and Díaz, 1994.

under opposition control;³ that is nearly 55% of Mexico's urban population if we include Mexico City. Also, the charts show that real expenditure has been diminishing at all levels of government, meaning that unbalanced distribution was not only based on Federal—state relations, but also on the partisan “correlation of forces” (i.e. that the ‘governing’ coalition of the PRI appropriated the larger amount of the federal budget, in spite of its reduced electoral force and population under its control).

Two major exceptions and changes will be the Mexico City government, whose budget amounts to almost 12% of the federal budget (and also 16.2% of the 1995 federal “participaciones” or “block grants”), and the Nuevo León State Government, now controlled by the PAN, which will transfer a significant portion to the Panista coalition. These states together with Jalisco; Baja California and Querétaro also controlled by PAN, account for almost half of Mexico's GDP (table 1).⁴

It is clear that the central authorities dominate the administrative process. Even the agreement reached for the 1998 budget between the President and the panista and priista fractions of the Chamber of Deputies, that increase the share to municipalities, is in the control of the federation. That is, the partisan coalitions in Congress together with the Executive Power turned the former “assignment” process into a proceeding that they thought was more appropriate to their (share of) municipal governments.⁵

2. A Statement on the economic and administrative process

This section will focus on the implementation of the new policy measures. The effects of past programs and measures for decentralization have been evaluated in several studies (see Ziccardi 1995, Cabrero 1996, Ward and Rodríguez 1992). These studies have stressed the impact on local government and clearly reveal the need for deeper reforms in order to allow public and private actors at the state level to improve their performances. It has also been demonstrated that even when the opposition wins the government, there is no guarantee of better performance and new democratic governability (Guillén 1995, and Ziccardi 1995). Therefore, modifications to the institutional bases of state and national political consensus are necessary. In addition,

³ After the state elections of August, 1998, Aguascalientes, Baja California, Jalisco, Nuevo León, Querétaro, Distrito Federal, & Zacatecas are held by opposition coalitions.

⁴ In July and August, 1998, several states had elections; the PAN lost Chihuahua but won Aguascalientes. The PRD won the State of Zacatecas and the rest of state remained in PRI hands, but several municipalities and state congressional seats went to the opposition.

⁵ It later proved to be a new “ley de la discordia municipal”, since the Puebla priista governor took this new law and its “legal loopholes” into his political and administrative favor. Right after the new budget and law was approved by Congress, he launched a new municipal law that seized the gains that panistas got from the Executive power. This produced a judicial controversy that was later won by PAN, but showed that the new way to get opposition's funding was not going to be easy.

there are other aspects of the reform process that demand attention. One striking question is whether this process in conjunction with alternance is truly building new and better local government; another refers to the capacity for creating new roots for social participation; it is also interesting to consider whether this process is really building a stronger, more democratic polity or is still trapped within the old authoritarian political structure.

It is necessary to stress that until 1997 all reforms were conducted from the center. State governments have been affected by the measures, but the federal authorities have not given them and their constituencies instruments with which to cope with modifications and new challenges.

The Federation still controls 80% of income and practically the total revenue generating capabilities. Income problems are due partly to the structure of taxes and other sources available to the states, such as local duties, rights, services, etc (Calleros, 1996, Alvarado, 1996).

The first changes in this relation started with the formula applied since 1994 (with a new criteria for assigning the Fondo General de "participaciones" according to Ley de Coordinación Fiscal) implied that states with more income and GDP will be able to obtain more income from participations, due to their development level and also the organization or coordination of its market (Arellano, 1996b, p.211). At that moment most of the states and of course the municipalities have substantive deficits and very little share of the total budget.

According to available data in July 1998, as of 1993, 16.2% of state expenditure and also 25.2% of local (municipal) expenditure was absorbed or dedicated to administrative spending (payrolls, etc. Arellano, 1996,b, p. 212. Take into consideration that the D.F. amounts to a larger portion of expenditure, if this is included in state participations. See table). This may be associated with the very low revenue collected by the states. In 1993 81.7% of state income was apportioned by federal "participaciones" and that the municipalities also share 52.1 % of the same income.⁶

Arellano finds that the amount of federal "participaciones" obtained by the states is not related to the condition or requirement of basic public services (a criteria similar to margination index of CONAPO). He also found that there is no relation between the level of "participaciones" and what he calls the political variable (i.e. amount of municipios governed by PRI). This means according to the author that there is no significant impact of the political variable, i.e. this does not influence the assignation of resources.⁷

⁶ Arellanos' data shows that this portio is larger than Sobarzo and Sempere's appreciation of 60% for the national level (1996).

⁷ I believe, though, that there must be another way of measuring the political impact with a different criteria, no only through political participation or partisan competition. For instance, we have noted that the amount of participaciones and additional resources allocated to every state increase during the years of

Sobarzo and Sempere also find that in general the amount of income generated by the states and by the municipalities through their own source is an average of 43.8% and 48% of their total expenditure. This means that half of their expenditure comes from federal sources, and that there is no independence from the center, but a strong dependence through the way resources are distributed.

Resource assignation according to the formula of “participaciones” is also negotiated inside the political arena. In the chart of income and participations, it is interesting to note that some states receive a substantial amount of subsidy, larger proportionately than other states, considering different criteria. For instance, panista governments of Baja California and Querétaro obtain subsidies from other states while Nuevo León, Jalisco, Guanajuato and Chihuahua transfer resources.⁸

Some states enjoy a better state expenditure than the national average. These states in 1990 were D. F., Nuevo León, Jalisco, State of México, Baja California and Veracruz. With the exception of Veracruz and México, all of them today are governed by the opposition (in addition with Guanajuato and Querétaro), and would be interesting to observe the evolution of this aspect (Sobarzo & Sempere, 1996, p.183).

Also according to 1992 per capita income, Nuevo León, D.F., Baja California, Jalisco had an average of between 12,000 and 33,000 pesos (4,000-10,000 1992 dollars). Then Chihuahua had an average of 9,500-12,000 and Querétaro around 7,500-9,500 and Guanajuato between 5,200-7,500.

Several problems are associated with the efficiency of federal income and expenditure, such as the revenue system (coordination, efficiency, etc.) and the applicability of revenue system to different regional or mobile taxes.

The literature on this topic shows a particular and worrisome status of the income and expenditure system associated. First, the states as well as the federation tend to overspend. Second, an unequal inter-institutional distribution of income favors some states at the expense of municipalities (which may have been partially corrected in the 1998 budget). Third, there is very low or very inefficient expenditure in the state.

But all authors coincide that there is not a conclusive argument about the inequality of the present distribution scheme. Finally, most of them coincide that it is necessary to implement a fiscal reform in order to allow states and municipalities to

municipal or gubernatorial elections. There must be a way to measure the impact of this additional expenditure in the political outcome.

⁸ Even D.F. transfers resources, considering only the criteria of population related to its GDP. On the contrary, when other criteria arises, like the amount of marginalization, D.F. could be considered a State that receive subsidies from the others (in spite of the fact that is one state with better quality of living conditions).

increase their own sources of income (also, state revenue could be increased if they are enable to tax “paraestatales” on local issues). Regarding these proposals, I will first consider proposals to increase state “recaudación” and adjustment.

There are 3 new policies that have been further developed: decentralization in education, in health services and the new budgetary distribution of federal resources to municipalities (Ramo 33 or new “Ley del federalismo municipal hacendario”). This part is not an evaluation of policies, so I will only concentrate on the last one that is the most promising.

There is a new procedure arranged between the President with the panista and priista fractions of the Chamber of Deputies, that modify the federal budget for 1998. This procedure named by some legislators “Ley del federalismo hacendario” modifies the formula applied to distribute resources to the municipalities. The resources came from ramo 26 (formerly “solidaridad”) and were essentially transferred to ramo 33 (fondo de participaciones sociales a los municipios). Although this is a substantive increase in the share to the ayuntamientos, the provision allows state legislatures and the governors to establish the “reglamentary” laws that ultimately determines the allocation of funds. Through this window of opportunity, the new provisions were taken to create advantages for municipalities associated with governors partisan coalitions, as occurred in the state of Puebla.

The former procedure for distributing the resources according to the Ley de coordinación fiscal (as of 1994) established a distribution “Fórmula” of resources according to the following manner: 45.17% of the federal tax income, IVA, was assigned according to what was collected in the state; other 45.17% was apportioned according to the population and the last 9.66% was distributed in a reverse (inverse) proportion to the “participaciones” per person of each state (which is the result of the sum of the former two). The importance of this formula and of the participaciones is such that it contributes to a national 60% of the total income collected by the states (Table income composition).

After this negotiation of the 1997 federal budget we can see some important new developments in several areas, such as:

- 1) fiscal coordination (cooperation), specifically in the new formula to distribute the resources collected by the federation;
- 2) The transfer of funds to federal programs and the consequent decentralization of them. This change has transferred enormous amounts of money and services directly to the municipios in 1997. Just consider that most of “solidaridad” which amounted more than 12% of federal budget, was transferred directly to the municipios. It still unclear who will benefit from these changes in the future, but for now political parties are claiming a big victory and advance on decentralization. It is also a puzzle to determine whether this new distribution method will have similar political consequences like the Solidaridad program;

- 3) (Partially from that former ramo 26), a new set of programs to transfer poverty fighting funds from federal to state and local authorities, like “Progres”;⁹
- 4) decentralization in health and education continued.

It is important to specify that federal authorities have implemented the reductions of expenditure at the state and local levels, not at the national one. They did not want to subsidize the political and electoral cuts of reductions while promoting federalism.

But even with present advances in decentralization and fiscal federalization, advocates of these administrative and economic theories (especially the Mexican versions of the theories of devolution) must still prove themselves before claiming victories. At any rate, the present transformation of the federal system has produced both ideological and political consequences.

The ideological debate deserves emphasis. It is not clear from the present discussion what the precise “new” roles both the federal and the local authorities will have in the new federal arrangement. In the original federalism, the discussion centered on the creation of a strong national government. Today, in contrast, the debate seems to focus on two different (and unspecified) proposals. First, to enforce and empower local authorities by transferring to them federal funds and functions (Most of PAN politicians tend to follow this position called “auténtico” federalismo. Some even want to shrink the federal government to promote their personal political career, e.g., Ciudad Juárez’s City President). However, some politicians think that power among federal and state governments must be balanced to “rationalize” the intergovernmental system and to make the structure more governable (this position is especially favored by the present national government, but some PRD authorities have mentioned similar proposals). The two positions imply different institutional models of federalism. While the idea of a new federalism tends to stress the empowerment of local authorities, it still leaves a problematic arena of intergovernmental relations where many problems may occur. There are conflicting conceptions and agendas between these two proposals related to budget distribution, promotion of development, and government capabilities.¹⁰

In any event, it is still unclear what the new federalism or authentic federalism means. Either less federal government or more local government are still affected by limited resources, limited powers, and the need for better performance.

⁹ A Federal Programa de educación, salud y alimentación was launched in 1997 and implemented mostly during that year. This program dsitribute resources to targeted families in communities and municipios in the states.

¹⁰ It will be interesting to discuss the “virtues” of local authorities and what that means for a new federalism: local authorities know better their constituents’ needs and demands; they are more responsive and provide better services, with the possible exception of education (because economies of scale).

On the other hand, the political consequences can be seen as new coalitions, and grouping of governors have been formed. It is clear that what is happening is a realignment and an institutional change. This issue deserves further comment.

3. The Federation and the political realignment in the states.

As a political result of the implementation of the “new federalism” presidential proposal, there was a fight both between the priista coalition of governors and the “Authentic” federalist governors of PAN; and a split among priistas: one side named “El sindicato de gobernadores”, or Hard-line “priistas-anticentralistas”, and the other side of new federalist “zedillistas”).

After almost two decades of decentralization policies, the effects on the building of a more plural, pro-democratic system are more discernible. Decentralization was initially launched by the priista coalition as a way of solving their internal political and financial disputes, and was not intended to serve as a power-sharing tool within the coalition or among government and opposition parties. It started, moreover, at a time when they controlled an overwhelming majority of every level of government, a situation that has changed.

The first reform was the 1979 political reform, that “imposed” a partial representation of the political parties at the state legislatures and at the ayuntamientos. Since then opposition has been growing constantly (but their gains were diminished by legal procedures that allow an overrepresentation of the former one party system, and even illegally by fraudulent procedures). All reforms have maintained and over-represented one partisan coalition at most levels of government.¹¹

Until July 1998, eight state governments (Baja California, Nuevo León, Jalisco, Gto., Qro., Aguascalientes, D. F. and Zacatecas (not Chihuahua from 1998), were held by opposition parties. Also more than 300 municipalities are controlled by the opposition, a number that becomes more important if we consider that most of these municipalities are state capitals, that nearly 30% of population and more than 55% urban population is governed by the opposition.¹²

Thus, alternance in state government represents a real process of transition and a deep political realignment. These changes affect the basis of the federal and presidential

¹¹ It has also been assumed that “electoral reformism,” the continuous negotiations between the opposition and the authoritarian governing coalition, has created a new pluralistic electoral system as well as a new competitive party system.

¹² But in spite of these facts, the PRI authorities still control most of the budget, as well as the budgetary processes; although the opposition built up a majority coalition in the Congress, the PRI and the President were still able to pass a budget with minimum negotiation, as we will observe later in the New Law of Fiscal Coordination (surname ley del federalismo municipal).

model of government established in the 1917 constitution. Changes in the political model affect:

1. The “administrative” and economic dimensions of governance that have been studied by Ziccardi (1996 & 1997), Cabrero Mendoza (1997), Sobarzo & Sempere(1996), and Díaz Calleros (1996) among others.
2. The political-institutional dimension of federalism. As new studies have been developed, we know something about the new political actors (Guillén, 1996), and the partisan configuration of federalism (Lujambio, 1995 & 1996).
3. Citizens’ participation -- although little is known about this topic (Ziccardi, 1996) and even less of the effect of participation in governance (and on the building of social capital)

But it is the new composition of the congress (as a result of the 1997 elections) that really was able for the first time to reflect all these changes in the distribution of resources. As I mentioned before, it was the agreement between the panista and priista coalitions inside the Chamber of Deputies that really revised the traditional presidential set up of the budget, and also modified the distribution between the states and the municipios.

Two questions arise here: To what extent are we observing a political realignment and a recomposition of governing coalitions? What impact does this new political competition have on the policy process, at the federal, state, and municipal levels?

The second aspect of this question is central to this paper. I propose to understand the present status and potential of the decentralization and “federalization” process as a new mode conforming “partisan federalism”. To understand this I will link the administrative “rationale” with its politics, that is, the new composition of political forces that are driving the governments, at national and state levels, and the new relevant actors.

As an antecedent to this model, I will describe the political realignment that had taken place in the electoral arena; I will also assert that the causes of this shift are the emergence of a new partisan system and a new form of citizens’ participation. Finally, I would link this process with the new status of federalism and with its consequences for further political and economic development.

I will also describe the effects that the transformation of the “top” level political institutions of the Mexican state will have in the “middle” level, (i.e.) governors and state legislatures, and on the bottom-level institution of the municipio.

4. The new composition of Congress and the disappearance of presidential dominance.

The first and most striking consequence of the changes at the national level and how they affect the state and local governments is the transformation of Mexican presidentialism. This process means the diminishing of the presidential dominance over the political institutions, and a new relationship with Congress and with the state system.¹³

The major characteristic of these years and its historical uniqueness was the strong and stable unity among the presidential and the legislative institutions, a period of executive dominance. This dominance was the result of a number of factors, among them a unified government, in which the PRI governing coalition held the executive office, an overwhelming majority of Congress, and also monopolized state executive and legislative powers. The states had similar arrangements until this collapsed in 1989.¹⁴ Also important was a leadership of the executive (national and state levels) over its own party. They controlled the recruitment and circulation of local elites. This arrangement was accompanied by the prohibition of immediate reelection.¹⁵

This arrangement produced an equilibrium that allowed the executive to control the majority of Congress, the policy making process, and the legislators. This cycle lasted until 1997 when the PRI lost its extraordinary majority in Congress; but since 1988 the PRI confronted contested elections. For the first time it lost more than 67 single-member districts. In 1989 it lost the first gubernatorial race in its history. And in 1997 it lost its overwhelming majority on the Chamber of Deputies (“mayoría absoluta”), winning only 239 seats.

The overwhelming strength of the Mexican president has been the key factor that explains the “submissive” behavior of state authorities, governors, local deputies and members of the ayuntamientos.

¹³ For the effect or the new relation between Congress and the President, vid. Alvarado, 1997, and Lujambio, 1997.

¹⁴ Scholars have studied more the presidency and the party system, and to a limited extent the impact of party system in the legislature; also some studies have linked the Congress to the federal system. Vid Lujambio (1995) and Weldon (1997).

¹⁵ In addition, the president and the governors are vested with constitutional and legislative powers, starting from the legislative ability of proposing initiatives that will be automatically accepted and studied by committees; the president and governors have veto power over proposals and are in charge of the enactment and implementation of legislation. In addition, they are empowered to solve conflicts in the legislature and the ayuntamientos, have a limited ability to call legislatures to extraordinary sessions, and, to a limited extent, can be vested with “extraordinary” and decree powers.

For governors and state legislatures, the transformation of the presidency carries several institutional, political, and economic consequences. Although they formally have autonomous powers, governors previously did not have much to say related to budgeting, except negotiation of extraordinary "partidas". Local congresses or municipalities were even less important, but today they have input with important effects in both local political and intergovernmental arenas.

These conditions consolidated and stabilized the political process and centralized power in hands of the Mexican presidency, with three consequences: 1) they consolidated and increased the priísta coalition, but 2) weakened the role of Congress and state governments by expropriating its elite recruitment function and by monopolizing all electoral charges, undermining the basis of federal autonomy; and 3) reduced the policy making sovereignty at all levels of government. As a consequence, in the mid 1940s, the president expropriated the revenue system function of the states, leaving them with very restricted and weak policy capabilities.

Next, my argument will deal with the implications of the unraveling of Mexican presidential control over the entire political system, something which opened (produced) what I will call the basis of a new partisan federalism.

5. The changing pattern of partisan competition.

The evolution of the party system has also changed the political model. Initially, the dominance of a single party characterized the electoral arena but beginning eight years ago we have observed an increased presence of national political parties in the national and state legislatures (due to electoral and political conditions. See chart.) A new partisan system is emerging both in the national arena (Congress) and (with different regional effects) in the states. For local groups this means an important recomposition of its forces and power (for instance, for the CTM inside the PRI, as well as for other groups within the opposition). The new system also raised a question about the articulation and representation of these forces into a new (local) system and its accountability. If someone can claim to be represented in national and local politics, they are the party elites. Parties appear to have gained control over the governance structure and over policy making matters at every level of government.

To a limited extent, the electoral system exerted a distorted effect by over-representing the majority party (the PRI), while punishing the medium size parties specifically the PAN, and by rewarding small organizations subservient to the government.¹⁶

¹⁶ Both the electoral formula and the partisan structure dynamic tend to produce strong majorities of one party. In some cases concurrent elections with the Federal Executive forced governors to build coalitions together with presidential candidates. It is necessary to mention that the number of competing parties (N) is always bigger than number of parliamentary groups. This produced effects of evolution of competence: The party system grew outside the Congress, in most cases also outside of the state and partially independently of the municipalities.

6. The new balance and its consequences for the federal model: a new partisan federalism?

The central questions here are whether this realignment will bring a more decentralized (and less disciplined) party system that usually accompanies federal systems (either like the multiparty system of Brazil or even the United States). Also, what will the impact of the new partisan system be on the state performance. To answer this I will analyze the implications of the following features:¹⁷

1. The partisan system: It is important to recall that a major source of opposition growth was not coming only from the gains in Congress, but from two different sources:

- a) an electoral realignment that provided the basic strength of the opposition (especially to PAN, in spite of the persistence of antidemocratic rules (i.e. the “governability” clauses that allowed unfair overrepresentation of the majority party in state congresses), and
- b) the breakdown of the presidential coalition in 1988, 1994 and their poor performance at 1997 elections.

This process affected the link between governors and presidents, as much as their relation inside the party and with the opposition.

Traditionally, to set up their administrations, governors used to establish alliances with other factions within his party and at the same time maintain a link with the president. Usually priista governors were in control of their state coalition. But today the composition of state congresses is changing (as we can appreciate in the chart on the composition of forces until 1995). In all states a new pattern of partisan competence is emerging with an effective number of parties near three. So, today they must negotiate links with the growing opposition.

Also their relation within their own party is changing. There is no longer a strong leadership (as we can see in the panista governments and also in some priista governors, or even in the Zacatecas PRD-Ricardo Monreal coalition). This has produced a set of new situations. On the one hand, there is no clear leadership for the partisan coalition and for discipline outside the governors house.¹⁸ As to the control of state congresses,

¹⁷ They can also be analyzed through the internal dimensions, the structure and organization of the States such as: 1) The governance structure of executives and state legislatures in Constitutional and 2) The policy making rules and resources for governors (which include the administrative process and has implications for relations with federal authorities and with local politicians).

governors' leading role and agenda setting is diminishing.

2. Governors: By losing their majority in local Congresses, governors' strength has diminished. Partisan control is no longer in the hands of the executive within his governing coalition; leadership in the majority party has been "erratic" and in the Congress is no longer guaranteed, although the governor still has veto power.

As a consequence of this process, we cannot realistically expect a consistent and improved performance from governors for a while (until we reform features such as candidate eligibility, limitation of powers, accountability, etc.). Nor can we expect a better implementation of state (and federal) policies.¹⁹

On the control of the state executives, state legislatures can formally control them, but formal provisions are reduced or diminished by the partisan-political arrangements (there is no accountability).

3. Legislative institutions and on Representation. If the political changes finally reach state legislatures, the agenda setting and the policy making power should be located in this institution. But given the present circumstances, there are several features that need to be improved. The coming of power of the new political parties will generate a modification in the policy making process as well as in legislators' behavior. But the party system has been formed outside the Congress and their legislative coalitions are still dominated by their partisan organizations. Legislators won't be subservient to the governor but they will have to follow party discipline.

Governors still have strong control of budget in states. And the fact that today there are stronger legislatures does not mean a different or better budgetary process. Only parties may bypass the governors' control and develop a new state and federal agenda. Changes in the partisan system imply changes in the preferences of the majority of legislators, and even though they have been diminished inside the legislature, sufficient change in party composition should lead to a recomposition of the policy process in Congress.

As I mentioned, governors had a virtual monopoly on the agenda, but pluralistic congresses will tend to compete with him. This could mean that the preferences and

¹⁸Hence the necessity of thinking about the implications of the breakdown of discipline, nomination role and coalition building that traditional governors used to have.

¹⁹The organizational features of states: are: 1) Governors: six years, direct election and no reelection. Elected by the parties; 2) Legislators, three years, no immediate reelection, elected by the parties in two way electoral method: majority and a variety proportional representation procedures. These rules, together with concurrent elections with the governor, forced congressmen to build coalitions together with state candidates (and outside the Congress). These conditions help to build strong one-party coalitions, but weaken the role of the legislatures by expropriating its elite recruitment function and its policy making sovereignty. In addition, state legislatures have a structure and governance problems that are very similar to the national congress: the same governance structure; they share the condition of a strong majority and the committee system with a "Grand Comission" as the main governance feature of their house.

legislative power of governors may not be fulfilled in the future, or may not be as

effective, especially if the political incentives (or needs) of legislators tend to differ with those of governors. And the emerging party system may also further limit the powers of governors, forcing them to cope with new forces and negotiate agendas.²⁰

It is not that the legislatures are becoming an important arena for policy making; it is that the parties are becoming important policy agents and, by doing so, they affect the proceedings in the assemblies.²¹ As a consequence, we can also expect that leadership in states may come from different sources.

Local congresses will also become important in promoting municipal initiatives, in balancing power between municipios and governors and in promoting new state-federal relations. They can promote innovation in municipios and in the executive branches, not only by control or oversight, but by solving problems. They can also build trust.

4. Implications for the policy process and for agenda setting. With pluralistic congresses there will be more requirements and complex negotiations of interests and arrangements, which in turn will tend to reduce executive and legislative productivity. These changes should be observed in the policy implementation process:

- a) New rules for setting up federal and state public policies (finances, taxes, federal-state legal agreements, social policies, education, health);
- b) New roles for the legislative and judicial branches of government;

5. Governance. We can expect that the governance structure of state executive and legislatives will soon have major overhauls.

6. Elite Recruitment. We may see emerging “parliamentary” parties and elites. After all, electoral reforms created political opposition inside and outside the assemblies. The legislative and municipal gains from opposition will also strengthen their elite recruiting functions (but the role of parties in recruiting politicians and creating a new policy process needs further analysis).

7. Representation: During this period political parties have gained representation;

²⁰ Legislators incentives are not necessarily the best source of sustainable development because it can raise the fiscal (and other) costs to project's costs. This makes any strategy of development base on legislator incentives more difficult to enact.

²¹ In fact, legislatures are still unable to set their own agenda and are forced to compromise among competing interests. Nor does the legislature have a mechanism that leads to the containment of conflict, Mezey in Lowenberg... Handbook of political., p. 761).

citizens' representation is still a task for the future.

8. Municipios: Especially in those in opposition control, governors' leadership has new challenges; today there is a new balance of resources to stimulate development at the municipal level. While municipios have been obtaining "impressive" amounts of monetary and functional capabilities (from "ramo 33"), governors have received less and less monetary resources and more responsibilities.

The new composition of ayuntamientos, together with more pluralistic legislatures, provide new strategies for government. Local congresses are important in promoting municipal initiatives, in balancing power between municipios governors and also in promoting a new relation between state and federal governments.

Another consequence of the political change is a new debate on constitutional rights among different levels of government. Constitutional disputes between state and municipal authorities arise especially between authorities of different parties. Governors from Tamaulipas, Puebla and Tabasco (from PRI) have been under scrutiny, and several PAN and PRD ayuntamientos have sued them because of the way they administer and deliver resources to the municipios. The basic and most recurrent issue is conflict of (liability) competence (like the one related to the appointment of the municipal police-commissioner).²² Even though the fight is more related to partisan disputes, this had lead to a new arrangement of inter-institutional relations.

Other important dispute took place during 1998 between the Puebla governor (PRI) and the panista ayuntamientos, related to the state municipal law. The dispute started because the governor issued and implemented a new municipal law that allowed him to distribute the resources according to criteria unfavorable to (ayuntamientos) panistas. Since there was an agreement between the president and the PAN coalition in Congress in order to increase and "liberate from governors' hands" the municipal grants on the 1998 federal budget, this should have lead to an increase in resources to the municipios. But the Puebla governor implemented a law that blocked the new resources and allowed him to control and distribute them in favor of his priista coalitions. The solution to the dispute is in its final steps at the Supreme Court, but no matter what the result (must probably in favor of the ayuntamientos) this has reinstated the Supreme Court as a partisan-political arena of conflict resolution, a function it has not exercised since probably the early Porfirian times.

7. Some concluding remarks and political problems.

1. For the political process.

²² Without being systematic, one of the important "new" pattern of disputes emerged in 1988 in the Ayuntamiento de San Pedro G.G. (then under panista administration) against the Nuevo León government (priista), because the last one decided to cut the Presidente Municipal's income (salary). This dispute was solved in favor of the ayuntamiento, but almost seven years later.

In analyzing the current status of federalism, I have explained the political changes and their consequences for the future of federal institutions. I have stressed and explained that the major features emerging in the state and national arena are the disappearance of presidential dominance and the partisan and electoral realignment that are taking place both at national and state levels. The unraveling of presidential dominance is providing a new partisan arrangement that will transform the federal balance. The political actors, the rules of relations, the conditions of governability, the relationship with citizens and the policy process and its products (policies and electoral outcomes) will be affected by this new partisan federalism.

Of course we can expect in the near future conflicts or tension between governors, parties and legislators, especially if the governors tend to have different goals than the ones proposed by the parties or legislators. In addition, we can expect conflicts between the representational activities of legislators or party leaders and governors' goals. The new composition of forces present additional challenges. Any executive (national or state) determination to impose its own (political or economical) goals excluding other proposals may produce tensions between them and the legislators (who wish to preserve their dominance of the political system and usually have a one dimensional view of development. That brings them into conflict with legislative institutions). These tensions may threaten alliances, but it is also my point that governors have better informal tools to solve them than parties and state assemblies today.

Party discipline is still available, but there are increasing problems to maintain it. Nomination of candidacies and no reelection and increasing competence on electoral posts makes politicians (and in general candidates) look for their own alternative, and this endangers even more the traditional partisan control over them.

From another perspective, state legislatures are no longer submissive, but they are still weak. They lack integrative functions and require new powers to create and disseminate symbols and goals that identify common interests and set agendas. Besides, they have experienced weakness in coalition building and in agenda setting. Governors still have a chance of setting goals and building coalitions, even though they may not last.

Does a change or realignment in the party system imply, or is it based on citizens' participation?

2. For citizen participation.

This process has partially integrated collective demands and actions of the citizenry into a more participatory, still unequal political system, mainly through participation in political parties or through new forms of co-governance. It is unclear whether this is a cause or a result of a new participatory process. The major question here, anyway is whether this process of participation is creating a new citizenry and what would be the implications for a form of new governance.

Perhaps the new partisan arrangement will increase control of resources and also

citizen control of authorities -- meaning accountability -- but this is still a hypothesis. One other important alternative that new party forces and coalitions will bring is the building or reshaping of social capital and democracy.

Accordingly, the new types of social involvement and forms of associational life will perhaps contribute to foster democracy beyond the new partisan coalitions. This will also produce the basis for a new contract for development. Then we should ask what kind of civic engagement seems most likely to foster economic growth and how citizens' participation contributes to foster this growth as well as governance.

Secondary associations play a central role in promoting and helping individuals to get organized and solve different collective dilemmas in order to allow the economy to grow. The existence of networks and the ways they help to solve cooperation dilemmas are central to the understanding of social development. In this context, new alliances promoted by the parties and the governors may enable the building of a new "developing coalition" or "developing federalism" (Cohen, 1998; Putnam, 1993 & 1996). Networks based on communities foster trust, lower transactions costs, and speed information and innovation. This social capital can promote development even when the national institutions may not have the power to promote it.²³

3. For the future of federal institutions and for development.

Federalism is a partnership that requires trust and solidarity, and someone has to build it, namely parties, legislatures, or governors. In this paper I have stressed the role of governors and parties in the building of new coalitions. Both governors and parties can be social policy and economic development leaders, but governors have a better chance of becoming coalition and trust builders.

For achieving development, the issue at hand is the feasibility of constructing a democratic as well as economically efficient federal regime which guarantees a new equilibrium between the federation, the states, and the local governments, and establishes new conditions for democratic governability. In this process, I have proposed that governors among other local social actors play a strategic role.

The need of new revenue is urgent, and the participation of local governments in obtaining new sources of income is critical.²⁴ Also the indebtedness of state governments and the restrictions for bailouts should be addressed.

²³ In fact, I tend to follow the argument that the Mexican and Latin American strategies of development have failed because in the reconversion of the economies, there has been an enormous destruction of social capital and social networks and of the social fabric (such as labor markets and community based organization), instead of a reallocation or creation of new one. As Putnam says, "Because social capital is a public good, the costs of closing factories and destroying communities go beyond the personal trauma.

²⁴ In these areas there are still very few proposals, either partisan or launched by certain governors, like the F. Barrio program in 1995 that was widely discussed.

Even though it is difficult to identify state policies that promote growth, governors as well as local governments easily perceive needs and demands of local citizens. Also, given the present national and international circumstances, state level development policies would become crucial in order to achieve growth (They still have capabilities to coordinate local level efforts as well as national alternatives in face of the globalization that have opened gates of local places). The states within the federation must engage and be part of larger regional efforts in order to ensure their economic prosperity. It is necessary to open state structures under the leadership of governors, to promote their states, obtain economic and trading resources, and establish new links among the federal government.

Partisan federalism can develop new “benefits coalitions” (Anton, 1989) that define and implement developing policies (these coalitions involves politicians and private sector actors). Among these groups, governors can become symbolic and practical agents of development.

Finally, I will mention that any proposal for development at the state level has to solve some problems and challenges:

1. The principal one is accountability. Presently there is no way to make governors and any politician accountable, either by constitutional or political means. A strong and clear constitutional set of rules for accountability is required. Also, the possibility of reelection could be considered as an accountability measure.
2. Another constraint is fiscal restrictions. Until now, the federal sources of income are still the crucial part of state budgets, and it is necessary to design new, independent revenue resources.
3. Intergovernmental relations and competence among levels of government. Many development strategies require both coordination among different levels of government and also across geographical spaces that surpasses institutional boundaries (e.g., infrastructure, social programs, etc.). And today there are no rules to negotiate that kind of strategy. State governments can provide the rules and the basic coordination to work out regional development especially where the national government is unable to provide the resources.
4. Finally, local and state governments are not very effective agents of redistribution, and this may affect or reduce their potential for development.

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**The Complexities of a U.S.-Mexican National Security Threat:
Mexico's Weak Institutions
versus
Powerful Organized Crime Syndicates**

By Sigrid Arzt²⁵

“Mexico’s Unquenchable Fires: Ecological Disaster Unfolds as Ancient Forest Burns On”

The arrival of U.S. experts has not been without problems. Mexican military officials were suspicious of the infrared heat detection system that would be mapping every square mile of the army’s more sensitive area—the southern state of Chiapas, adjacent to Oaxaca, where Mexico has deployed tens of thousands of troops since the 1994 rebel Zapatista uprising.

After landing at a Chiapas airfield last week, U.S. authorities decided to move the airplane to a more secure airport in a neighboring state for fear that drug traffickers—who favor King Airs—might try to steal it.

(The Washington Post, May 31, 1998)

Introduction

There seems to be no doubt that drug-trafficking threatens the national security of both nations: Mexico and the United States. In the post-Cold War era, a “new world” has emerged while at the same time we continue to preserve old Cold War institutions and mentalities. This remains, for different reasons, valid for both Mexico and the United States. In the particular case of Mexico, the “forever and ever stability” was assumed as a given at the post-Nafta scenario, and while the Revolutionary Institutional Party (PRI) loses hegemony, new institutions and actors are positioning themselves in the political arena to counter the government’s actions. It is not clear yet, what the end result will be, but at any rate, drug-trafficking remains a challenge to both nations, and therefore, a matter of national security as proclaimed by its leaders.

In a very intense and highly interdependent United States-Mexico relationship,²⁶ the problem of combating drug trafficking is of great importance because of the political implications for both countries and the effects it is having on the daily lives of ordinary citizens on both sides of the border. On the Mexican side, the corruption scandals, the

²⁶ U.S. Ambassador to Mexico, Jeffrey Davidow asserted before the Foreign Relations Committee that, “Mexico is an important as, and probably more complex, than our relations with any country in the world...[and] it is fair today, that no other country is more directly affected by the United States than is Mexico...its number two export market. Bilateral trade reached almost \$170 billion in 1997. The U.S. provides 76 percent of Mexican imports while receiving 85 percent of Mexico’s exports. There are more than 250 million legal border crossings from Mexico annually... [these figures] only begin to tell the story of the intense inter-dependency of the relationship.” May 21, 1998.

ineffectiveness of the law enforcement agencies,²⁷ and the lack of mechanisms to enforce the rule of law are issues that reduce Mexico's credibility and capacity to govern. On the U.S. side, drug-related crime not only plagues the daily lives of numerous Americans, but is perceived as an inevitable consequence of the drug trade. But even worse, the popular view that other countries are largely responsible for the United States' drug problems has deep-seated roots and does little to encourage alleviation of the enormous consumption problem in the U.S.²⁸ and to foster closer cooperation among nations to fight drug trafficking. There is also the sense that drugs are brought into the U.S. and sold by Latin American immigrants,²⁹ yet it has been proven by recent federal trials that drug dealing is not an exclusive Latino trade.³⁰ Furthermore, only recently has there been U.S. disclosure of the penetration of drugtrafficking in the police department of Los Angeles, California, where police agents have accepted bribes and acted unlawfully.³¹

The purpose of this paper is to examine the critical points in light of an ongoing political transformation in Mexico, whose weak institutions are trying to cooperate effectively in the combat against drug syndicates. I have divided this essay in four sections, which form part of an ongoing research agenda. The first part deals with the concepts of sovereignty and national security; followed by the definition of what we understand by transnational organized crime, a concept where the activity of drug-trafficking fits very well, and where I try to address the weakness of the Mexican institutions charged with combatting this phenomenon. Third, I address the creation of the High Level Contact Group, a forum where Mexico and the United States try to work out issues of bilateral cooperation in regards to the combat of drug syndicates. Finally, I discuss what I believe to be the remaining obstacles for both governments to attack the problem, and examine which were the initial conditions address by the Zedillo administration, and the current head of the Attorney General's Office.

²⁷ It must be clarified that by "effectiveness" I mean objectives. On the one hand, this involves the professionalization of the police and prosecuting officers, but also implies that those involved in the daily duty of protecting the citizenry are backed by their institutions. We continue to hear how men die in the line of duty or are executed and the circumstances always remain obscure. See the recent case of the police agent, member of the Organized Crime Unit found executed in Mexico City. Humberto Ortiz Moreno "Hallan el cadáver de un comandante adscrito a la PGR", La Jornada, September 12, 1998. Francisco Rodríguez, "investigan la ejecución de agente", Reforma, September 13, 1998.

²⁸ New viewpoints have been expressed about this matter, and can be reviewed by taking a look at: Mathea Falco "U.S. Drug Policy, Addicted Failure" Foreign Policy Spring 1996; Mathea Falco "Rethinking the International Drug Control. New Directions for U.S. Policy" Council of Foreign Affairs, New York 1997. Or, Eva Bertram, Morris Blachman, and Peter Andreas, Drug War, Politics, and the Price of Denial, (University of California Press, Berkeley, 1996), and Dan Baum, Smoke and Mirrors, the War on Drugs and the Politics of Failure, (Little Brown Co., New York, 1997).

²⁹ Mathea Falco, "U.S. Drug Policy: Addicted to Failure," Foreign Policy, Spring 1996. Also, Mathea Falco (chair), Task Force Report "Rethinking International Drug Control, New Directions for U.S. Policy," (Council on Foreign Relations, 1997).

³⁰ Jim Cason, "Dos juicios demuestran que en EU el narco no es exclusivo de latinos," La Jornada, April 21, 1997.

³¹ El Financiero, "La confirmación de un red en Los Angeles", July 14, 1998.

The relevance of the research derives from the understanding that without full cooperation and institutional trust between both nations, all efforts will be doomed given the nature of the challenge.

In such an endeavor, it is important to consider the accomplishments of the U.S.-Mexico High Level Contact Group (HLCG) and the emerging binational framework designed to confront the identified common enemy: drug-related organized crime syndicates³². Both nations have expressed their concerns over the dangers as well as the scope and diversity of the drug syndicates. The U.S. talks about the alarming number of drug consumers and the Mexican inability to combat drug trafficking given the ineffectiveness of its law enforcement institutions and the growing power of drug cartels. Furthermore, all five of the main drug cartels identified by the DEA have reached what is called a symbiotic stage, that is, a situation where criminal enterprises have become dependent on the formal economy and vice versa, and they have become a real threat to both nations' security.³³

Meanwhile, Mexico's drug czar, Mariano Herrán, claims his country is less vulnerable to drugtrafficking, and although he recognizes Mexico's continuous commitment to the war against drugs, he said recently that this was not "Mexico's direct responsibility"³⁴. This statement in fact illustrates how many Mexican officials still see the drug problem as a U.S. problem. We could also say that the Mexican government believes is a phenomenon that should be attended with "co-responsability". This view is consistently shared by U.S. drug czar General Barry McCaffrey. However, the reality is that there is extensive evidence of the penetration of drug money and violence in Mexico, something disclosed in the press almost daily³⁵.

We can identify at least three important elements that relate to the security and are present in some degree or other in any of the two countries. First, the degree to which drug syndicates resort to the use of violence to deter law enforcement officials from implementing effective measures to combat them. Second, the use of corruption to undermine law enforcement and political institutions, which is a more subtle mechanism to hinder effective policy responses. And third, the corrosive effect of impunity of political actors who protect drug kingpins. For obvious reasons, all three elements are important to U.S. security interests but the ones that dominate public perception today are

³² See ONDCP Report to Congress, Volume I, September 1997, pp. 5-7. Also see, Jorge A. Cornejo, "EU extraditó la semana pasada a Gabriel Valdez, el Radiloco", La Jornada, September 14, 1998.

³³ In various congressional testimonies, the DEA identifies five main drug cartels: the Juárez cartel, the Arellano Brothers cartel, the Gulf cartel, the Amezcuá cartel and the Caro Quintero cartel. See <http://www.usdoj.gov/dea/pubs/cngrtest>.

³⁴ Luis Guillermo Hernández, "México no trabaja para Estados Unidos" Reforma, February 26,1998.

³⁵One very recent example is the Special Report by Jaime Ramírez Yáñez at El Financiero, "Michoacan bajo el manto del pánico", September 13,1998.

corruption and violence, both problems that generate enormous instability in some parts of Mexico, and the picture portrayed is that of a Mexico unable to guarantee peace and stability within its own borders.

To analyze and better understand the issue of security in a U.S.-Mexico context, Ivelaw Griffith's notion of geonarcotics is useful.³⁶ The concept is based on the relationship between conflict and cooperation among national and international actors, a relationship driven by the narcotics phenomenon whereby a combination of elements related to geopolitics, power, and resources combine to generate conflict or cooperation among two nations. In this context, drug trafficking and its related activities, i.e., money laundering, chemical diversion, arms trafficking, and availability of drugs, pose a real national security threat to Mexico and the United States. Although the governments of both nations have expressed considerable concern about this issue, given the weakness of Mexico's institutions, on the one hand, and, on the other, the ever-increasing consumption-driven demand in the United States, realistically the phenomenon itself can only be controlled but not resolved.³⁷

In any respect, some literature suggests that drug trafficking serves only as an amplifier of the general tone of the bilateral relationship: if the relationship is good overall, the drug issue is used to highlight Mexico's will to cooperate, thus reinforcing the U.S. government's respect for Mexican sovereignty; if the relationship is bad overall, it serves to underscore U.S. allegations of corruption in Mexico and of the ineffectiveness of Mexican institutions, prompting the Mexican government to raise the flag of nationalism. Or, as an expert has suggested, this reflects what has been labelled as the "politics of simulation."³⁸

Sovereignty and National Security

For the purposes of this paper, the concept of sovereignty is useful only in terms of defining the international community of states, but it must be understood that the state has no real capacity to control other than her territorial dimension. Analysts have asserted that Mexico is under the U.S. security umbrella, and therefore, the priority should be to preserve stability and the well-being of citizens on both sides of the border³⁹. Currently,

³⁶ Ivelaw Griffith, "From Cold War Geopolitics to Post-Cold War Geonarcotics," *International Journal* XLIX (Winter 1993-94): 31-35.

³⁷ See Table no. 1.

³⁸ Jorge Chabat, Drug Trafficking in the U.S. Mexico Relations: the Politics of Simulation", a paper presented at the II International Conference organize by the International Studies Association (ISA) and the Mexican Association of International Studies (AMEI) in Manzanillo, December 11-13, 1997.

³⁹ Michael Dziedzic "Mexico y la Gran Estrategia de EU: Eje Geoestratégico para la Seguridad y Prosperidad", in Sergio Aguayo and John Bailey, *Las Seguridades de México y Estados Unidos en Un Momento de Transición*, (Siglo Veintinuno Editores, México. 1997) pp. 85-114; and Raúl Benítez "Las Fuerzas Armadas Mexicanas a fin de Siglo, Su relación con el Estado, el Sistema Político, y la Sociedad", *Sociológica*, año 9, no. 25. May-August, 1994.

nation-states have relative control over their economic systems –while some remains, but is decreasing, over the political, social and cultural ones -- within their boundaries. This fact has to redefine the use and definition of the concept of sovereignty and national security. This is matter that in a globalized world, Mexico resists doing.

In my analysis, when using the term ‘sovereignty,’ I refer to the capacity of the state to make its own security-related decisions and design its own plans of action free of external influences. However, from my review on the use of the concept of sovereignty, I identify two dimensions on its use rhetorically by Mexican officials. The first dimension, is a formal use of the concept. By this, Mexico claims any right and capacity from the state to have the control over its borders and territorial integrity; and a second dimension, an ideological one, which is closely linked and profoundly rooted in the sentiment of Mexico’s nationalism, and therefore, a still prevailing “anti-gringo” feeling. This second dimension appeals to those in the Mexican domestic arena that see any criticism from the United States as an increasing state of vulnerability. It may seem very contradictory, but publicly, Mexican officials continuously appeal to the ideological dimension in an effort to strengthen its independence from the United States, even though in practice this dimension is present to a lesser extent.⁴⁰

In any case, Mexico’s sovereignty is at risk not when foreign undercover agents operate in Mexican territory, or when the number of DEA operations in Mexico increases⁴¹, as recently claimed by Mexico’s Foreign Relations Ministry, but rather when the Mexican government is incompetent to make decisions internally and act on its own initiative for political reasons in matters that affect the U.S.-Mexican relationship.

Due in part to the transitional state of Mexico’s economy and political system, the concept of national security remains inconclusive.⁴² The North American Free Trade Agreement (Nafta) set the stage to assume Mexico under a regional frame of security which is basically dominated by the United States, a reality that will not change any time soon. Therefore, it is unavoidable to consider U.S. policies in matters of security because of its influence and impact in the Mexican agenda.

In contrast, the U.S. has a defined set of general security goals described in the government’s “National Security Strategy for the New Century.”⁴³ Not surprisingly,

⁴⁰ The following anecdote was told to me as an example of how the politics in the bilateral relations over the past years have changed. A source (a high level U.S. government official) that will remain unidentified described to me how in the past American officials used to make bets before entering a meeting with their Mexican counterparts. The “bet” was to estimate at what time, or by which Mexican official, the question of “sovereignty” appeared in the course of the conversation. The colloquial term for setting the bets was known as the “1848,” the year when the United States invaded Mexico. As of today, he claims that personal contact and knowledge on both sides has ameliorated this “past tension”. In fact, it is better understood by the American official.

⁴¹ See Table no. 8 to observe the yearly increases of official DEA agents in Mexican territory.

⁴³ Sergio Aguayo and John Bailey, *Las Seguridades de México y Estados Unidos en un momento de transición*, Siglo XXI. México. 1997. Cited as Aguayo-Bailey (1997).

however, upon a review of this document it is evident that the United States sees Latin America simply as a region comprised of emerging democracies linked to one another and to the U.S. by shared values and expanding trade. In fact, the strategy simply says that “the U.S. must help nations embrace open market ideals, improve living standards, and advance the rule of Law”—in reality, the U.S. continues to focus far greater attention on relations with Europe and other regions than with Latin America.⁴⁴

In any case, Mexico needs to recover its fundamental prerogatives as a state: first, the capacity to guarantee the security of its citizens and their property within the country’s borders; and, second, to secure the government’s legitimate monopolization of the use of force. Without going into detail about the definition of the term ‘national security,’ suffice it to say that Mexico’s national security is contingent upon its ability to guarantee these prerogatives—as of today, the Mexican state is incapable of delivering these intrinsic guarantees, and, in this sense, Mexico’s national security is indeed at risk.

To design an adequate national security strategy Mexico must urgently define what are the best preventive measures that should enter into effect when dealing with threats such as the impact produced when combatting drug trafficking. Mexican officials have extensively recognized the complexity and challenge posed by organized crime and drug trafficking, but unfortunately it has not been until very recently that a National Program against Crime and Delinquency was announced.⁴⁵

No doubt that the alarming levels reach by the crime rates and delinquency have become a national security matter, but this is also a result of the political context lived in Mexico. By this I mean, the lost of hegemonic rule of the PRI, and thus, new forces and actors challenge the political system. Consequently, the remaining pillars of political control, such as, the Ministry of Interior (Gobernación--CISEN), the Attorney General’s Office including the Ministry of National Defense remain permeated by a severe authoritarian culture. The culture of loyalty and camarillas prevails in the strategies drawn from the Mexican intelligence community, not in terms of a professionalized body that clearly identifies the threats posed to the Mexican state⁴⁶. In the meantime, any measure undertaken by the government becomes immediately politicized by the opposition actors. Plus, the terms of sovereignty and national security remain trapped

⁴³“A National Security Strategy for a New Century,” White House, May 1997.

⁴⁴ Ibid, p. ii.

⁴⁵ Rosa Elvira et.al. “Fallamos, pero no fracasaremos contra el crimen: Zedillo”, La Jornada, August 27, 1998. The announcement of the National Program against Crime and Delinquency has at least during the Zedillo administration, one predecessor: the creation in December of 1995 of the Coordinación Nacional de Seguridad Pública. See Diario Oficial, December 11,1995.

⁴⁶ See a more extensive analysis of this in Craig A. Deare, *The Dilemmas of Mexican National Security: An Assessment of the Salinas Administration*, dissertation , The John Hopkins University, Baltimore, Maryland: 1997.

under old conceptions and are confronted permanently by a new reality resulting from the new world order and the bilateral relations with the United States.

It becomes clear that the main unanswered question is: “Security for whom?” Can a binational concept of security be built between such contrasting nations? Can the Mexican state deliver the commitments and decrease its security threats parallel to the political, economical and social transformation that is facing?

Some authors believe that as long as Mexico remains prosperous, stable, and friendly to U.S. interests, its national security is not in danger.⁴⁷ In fact, the U.S. national security agenda vis a vis Mexico remains dominated particularly by issues such as drug trafficking violence, economic instability, and only recently crime rates. In a recent meeting between legislators of both Mexico and the United States, well-known Senator Adolfo Aguilar Zinser commented: “the U.S. sees the relationship in terms of the war on drugs, not in terms of the social and political transformation [taking place in Mexico], which would foster a better neighbor”⁴⁸.

Last but not least, is the matter of national security, fueled in some regions because of the increasing presence of drug cartels and organized crime syndicates. The Mexican government has legitimized the militarization of the security, as a result of the extensive penetration of organized crime syndicates in law enforcement institutions⁴⁹. The U.S. has contributed to this militarization, as we will see in a later section by increasing dramatically the number of army personnel trained in the U.S., as opposed to law enforcement officials or public prosecutors. As of today, this contribution from the U.S. remains completely out of the scrutiny of Mexican legislators, a matter that should be taken into consideration, given the fact that this is not the case in the U.S. In other words, U.S. congressmen no doubt keep a close eye on Mexico’s cooperation and commitment to the war against drugs as a matter of domestic politics, an exercise certainly not done in the Mexican case.

Now, follows a description of the nature of the problem and what are the difficulties to combat it when, like in this case, Mexico lacks the pertinent judicial institutions to investigate and prosecute those involved in these illegal activities.

Transnational Organized Crime and Weak Institutions

⁴⁷ Sergio Aguayo Quezada “Los Usos, Abusos y Retos de la Seguridad Nacional Mexicana, 1946-1990”, in Sergio Aguayo Quezada and Bruce Bagley, En Busca de la Seguridad Perdida, Aproximaciones a la Seguridad Nacional Mexicana, (Siglo Veintiuno Editores, México, 1990) p. 108.

⁴⁸ John Ward Anderson “No Back-Slapping For U.S.-Mexico” Washington Post, June 22, 1998.

⁴⁹ ECO, “Siete secuestradores express, libres”, September 10,1998. Humberto Ortiz Moreno “Cero tolerancia contra la corrupción: Del Villar” La Jornada, September 10,1998.

A general overview of the scope and perils posed by criminal enterprises engaging in drug trafficking and its collateral activities is useful in this analysis.⁵⁰ For the most part, Mexico still considers the issue of narcotics to be mainly a U.S. problem, which evidently is not the case anymore; for the United States, the range and degree of penetration of Mexican cartels, coupled with the inability of the law enforcement agencies to combat them, make the issue a national security concern. It is thus important to place the issue of drug-related crime at the level of transnational organized crime.

In the course of my research I encountered an extensive amount of literature examining the reach of transnational criminal organizations (TCOs)⁵¹ which by no means are limited to drug trafficking.⁵² However, for the purposes of this paper, when speaking about transnational criminal syndicates, I refer specifically to those dedicated to drug-related crimes —drug trafficking, money laundering, arms trafficking, kidnapping and other such crimes.

I share along with many other analysts the concern over the alarming and overwhelming challenge that organized crime presents to security forces. The capacity of TCOs to expand their activities and to target the security forces and the economies of entire countries, in particular those that are just developing or in transition, represents one of the major threats that governments have to deal with in order to ensure their stability, the safety of their people, the preservation of their social fabric, and the viability and further development of their economies.⁵³

As pointed out by Phillip Williams, responding adequately to the social, political, and economic problems posed by organized crime requires a clear understanding of its roots, nature, and the probability of success of particular kinds of countervailing efforts. Policy made without such an understanding is both fundamentally flawed and doomed to fail, because those responsible for implementing the necessary preventive measures will invariably lack the resources and manpower. A threat assessment of the organized crime

⁵⁰ See Table no. 1. The intention is to draw a statistical picture of the phenomenon.

⁵¹ Organized crime syndicates by definition are groups of persons associated for the purpose of engaging in criminal activity on a more or less sustained basis. A significant degree of cooperation and organization takes place, and it becomes transnational when the goods and services provided cross borders at least in a more or less permanent manner. By acting transnationally, criminal organizations are able to obtain access to lucrative markets and to find points of vulnerability that they can infiltrate, while still operating from areas where they are relatively immune to law enforcement efforts. Phillip Williams and Ernesto U. Savona, *The United Nations and Transnational Organized Crime* (London: Frank Cass Publishers, 1996), p. 5.

⁵² Jane Buckwalter, ed., *International Perspectives on Organized Crime* (Chicago: Office of International Criminal Justice, 1990); Patrick Ryan and George Rush, eds., *Understanding Organized Crime in Global Perspective* ([city], CA: SAGE, 1997); William McDonald, ed., *Crime and Law Enforcement in the Global Village* (Ohio: Anderson Publishing Co., 1997); and Williams and Savona, *The United Nations and Transnational Organized Crime*.

⁵³ Williams and Savona, *The United Nations and Transnational Organized Crime*, p. 1.

syndicates operating in Mexican territory is a key requirement in identifying the steps to be taken to effectively reduce the opportunities available to drug-related criminal enterprises⁵⁴. Disrupting operations, issuing indictments, and limiting their profits should be a first priority for the law enforcement agencies working to combat them.

Investigations have revealed that the various organizations have different structures, varying criminal emphases, and distinct modus operandi but, at the same time, there are increasing linkages and cooperative enterprises among these groups. Mexico is no exception, particularly as regards the spread of criminal activities in U.S. territory. One such example is the Arellano Brothers cartel, which deals with a local group in California known as the Logan Gang.⁵⁵ It has also been proven that the Arellano cartel was involved in the killing of Cardinal Posadas, who was executed in Guadalajara, Jalisco in May of 1993. Another example is the Juárez cartel, which has a partnership with the Cali cartel and various enterprises in Chile. It was also discovered that Amado Carrillo, the late kingpin of the Juárez cartel, had direct dealings with the Mexican drug czar, Gen. Jesús Gutiérrez Rebollo, a discovery that sparked a complicated scandal with direct implications for the U.S.-Mexican relationship⁵⁶.

The Mexican government cannot underestimate the power of these organizations, and has to understand that this is no longer a domestic phenomenon. TCOs do have the capacity not only to engage in violent acts to protect their profits and merchandise, but also to undermine the capacity of the state to control its own territory, in so doing elevating the costs of operation of political and law enforcement institutions⁵⁷.

Williams argues that organized crime groups vary considerably; but the links between groups in their operations across borders should help national and international law enforcement agencies to create effective measures to counter-attack their activities. However, one of the problems that arises in the joint U.S.-Mexico strategy against criminal enterprises is the weakness of the Mexican institutions responsible for combatting them. Recent statements by president Zedillo asserting “that the enemy of

⁵⁴ The Organized Crime Unit at the Attorney’s General Office of Mexico revealed that car theft occupied third place, after drugtrafficking and money laundering in Mexican territory. Patricia Zugayde “Detienen a dos rusos, traficantes de autos de lujo”, El Universal, March 3, 1998.

⁵⁵ See Sebastian Rotella Twilight on the line, underworld and politics at the U.S.-Mexico border, (W.W. Norton & Co. New York: 1988) Chapters 4 and 6.

⁵⁶ Follow the current police investigation headed by the FEADS, known as the “maxiproceso”. See El Universal, “Graves testimonio del Cartel de Cali contra Raúl Salinas de Gortari”, June 7,1998; Gustavo Castillo “Doce militares involucrados con el Cartel de Juárez, Mariano Herran”, La Jornada, March 10,1998; “Financió el Cartel de Juárez a los Arbolitos”, La Jornada, May 13, 1998; Miguel Badillo, “Involucrados 11 empresarios, hay vínculos con Cali”, El Universal, May 5,1998; Rubén Villapando, “Ejecutan a un jefe de la PGR, en Ciudad Juárez”, La Jornada, July 11,1998.

⁵⁷ See Gustavo Castillo “DEA, van 50 asesinatos en purgas por el control del cártel de Juárez”, La Jornada, May 18,1998.

organized crime is within the state institutions” give a very sad picture of the degree of collusion between government officials, and criminal syndicates⁵⁸.

President Zedillo himself has recently acknowledged that the problems of corruption and crime in the Mexican Attorney General’s office have historically been “severe”. This not being new, the head of Mexico’s internal civil intelligence institution (Centro de Investigación y Seguridad Nacional –CISEN--) recognized how drug trafficking has eroded the territorial integrity of the country, affected its political stability, and crippled the rule of law.⁵⁹

Unfortunately, as a result, Mexico has become a sanctuary for drug-related criminal organizations. This by no means is new—evidence of drug trafficking in Mexico can be traced as far back as the mid-1940s.⁶⁰ However, the power and capabilities of these organizations has proven to be greater than the Mexican state’s ability to combat them. The flourishing power of these organizations operating in Mexico is a result of the collusion and corruptability of law enforcement institutions, and the lack of professionalization of Mexico’s police forces and public prosecutors⁶¹.

In many ways, at a comparative level Mexico shares enormous similarities with the transition underway in Russia⁶². In the former Soviet Union, Russian criminal organizations are not new either, but the demise of the Communist Party, the disintegration of the Soviet Union, and the collapse of the criminal justice system clearly produced conditions that were highly conducive to the consolidation of existing criminal organizations and the emergence of new ones. In other words, weak governments and

⁵⁸ See Fernando Mayolo “Urge EZP limpiar las procuradurías”, Reforma, February 28,1998. Patricia Zuyayde and Fabiola Guarneros “El Enemigo adentro, asevera; propone reforma constitucional”, El Universal, November 9,1997.

⁵⁹ Jorge Tello, “El Control del Narcotráfico: Operaciones Estratégicas e Intereses Nacionales de México y Estados Unidos en el período a la Posguerra Fría”, in Sergio Aguayo and John Bailey, eds., Las Seguridades de México y Estados Unidos en un momento de transición (Mexico City: Siglo Veintiuno editores, 1997).

⁶⁰ William Walker, Drug Control in the Americas (Albuquerque, N.M.: University of New Mexico Press, 1989.

⁶¹ The following articles describe how the former Chief Unit for Anti-Kidnapping from Morelos, Armando Martínez Salgado had met and started business with Amado Carrillo, who he knew while Carrillo was incarcerated in Mexico City in 1989, at the time, Martínez Salgado was a federal judicial police commander. See Ma. Idalia Gómez “Ofrece la PGR pago de \$24 millones por cómplices de Carrillo Fuentes”, El Universal, March 10, 1998.

⁶² Amy Knight, Spies without Cloaks, The KGB’s Successors, Princeton University Press, New Jersey. 1996. Or, CSIS, Russian Organized Crime, Global Organize Crime Project, Washington, D.C., 1997.

corrupt institutions lacking legitimacy and authority to enforce the rule of law and maintain order are excellent ingredients for the development of transnational organized crime under a system of total impunity. Mexico has become fertile soil for this.

According to R. T. Naylor, there are three stages in “big time crime”—predatory, parasitic, and symbiotic.⁶³ In the predatory stage, criminals are confined to a limited territory and/or are linked by only loose associations, i.e., urban street gangs. Law enforcement agencies are effective enough to deter some of their activities. In the parasitic stage, criminal activity passes from a local or regional level to a national scope. As a result of this new range, the infrastructure of criminal syndicates is better organized, and occasionally they have privileged relations with the governing apparatus or the formal economy, which can provide cover for criminal business dealings. In the symbiotic stage, the extent of the organized crime network goes beyond the natural national borders, and a joint dependence between crime and the formal economy develops, which in turn forces relations between the criminal organizations and the political apparatus to adjust accordingly.

It must thus be understood and accepted by Mexican officials and political actors that transnational organized crime presents a direct and serious threat to national and international security and stability, reaching what R.T. Naylor defines as the symbiotic stage. There is no doubt given the ample public evidence that organized crime constitutes a frontal attack on political and legislative authority, and a challenge to the very authority of the state; it disrupts and compromises social and economic institutions⁶⁴, causing the loss of faith in democratic processes and the trust in governmental authority.

Examples of this phenomenon in Mexico can be traced through press reports, but it has also been claimed that the peak of the crisis was reached with the arrest of the Mexican drug czar, Gutiérrez Rebollo, in February 1997.⁶⁵ The increasing number of

⁶³ R. T. Naylor, “From Cold War to Crime War: The Search for a New National Security Threat,” *Transnational Organized Crime* 1, no. 4, Winter 1995, pp. 37-56.

⁶⁴ See Héctor Cruz, “Amado Carrillo penetró con facilidad al sistema financiero”, *Excélsior* June 5, 1998; Víctor Fuentes “La influencia de los lavadólares”, *El Financiero*, May 18, 1998; and Gustavo Castillo “Investiga la PGR 22 denuncias de SHC”, *La Jornada*, April 16, 1998.

⁶⁵ Some examples include: Manuel Rojas, “Los Narcos destinan 60% de sus utilidades para corromper autoridades: Molina Ruiz,” *Excélsior*, July 4, 1996; Juan Manuel Venegas, “Narcos y grupos internos de la PGR, en campaña contra Lozano,” *La Jornada*, July 24, 1996; Rafael Medina and Roberto Meléndez, “Ineficiente e Inoperante, la PJF,” *Excélsior*, August 28, 1996; Hugo Martínez McNaught and José Luis Sierra, “Los Militares en el Narco,” *Reforma*, March 23, 1997; “Ofrece un militar un millón de dólares mensuales al delegado de la PGR,” March 18, 1997; Moisés Sánchez, “Presos los dos militares que dejaron escapar a Humberto García Agrego,” *El Nacional*, March 19, 1997; José Reveles, “Otro General tocado por el Narco,” *El Financiero*, June 19, 1997; “402 presos militares, de los cuales 15 tenían rangos desde tenientes coroneles a generales,” *Reforma*, August 1, 1997; Gustavo Carrillo, “Consignan a siete militares ligados al cártel de Juárez,” *La Jornada*, March 13, 1998; Rubén Villalpando, “Tres Militares, un periodista, y un abogado en una banda de plagiarios,” *La Jornada*, May 18, 1998; and, Mónica Marín, “Poco más de 200 mexicanos han muerto en la lucha contra del narcotráfico,” *Excélsior*, June 5, 1998.

government officials being put in jail after the Gutiérrez Rebollo scandal should also be seen as an alarming example of the extensive problem Mexico is facing. This is significant because, for the first time in postrevolutionary Mexico, a high ranking general was put in jail because of alleged narco-corruption dealings with one of Mexico's main drug cartels.⁶⁶ Although a federal judge has already sentenced him for arms trafficking and abuse of authority, he is still pending sentence on organized crime charges.⁶⁷

However, according to Reforma, some 400 army men have been put in jail for drug-related charges in the past year. There have been at least some 15 generals linked to drug corruption⁶⁸. Furthermore, during the “clean-up” of the police force carried out during Attorney General Lozano’s tenure, 70 percent of the cases of approximately 1,000 suspended officers were related to corruption and/or drug trafficking. Yet, even when we do see these efforts, we should still question the fact that no political figure involved either directly or indirectly in organized crime or drug trafficking activities has been prosecuted.

The problem of lack of security, violence, drug-trafficking and organized crime has two dimensions that have become an important concern for the U.S. government. On the one hand, the government of Mexico has shown very little capacity to combat the rampant violence to which any individual is faced in a daily basis across the country, but particularly in large urban centers. In addition, the Mexican government seems paralyzed in applying the rule of law, bringing criminals to justice, respecting authority, and stopping the decomposition of its justice and security institutions⁶⁹. But we should not be blind to the fact that, to the degree that Mexico is incapable of solving the public safety crisis that is facing, investment is running away. The number of entrepreneurs killed and kidnapped is symptomatic enough of the ineffectiveness in safeguarding a peaceful environment.

On the other hand, with regard to the United States, the Mexican drug syndicates have found their way to the American streets. Furthermore, the impact of Mexico’s incapacity to fulfill its commitments with the U.S. government in combatting the drug cartels is considerable.⁷⁰ There is no doubt that drug-related crime has transcended both sides of the borders.

⁶⁶ Sam Dillon, “A New Optimism on Ending Graft in Mexico City,” New York Times, February 12, 1998.

⁶⁷ María de la Luz González, “Sentencia a 13 años a general,” Reforma, March 4, 1998.

⁶⁸ Just a few days ago, the PGR requested new arrest warrants against nine Mexican army men linked to activities of organized crime and illegal aliens. See Roberto Garduño & Juan Manuel Venegas, “La PGR solicitó órdenes de aprehensión contra 9 militares”, La Jornada, August 28, 1998.

⁶⁹ See Rosa Elvira “Fallamos, pero no fracasaremos: Zedillo”, La Jornada, August 27, 1998.

⁷⁰ As stated in DEA congressional testimonies over the past three years. See DEA Congressional Testimony: February 26, 1998; October 29, 1997; March 19 and 12, 1997; March 28, 1996; May 1, 1996; and August 8, 1995, <http://www.usdoj.gov/dea/pubs/cggrtest>: ct970319.htm, ct950808.htm, ct960328.htm, ct960501.htm, ct971027.htm, ct970312.htm, and ct980226.htm.

The bilateral framework to cooperate more effectively against the drug syndicates and organized crime has come to be known as the the High Level Contact Group, analyzed in the following section.

The High Level Contact Group

In an unprecedeted effort to increase collaboration and cooperation, both governments decided to create a mechanism that would change the pattern of finger pointing and help in the search for a common approach in the fight against drugs, creating in March 1996 the High Level Contact Group on Drug Control (HLCG). Among its principal objectives is to conduct a bilateral assessment on the narco-trafficking threat and its related activities, to then design a Binational Strategy which will facilitate the coordination of the institutions involved in the war against drugs on both sides of the border.⁷¹ The HLCG is currently negotiating some fifty performance measures of effectiveness, that is, a system where both governments can test the effectiveness and efficiency of the goals and measures established to combat drug trafficking and its related activities.

To achieve these goals, both governments adopted as starting points their own national programs—in the case of Mexico, the Programa Nacional para el Control de Drogas, 1995-2000, and in the case of the United States, the National Drug Control Strategy, 1998: Ten Year Plan. Each government has its own leading agency to deal with the drug problem. In the U.S., the Office of National Drug Control Policy (ONDCP), headed by drug-czar General Barry McCaffrey, is the main agency in charge of drug policy; but some additional 57 agencies and departments are involved in this task, together with some 19 intelligence centers that collect data.⁷² The level of coordination, communication, and information sharing is critical to the success of the goals set by the ONDCP, but the differences in how the various agencies deal with Mexico play a major role in the inter-agency relationships as well as in the complex U.S.-Mexican relationship. Tensions arise as certain agencies seek to get involved in the drug war simply to avoid budgetary cuts or to acquire new funding, like the Department of Defense or the CIA, as they struggle to find new ways to justify their scope and existence in a world of undefined “new” enemies, for instance, organized crime syndicates.

In the case of Mexico, the main drug policy agency is the Fiscalía Especializada para la Atención de Delitos Contra la Salud (FEADS)⁷³ under the Attorney General’s

⁷¹ See the “U.S.-Mexico Binational Drug Threat Assessment,” May 1997 and the “U.S.-Mexico Binational Strategy,” February 1998.

⁷² Notimex, “Y ahora le toca a Estados Unidos, critican la lucha al narco”, June 9, 1997.

⁷³ Created just on April 30,1997 in the aftermath of the Gutiérrez Rebollo scandal. To see detail of its functions and structure, check Diario Oficial. It is important to mention that the FEADS used to be what was known as the National Institute against Drugs (INCD), created by the Salinas administration in June

Office, currently headed by Jorge Madrazo. The pressure posed by the production and transit of drugs, together with the institutional crisis still underway in the Attorney General's office, have led to the military's now playing an increasingly important role in the fight against drugs. According to Mexico's national drug program, the National Defense Ministry is in charge of the eradication and interception operations, and it must work in conjunction with the Attorney General's office. This process creates a series of problems raising important questions: about the greater presence of the armed forces and their increased role in intelligence gathering, about instances in which military officers occupy positions that civilians should occupy to conduct investigations, and about incidents where civilians are arrested by army personnel for questioning before they are put in the custody of law enforcement officials. Such common patterns or dysfunctions undermine civilian efforts to strengthen the rule of law and the institutions themselves, while the army gains presence in security matters under "emergency" conditions. The lack of civilian law enforcement institutions allows this situation to continue and intensify⁷⁴.

The nature of the threat implied in combatting drug syndicates and organized crime opened the necessary space for the armed forces to become even more closely involved in the counternarcotics effort. The army's counternarcotics capability to a great extent stems from its special units called Grupos Aeromóviles Fuerzas Especiales (GAFEs).⁷⁵ An important problem, however, is that the Mexican army, as is the case in most Latin American countries⁷⁶, has been seldom held accountable for human rights violations or extrajudicial killings.⁷⁷ On the other hand, it seems ironic that the Attorney General's office, the weakest institution on the Mexican side, is the one in charge of leading the efforts to combat drugs.

The HLCG thus represents a commitment between the U.S. and Mexico to cooperate closely in the war on drugs, despite each country's institutional or bureaucratic turf wars. As part of the program they signed a joint Declaration of Alliance Against Drugs, consisting of sixteen points, each one with a main objective and a strategy to be

1993. Continuous allegations of corruption and antinarcotics abuses lessened its credibility and functioning, despite its very close ties to the Drug Enforcement Administration, its U.S. counterpart.

⁷⁴ See table no. 7.

⁷⁵ See table no. 3 and 4 at the end of this paper.

⁷⁶ Douglas Farah "Special Alliances. The Pentagon's New Global Engagements: A Tutor to Every Army in Latin America," Washington Post, July 12, 13, and 14, 1998.

⁷⁷ In December 1997, GAFE units of the V Military Zone in Guadalajara, Jalisco, were arrested under charges of murdering a man, and torturing nineteen others. See Eduardo Chimal, "Capturan y consignan a 28 militares en Jalisco por el secuestro de 20 jóvenes," Excélsior, December 26, 1997; Cayetano Frias, "Tres continúan desaparecidos, represalia por el robo de una pistola," La Jornada, December 17, 1997; Triunfo Elizalde, "Los ilícitos cometidos por uniformados, cada vez más notorios, según activistas proderechos," La Jornada, December 17, 1997; SUN, "Jalisco, CNDH Militares," December 23, 1997.

followed by each government.⁷⁸ Among the most important commitments are the focusing of law enforcement efforts against criminal organizations and against those who facilitate operations in both countries; increasing the ability of the law enforcement institutions to attack the corruption phenomenon resulted of the drug trade; enhancing the exchange of information and evidence provided to prosecute those who commit these crimes, and continuing with the training and technical cooperation between the two countries.⁷⁹

The main objectives of this “contract of cooperation” between Mexico and the U.S. are to reduce demand, to dismantle criminal organizations, and to combat drug-related crimes such as money laundering, corruption, and chemical diversion.

The HLCG is composed of three different levels. First, the cabinet level representatives, co-chaired by the director of the ONDCP, Gen. Barry McCaffrey, on the U.S. side, and the Mexican Foreign Affairs Secretary and the Attorney General on the Mexican side. Second, a group of senior law enforcement officials, co-chaired on the U.S. side by the Deputy Assistant Mary Lee Warren, and on the Mexican side by the Deputy Assistant on Legal Affairs, Eduardo Ibarrola. This group focuses mainly on coordinating the final steps of intelligence sharing and the exchange of fugitives. Third, a set of five bilateral working groups of experts in the various issues at hand, such as demand reduction, money laundering, chemical diversion, firearms trafficking, and interdiction. These working groups share expertise, knowledge on legal procedures, and different kinds of information, with the common goal of dismantling the major criminal organizations of both countries.⁸⁰

At this point it becomes easier to identify common ground for efforts to implement effective measures and accurately assess binational strategies. It is important to highlight that on the U.S. side an assessment of the government’s performance in the counternarcotics effort is made by both private and public actors⁸¹, thereby increasing accountability in drug control efforts. Unfortunately, this is not the case for Mexico, where the government refuses to disclose to the public most related information. Other than the general information contained in official joint documents, the information available on the counternarcotics effort in Mexico is inevitably what comes out through press leaks, making it impossible to make a fair assessment of the Mexican government’s performance. The Mexican government should make it a priority to bring more information to the public eye, encourage greater citizen participation in constructing institutions to strengthen the rule of law, increase government accountability, and improve performance on the measures agreed to with the United States.

⁷⁸ See table no. 6.

⁷⁹ See tables no. 3, 4, and 5.

⁸⁰ U.S./Mexico HLCG, Report from the Fourth Plenary Meeting, Washington, D.C., October 22-24, 1997, p. 16.

⁸¹ Performance Measures of Effectiveness. A system for Assessing the Performance of the National Drug Control Strategy. ONDCP [Washington, D.C., 1998].

Obviously, there is a logic from the standpoint of the Mexican government to conceal information: it is basically to avoid politicizing the U.S.-Mexico agenda, particularly regarding security matters. This agenda is extremely sensitive to the questions of sovereignty, national security and territorial integrity, coming from PRI nationalists or opposition parties, leaving the government in a vulnerable and weak situation.

Although it may seem unrealistic, Mexican officials have to learn to accept that concealing information from the public does more to increase mistrust of the government and its institutions than to protect them from criticism or excessive oversight, and ultimately tends to weaken the support needed to fully engage in the immediate necessary measures to counterattack the growing scope and penetration of criminal enterprises. Because of the lack of disclosure, drug syndicates are seen as closely associated with government officials and, therefore, protected by impunity.

On the U.S. side, officials should consider important keeping an open channel with their Mexican counterparts and avoiding other operation like “Casablanca”. There is no doubt that cooperation and collaboration between both nations has increased.⁸² But, in an effort to improve the exchange between both countries, the U.S. should remain sensitive to the fragility of Mexico’s political transformation.

Obstacles to Success of the Bilateral Efforts

Although the infrastructure established for the bilateral anti-drug effort has been in place for over two years, some general problems still exist. The obstacles to success can be divided as follows. On the Mexican side: a) a strong feeling of nationalism linked to the concept of sovereignty, which produces a sense of vulnerability (domestic and foreign); b) corruption of the law enforcement institutions; and, c) a lack of a professionalism in law enforcement and security institutions, thereby undermining the potential effectiveness of measures to combat the drug cartels in Mexico more efficiently.

On the U.S. side, probably the most important obstacle is the lack of coordination among all the agencies that deal with the drug issue. Each of the U.S. bureaucracies respond to a determined budget and have their own independent internal logic in dealing with the issue of drugs. An additional obstacle that impacts the bilateral framework is the certification process; the certification is basically an instrument of domestic politics by which the U.S. Congress monitors the efforts of the U.S. administration and pressures those countries seen as responsible for the drug consumption of American youth.

One issue which is particularly frustrating to U.S. authorities is the almost constant change of their law enforcement counterparts and the lack of institutional memory to move forward with the ongoing bilateral agreements. Since the beginning of

⁸² See ONDCP Report to Congress, Volume I, September 1997, pp. 5-7.

the Zedillo administration, there have been three Mexican drug czars in charge of managing the bilateral strategies and two attorneys general participating in the High Level Contact Group.⁸³

Another obstacle is Mexico's very strong sense of nationalism, reflected in the views and responses of government institutions, particularly the Attorney General's office. Nationalism has such a strong influence in some cases that decisions can be based almost entirely on sovereignty rhetoric; for instance, Mexican officials turned down the U.S. offer to send training manuals for police officers—even when they are the most popular and basic handbooks for Eastern European and Russian officers. The argument used by the Mexican government is that Mexico has a different penal system; unfortunately, what really lies behind the Mexican refusal is a sense of having to continuously surrender to the U.S. system. This position does not take into account the dramatic level of deficiencies that Mexico's training institutions have in training their own police and public prosecutors. It is unfortunate that absurd decisions are made in an effort to protect Mexico's "sovereignty," instead of seeking new strategies to strengthen its law enforcement institutions.

Here the question of what is Mexico's best strategy becomes relevant. U.S. and Mexican law enforcement officials work hand in hand and exchange evidence and intelligence information, which is critical to the dismantling of identified cartels. However, the trust involved in exchanging this information derives from personal, not institutional contact. In particular, according to several U.S. officials, this trust relies at the operational level on part of the Organized Crime Unit. This situation raises a number of questions: a) what will happen if Mexico has another change in the AG's office? b) what would happen if the "efficiency in the application of the Federal Law Against Organized Crime" produces political tensions in the ruling party and therefore, bilateral investigations are stalled? c) what would happen if there were an increase in the number of deaths of "trustworthy" government officials in the OCU, as a consequence of their positive accomplishments, and therefore, resulting in the lack of reliable personnel? Would this last point create a tension at the bilateral drug combat cooperation? The truth of the matter is that in many senses the bilateral framework of cooperation in matters of combatting drugs remains attached to "personal" contacts and results, and not to the overall functioning of the Mexican law enforcement community.

The obstacle of nationalism and the use of this concept by Mexican officials serve only to polarize and politicize the drug war from the remaining actors in Mexican politics and contribute to the prevailing view that the drug problem is "a U.S. problem."

Disclosing the complexity of dismantling drug-related organized crime syndicates, and at

⁸³ The HLCG was started in March 1996 and led on the Mexican side by Attorney General Lozano and drug czar Francisco Molina. In December 1996, both Mexican officials were removed and Jorge Madrazo was appointed Attorney General and General Jesús Gutiérrez Rebollo was named the new drug czar. Two months later, Gutiérrez Rebollo was arrested on drug-related charges for protecting one of Mexico's main drug kingpins, Amado Carrillo; he was replaced by Mariano Herrán Salvatti. Herrán Salvatti announced the creation of the Fiscalía Especializada de Delitos contra la Salud (FEADS) on April 30, 1997. (*Diario Oficial*).

the same time sharing the burden of this battle with the U.S., where demand is the main problem, would help mitigate the power of these organizations. It is also important to avoid the tendency to let drugs become the dominant issue in the bilateral relationship, which is extremely broad, thereby breeding distrust.

On the U.S. side, I found basically two very rooted obstacles. First is a lack of coordination of all the agencies that deal with bilateral drug combat efforts, despite the leadership of the ONDCP. Interagency cooperation and coordination is hindered by individual agendas and turf disputes, and there is little sign that this situation will change in the near future. One need only review the various statements made over the past year by drug czar McCaffrey, by DEA director Thomas Constantine, and by the State Department⁸⁴. A more recent example of the lack of interagency cooperation and information sharing was the Casablanca operation and its negative impact on bilateral Mexican-U.S. relations.

A second obstacle to bilateral cooperation is the actions undertaken by U.S. congressmen, viewed from the Mexican perspective as acts of interventionism, even though their actions mainly respond to local politics. Furthermore, a continuous symptom is a sense of frustration by U.S. authorities caused by Mexico's apparent lack of commitment to fight corruption and drug trafficking, an image widely disseminated in the U.S. press, and quite often expressed at HLCG or other binational meetings⁸⁵. This sense of frustration also derives from the existing corruption that threatens the security of criminal investigations and the lives of those combatting drug-criminal syndicates.

Currently, DEA special agents that form part of the Border Task Forces⁸⁶ do not stay in Mexican territory, due in part to unsafe working conditions. The security houses given to the BTF are in fact "insecure" headquarters. Efforts to remedy the situation of the BTF are now underway by assigning 150 Mexican army troops trained by the Pentagon and 46 civilians vetted and trained in U.S. territory together with 22 DEA agents⁸⁷.

⁸⁴ Jim Cason, "Elogió E.U. su valiente acción antinacros", La Jornada, March 2, 1997; Alejandro Paez "El México sombrío, según E.U.", Reforma, March 14, 1997, Reuters "Califica la DEA a México como el más corrupto", March 15, 1997; Jim Cason et al. "Constantine, operan en México los narcos más poderosos del mundo", La Jornada, March 20, 1997.

⁸⁵ Tim Golden, "U.S. Lauds Mexico on Drug Efforts Countering DEA", New York Times, February 2, 1998; Sam Dillon, "The Man likely to be Mexico's No.1 Trafficker", New York Times, February 27, 1998; Sam Dillon and Craig Pyes, "Foiled Drug Pursuit of a Mexican bares a system rife with graft. Suspect walks free twice, frustrating the U.S.", New York Times, April 15, 1998; John Anderson, "No Back-Slapping for U.S., Mexico, suspicions strain legislators' gathering", Washington Post, June 22, 1998.

⁸⁶ The three Border Task Forces are currently located in 5 different satellite offices: Tijuana linked to Mexicali; San Luis Rio Colorado and Nogales; Ciudad Juárez and Monterrey linked to Reynosa and Matamoros.

⁸⁷ David Aponte "Son 150 integrantes de élite; el Pentágono les dio entrenamiento", La Jornada, March 4, 1998.

In the aftermath of Casablanca⁸⁸, both governments displayed serious distrust toward each other. The Mexicans claim their sovereignty was trampled on when the U.S. did not notify Mexico of the activities of U.S. agents in Mexican territory; the U.S. responded that they did inform the Mexican government, but, as in many other cases, Mexicans did not want to cooperate and simply “never get back to them”⁸⁹.

Distrust is perhaps the most difficult barrier to overcome. Former Attorney General Lozano in an interview expressed disappointment after extraditing drug kingpin Juan García Abrego⁹⁰, after the U.S. had agreed to share information resulting from the judicial process to continue future investigations. This validates Jonathan Marshall’s point that, “time after time, genuine law enforcement efforts are hampered by major players, especially in the U.S., interfering to protect well-known criminal elements precisely on the grounds that national security takes precedent over law enforcement”⁹¹.

Meanwhile, experts and politicians talk about the new (old?) evil empire – drug syndicates and organized crime —and the United States policing activities become internationalized at a unprecedented pace⁹².

Casablanca sparked resentment from the Mexicans, as the U.S. once more seemed to be acting unilaterally without concern for how its actions might affect its Mexican counterparts⁹³. In the end, as pointed out by Celia Toro, narcotics-related policies will be tailored to protect national interests, even when programs are designed based on the need to collaborate with the U.S. government⁹⁴.

⁸⁸ Casablanca was the name given by the United States government to a three-year undercover investigative operation that resulted in the arrest of 26 Mexicans and the seizure of \$35 million in illegal proceeds from drug money. Don Van Natta Jr., “U.S. Indicts 26 Mexican Bankers in Laundering of Drug Funds,” New York Times, May 19, 1998.

⁸⁹ Douglas Farah and Molly Moore, “Doctor in Drug Lord’s Operation Sheltered in U.S.” Washington Post, April 11, 1998.

⁹⁰ Juan García Abrego was arrested march of 1996. After long hours of deliberations amongst numerous Mexican government officials, they decided to extradite García Abrego.

⁹¹ Jonathan Marshall, Drug Wars, Corruption, Counterinsurgency and Covert Operations in the Third World (Forestville, California 1991), p.53.

⁹² Ethan Nadelmann, Cops Across Borders: The Internationalization of U.S. Criminal Law Enforcement, (University Park, PA: The Pennsylvania State University Press, 1993); Paul Chevigny, Edge of the Knife, Police Violence in the Americas, (New York: The New Press, 1996); Timothy J. Dunn, The Militarization of the U.S.-Mexico Border, 1978-1992 (CMAS Books, The Center for Mexican American Studies: The University of Texas at Austin. 1996); Senator John Kerry, The Web of Crime that Threatens America’s Security , the New War, (New York: Simon & Schuster, 1997); and Richard Frirman, Exporting the U.S. War on Drugs, Narcodiplomacy, (Ithaca: Cornell University Preess, 1996).

⁹³ A similar unilateral investigation was disclosed on May 2, 1996, called: Zorro Operation II. See DEA Congressional Testimony before the House Appropriations Committee Subcommittee on Commerce, Justice, State and Related Agencies, March 19, 1997, p. 11. Once again this was a unique and successful

Probably the clearest obstacle faced by the United States and Mexico is that drug syndicates operate without regard to international borders, and national law enforcement agencies from both nations are greatly limited by borders, police jurisdiction, air-space and maritime/territorial sovereignty, and national judicial systems. To counteract drug and organized crime syndicates, the U.S. and Mexico require instruments of international cooperation and strong institutions that enable them to combat such phenomenon.

Post-Salinismo and U.S.-Mexico Relations

By the end of the Salinas administration, the law enforcement crisis had already reached alarming levels⁹⁵. The unresolved political assassinations, the persistent impunity of criminals and corrupt officials, the extent of corruption within law enforcement agencies, the lack of a coherent justice system, and the decomposition of the public security system, were evidence of this crisis.

In an effort to bring some legitimacy to the actions undertaken by the Zedillo administration, President Zedillo invited a member of the opposition to head the Attorney General's Office (the Procuraduría General de la República, or PGR). This was the first time in Mexican history that an opposition member from the center-right National Action Party (PAN) was welcomed into a cabinet position. The PAN accepted the position based on a desire to contribute to the ongoing democratic transition.

Lozano's appointment produced two positive effects that gave Zedillo great leverage, credibility, and legitimacy, given the clear popular demand to enforce the rule of law and to modernize the justice and security apparatus. With Lozano's appointment the PAN publicly shared the burden of reforming an almost lost institution, and, furthermore, the appointment symbolized an acknowledgment that Zedillo was willing to take the necessary steps to change the system.

operation which targeted a Mexican-run cocaine smuggling and distribution network within the United States with ties to the Colombian drug mafia. Using over 90 court-authorized wiretaps, law enforcement personnel were able to arrest 156 traffickers from Los Angeles, Chicago, El Paso, Houston, and other cities, and seized 5,600 kilograms of cocaine, and over 10,000 pounds of marijuana. Operating for organized crime groups in Mexico, these groups smuggled cocaine over the Mexican-U.S. border for consumption in the U.S. with eventual distribution to Miami, Chicago, Philadelphia, New York, Newark, and Richmond, by representatives of Mexican organized crime syndicates and the Colombian Cali cartel.

⁹⁴ Maria Celia Toro “Unilateralism and Bilateralism” in Peter Smith (editor) Drug Policy in the Americas, (University of California, San Diego, Westview Press, 1992).

⁹⁵ As the security problems reached alarming levels during the Salinas administration, President Carlos Salinas de Gortari created the National Coordination of Public Security in April 1994, headed by Arsenio Farrell Cubillas. At that time, Farrell (currently the head of Secodam –Secretaría de la Contraloría y Administración) invited a number of people with questionable backgrounds regarding issues of public security such as: Miguel Nazar Haro, Javier Coello Trejo, and General Mario Arturo Acosta Chaparro. See Miguel Angel Granados Chapa, “Cruzada contra el crimen”, Reforma, August 28.1998. 17A.

Lozano was faced with an enormous task. In a United Nations survey in 1996, Mexicans were asked how much confidence they had in their judicial system: 80 percent said “little” or “none.” Those responsible for enforcing the law, i.e., public prosecutors and federal judicial police, are often members of organized crime syndicates. And too often those who publicly state they will put an end to crime and corruption—as was the case of the first Chief of the Federal Judicial Police, Juan Pablo de Tavira—suffer attacks on their lives. Lozano himself was a victim of such an attack in February 1996.

A complete internal diagnosis of the state of the PGR during the Lozano years revealed important challenges:

- (1) The two main bodies responsible for enforcing the rule of law—the public prosecutors and the federal judicial police—were ill-prepared, lacked any professional training, were underpaid, and had insufficient institutional security to protect them from the risks they faced when dealing with federal criminal investigations. A profound bureaucratic culture change had to take place to counter the vicious circle of “incondicionalidad por impunidad”.
(Unconditionality in exchange for impunity).
- (2) There were no mechanisms of supervision, evaluation, or revision of the tasks undertaken by the public prosecutors and the police force.
- (3) There were no reliable records on human resources, least of all on weaponry records, vehicles, or even ammunition.
- (4) There was a serious lack of technology (computer systems and telecommunications technology) to do the work or apply even basic investigative techniques.

In sum, the PGR lacked any real and reliable institutional memory to carry out its main responsibilities with consistency and efficiency. Corrective measures had to be undertaken, but the politicization of the rule of law became an obstacle during the Lozano years to achieve profound change. If even high profile political assassinations were not resolved, impunity would prevail. In the public mind, the person responsible for the Colosio assassination was former president Carlos Salinas. A collective judgement had been made, and the economic crisis which once again had to be endured by the majority of the population made it a sure sentence: Salinas was responsible. The fact that Carlos’ brother had been put in jail after being accused of masterminding the assassination of the secretary general of the ruling PRI, José Francisco Ruiz Massieu, and later for money laundering and embezzlement, did not diminish public anger toward Carlos Salinas—society demanded his incarceration as well.

Public opinion favored putting an end to impunity and the abuse of power of the ruling elite. This public pressure was felt by Lozano, who had numerous actions to take to redirect a malfunctioning institution. Unfortunately, the course of the investigations of the political assassinations was too politicized.

Lozano adopted policies in three critical areas in response to the challenges facing him. First, he needed to restructure the internal functioning of the PGR, which was overrun with corruption, impunity, and inefficiency. Second, he needed to professionalize personnel and train the police forces and public prosecutors; and, third, he needed to address the allocation of sufficient resources to put the institution to work.

Thus, the need for a civil service structure was imperative. Under the new law that regulates the functioning of the PGR, Lozano created the Public Prosecutors' Professionalization Council (Consejo de Profesionalización del Ministerio Público de la Federación), which was to be an ongoing effort to control, supervise, create, operate, and follow-up on the civil service.

For the first time, basic organizational training and professionalization principles were integrated into the law. This body still exists under the Madrazo administration, but it is not publicly known to what degree this effort has continued. The press reports of police agents involved in drug trafficking and corruption within the institution certainly hinder any efforts to move forward.

Additionally, in an ongoing effort to improve the legal framework to combat organized crime, Lozano proposed, created and passed through the Mexican Congress a new body of laws that increased the capacity of the state to investigate crimes not only related to drug trafficking and money laundering, but all those considered to fall under the typology of organized crime. The Federal Law Against Organized Crime was created and put into effect in November 1996.

This new law allows for wiretaps as judicial evidence, a witness protection program, and some additional investigative techniques. None of these measures existed previously under the Mexican judicial system. The law is very similar to what is known in the United States as the Racketeering, and Corrupt Organizations Law enacted in the mid-1970s (RICO law).

Currently, Attorney General Madrazo has only been able to restructure what used to be the National Institute Against Drugs (INCD), now named as Fiscalía Especializada de Delitos contra la Salud (FEADS). As mentioned before, this is the area where the Border Task Forces and the Organized Crime Unit are operating. Judging from press information, the achievements overall seem to fall short. However, more serious is the question of "trust" built only with a few members of the PGR and more specifically of the Organized Crime Unit. This fact can seriously affect in the near future the "contract of cooperation," in the event that those in charge of combatting organized crime are removed, die in the line of duty, or succumb to corruption even when trained in the U.S. This is a matter about which Mexico has not planned any further strategies; and for the time being, the press is dealing with other national questions.

In any case, the challenges for Mexico remain: a) a true allocation of sufficient financial resources to invest in police and prosecutors' training, and in improving the

benefits of those taking the risks when combatting drug syndicates; b) a culture of zero-tolerance for corruption, by implementing on a permanent basis the background check-up and vetting process of those working in the judicial system; and c) bringing to justice those who have so rampantly abused power, promoted corruption, and worked collusively with drug-organized syndicates and their related activities. The Mexican government has to deliver proof of its rhetoric, and set in motion the first stages of transformation. Citizens should be allowed to scrutinize these efforts in conjunction with the Mexican Congress. If not, law enforcement institutions will remain weak, fragile, distrusted, and permeated by impunity.

With regard to the U.S.-Mexican framework, we can welcome the existence of and cooperation-building represented by the High Level Contact Group. But there are still challenges on the Mexican side, the complexity of the domestic politics of each government, and the dramatic increase in the power of the drug syndicates. The aspiration shall remain on both sides of the border to achieve and accelerate the necessary institution-building in Mexico and to continue working more on the U.S. consumption problem.

Both nations remain committed to achieve the betterment of their respective societies and their development. However, the degree of drug demand, violence and insecurity has reached such a peak that it has seriously become a threat for future generations and the nation's institutions.

Tables

Table no. 1. Data on the results of Drug-Organize Activities.

MEXICO	UNITED STATES
	More than 12 million Americans use illegal drugs, a population that creates a demand of approximately 300 metric tons of cocaine, 10 tons of heroin, and increasing amounts of methamphetamine
At Tijuana's federal jail, the estimate in drug-related bribes is U.S.\$30,000	34 percent of FBI corruption ^{ion??} convictions of U.S. state and local public officials and law enforcement officers between 1991 and 1995 were drug-related
600 tons of cocaine go through Mexican territory annually, and each kilogram of pure cocaine has a retail price in the U.S. market of \$60,000	6 percent of money laundering cases investigated by the IRS in FY1996 were drug-related
100 thousand doses of heroin go through Ciudad. Juárez	Each day 360 children under 18 are arrested on drug-related charges

⁹⁶ Statement by Gen. McCaffrey “U.S.-Mexico Counterdrug Cooperation,” ibid.

⁹⁷ Dora Elena Cortés, “Militarización Proyecto Chihuahua,” SUN, January 28,1997.

⁹⁸ Ibid.

⁹⁹ La Jornada, May 27, 1998.

¹⁰⁰ Ibid.

¹⁰¹ José Reveles, “Chihuahua, punta de lanza en la militarización antinarco,” El Financiero, April 20, 1997.

¹⁰² Ibid.

Table no. 2

MEXICO	UNITED STATES
At least 200 Mexican officials have been killed in the drug war	1,055,000 youths have been killed between the ages of 12 and 17 in drug-related crimes
An estimated 2,000 federal judicial police have been dismissed under drug-related charges or corruption	Some 860,000 persons are chronic users of heroin in the United States
Some 400 military officials are in jail for drug-related charges; of a total of 33 subdelegados, 22 were removed in 1996	In 1995 illicit drug users ¹⁰³ in the U.S. reached some 8.6 million, 21 years of age and older
10 percent of the military police force in Sonora were charged with drug-related crimes	\$52 billion are spent by U.S. drug users
74 percent of the arrest warrants for federal crimes are not executed	30 percent of the total hospitalizations in the U.S. are drug-related
10 percent of the total number of Mexican states have some drug-related problem and 20 percent of the total municipalities are involved in production or transit of drugs ¹¹²	11 percent of the world drug consumption takes place in the U.S. ¹¹³

¹⁰³ Mónica Martí, "Poco más de 200 mexicanos han muerto en la lucha contra el narcotráfico," Excélsior, June 5, 1998.

¹⁰⁴ Mónica Martí, "En Estados Unidos, más de 1,400 pandillas participan en el narcotráfico," Excélsior, June 10, 1998.

¹⁰⁵ Notas de los ceses con Lozano 1,200 y los de Madrazo son otros 500.

¹⁰⁶ Reforma, August 1, 1997.

¹⁰⁷ New York Times, April 13, 1998.

¹⁰⁸ SUN, "Sonora Militares, policías," January 27, 1998.

¹⁰⁹ Clinton Murchison, "Democracies or Narcodemocracies," Council on Hemispheric Affairs, June 1997, p. 1.

¹¹⁰ Claudia Guerrero, "Admite corrupción policiaca", Reforma, March 5, 1998.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ David Brooks and Jim Cason, "Logran México y Estados Unidos puntos de acuerdo en extradición temporal," La Jornada, October 25, 1997.

Table no.3
Attorney General's Federal Budget

1995	1996	1997	1998
960,00 millones de pesos	1,600 millones	2,400 millones	3 mil 556 millones ¹¹⁴

GOM has claimed spending 70% AG's budget goes to the drug war meaning:¹¹⁵

1995	1996	1997	1998
672,000 millones p p	1,120 millones	1,640 millones	2, 490 millones

Budget line for investigations expenditures¹¹⁶

1996	1997	1998
40 millones de p	120 millones	--- no data available

¹¹⁴ Gilberto López y Rivas "Democratizar el presupuesto militar" La Jornada, December 2,1997.

¹¹⁵ Juan Manuel Venegas, "México decidido a consolidar una cultura contra el narco: Zedillo", La Jornada, June 27,1996.

¹¹⁶ The first allocation of money took place in November 1996. Before this, the Federal Annual Budget did not have a line budget for investigations. The expenses came from the Dirección General de Administración de Bienes Asegurados. A law is pending to control, supervise and review the allocation of these resources by the ministries of Finance, Interior and Accounting Office. Currently this allocation is used to finance the FEADS.

Table no. 4

Mexican Military trained in the United States

1983-1988	1989-1994	1995-97
293	821	1,910

Source: Reforma. [November 7,1997].

Table no. 5

Mexican Civilian Law Enforcement trained in the United States

1988-94	1994-96	1997-98
	250	

Source: Financiero. [June 30,1997]

Table no. 6

U.S. assistance to Mexico in the Counternarcotics

In millions of U.S. dollars

1988-1994	1995	1996	1997	1998
86.5 ¹¹⁷	.4	2.2	3.9	5.9

Source: USAID, and Reforma.

¹¹⁷ Congressional presentation documents, cited in WOLA: Reluctant Recruits, The U.S. Military and the War on Drugs. (Washington, D.C., August, 1997), p. 43; Maribel González “Detendría E.U. ayuda financiera a México”, Reforma , March 12, 1997.

Table no. 7

U.S.-Mexico Alliance points

Alliance point 1: Reduce demand through information, education, and rehabilitation;

Alliance point 2: Reduce production and distribution of drugs;

Alliance point 3: Focus law enforcement efforts against criminal organizations and those who facilitate their operations in both countries;

Alliance point 4: Strengthen U.S.-Mexico law enforcement cooperation and policy coordination, and assure the safety of law enforcement officers;

Alliance point 5: Bring fugitives to justice. Negotiate protocol to extradition treaty;

Alliance point 6: Identify courses of and deter illegal traffic in firearms;

Alliance point 7: Hemispheric agreement outlawing illegal firearms traffic;

Alliance point 8: Work for the success of the UN Special Session on Illicit Drugs in June 1998;

Alliance point 9: Increase the abilities of our democratic institutions to attack and root out the corrupting influence of the illegal drug trade in both countries;

Alliance point 10: Enhance cooperation along both sides of our common border to increase security;

Alliance point 11: Control essential and precursor chemicals to prevent chemical diversion and illicit use;

Alliance point 12: Implement more effectively the laws and regulations to detect and penalize money laundering in both countries;

Alliance point 13: Seize and forfeit proceeds of drug trafficking and money laundering;

Alliance point 14: Interrupt air, land, and sea shipments of drugs to Mexico and the U.S.;

Alliance point 15: Training and technical cooperation;

Alliance point 16: Enhance exchange of information and evidence and ensure the security and appropriate use of the information and evidence provided.¹¹⁸

¹¹⁸ See the Declaración de la Alianza México-Estados Unidos contra las Drogas, May 6, 1997 and the U.S.-Mexico Binational Strategy, February 1998.

Table no. 8

Mexican Army involved in combatting drug-trafficking

1996	1997	1998
21900	14 057	23 000 ¹¹⁹

Fuente: Reforma

Table no. 9

Number of DEA agents in Mexico

Year	Number
1996	39 ¹²⁰
1997	45 ¹²¹
	51 ¹²²
1998	52 ¹²³ 67 ¹²⁴ 45 nationwide, and 22 BTF, plus an additional 150 military trained.

¹¹⁹ Javier Ibarrola “Fuerzas Armadas: Más Alla del Informe”, El Financiero, September 9,1998.

¹²⁰ SUN, “Lozano Gracia, DEA”, November 27,1996.

¹²¹ Dolia Estevez , “45 agentes de la DEA no serán autorizados bajo ninguna circunstancia a portar armas”, El Financiero, December 23, 1997.

¹²² David Aponte, “Estudia reubicar y proteger a agentes de la DEA”, La Jornada, February 21, 1997.
DEA’s main distribution is Mexico City (14) , Monterrey, Nvo. León (5), Guadalajara, Jalisco (4), Mérida, Yucatán (3), Hermosillo, Sonora (5) and Mazatlán, Sinaloa (5).

¹²³ José Luis Ruiz “Consolida la DEA su presencia en México; opera en seis localidades”, El Universal, June 17,1998; see David Aponte, “La SRE rechaza presiones de congresistas de E.U.”, La Jornada, August 28,1998.

¹²⁴ David Aponte “Son 150 integrantes de élite, el Pentágono les dió entrenamiento”, La Jornada, 1998.

Addressing Race Inequalities in Brazil: Lessons from the United States

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Introduction

Affirmative action has been proposed as a possible model for addressing racial inequalities in Brazil. However, affirmative action policies in the United States are generally understood in Brazil in a narrow, simplified, and often distorted way. Not only are social and economic conditions in the U.S. and Brazil quite different, manifestations of racism are also specific to each country. In order to adapt affirmative action as a workable policy in Brazil, a clearer understanding of what affirmative action in the U.S. really means, or used to mean, is necessary.

The Black Movement in Brazil is talking about quotas. President Cardoso has said that we have to find our own way of conceptualizing and implementing affirmative action. Some scholars have stated that, since our ethnic and racial “boundaries” are not clearly established, the adoption of such a measure would be compromised. The purpose of this paper is to bridge these cultural and political differences so that Brazilians can establish policies that will work in a Brazilian context.

The research and conclusions presented here aim to be a specific contribution to the debate about how to confront racial inequalities in Brazil. A summary and analysis of how this subject is being debated in the U.S. is the starting point. I will address the following questions:

- What are the theoretical and political justifications formulated by both those that support and those that oppose affirmative action?
- What are the main affirmative action policies implemented in the U.S. over the last thirty years, and did they reduce racial inequalities and promote equal opportunity for women and minorities? In other words: were affirmative action policies effective?
- What are the challenges presented by the implementation of similar affirmative action policies in Brazil?

There are no simple answers to these questions. I expected that the political and philosophical debate and the measurement of effectiveness were just there, ready as a body of research, waiting for me to analyze them. But, of course, they were not. I soon found that these questions led to many other broad, structural questions that could not be easily answered.

My methodological approach included a thorough literature search. I compiled and reviewed a selected bibliography that specifically addresses affirmative action, including opinion polls and other surveys that would provide “common sense” rather than the academic opinions on the debate. I looked at the legislation that regulates affirmative action and, to some extent, at some of the ways in which it is implemented. I sought basic social and economic indicators that offered some evidence of change in the life chances, economic situation, and social status of

women and minorities during the last 30 years.

- 1) The context: why is it important to discuss race inequality and affirmative action in Brazil?

Brazil was the last country in the world to abolish the slavery of people of African origin, in 1888. Although no formal segregation was imposed after that, former slaves became totally marginalized from the mainstream economy. They were for the most part illiterate, with no job skills and no capital. Beside that, Brazilian government began in the late 19th century to stimulate European immigration, in an explicit attempt to “whiten” the national population. Millions of European immigrants entered the country during the last decades of 19th century and the beginning of the 20th century. This workforce was preferentially hired both in agriculture and by the industries that were flourishing in the main cities.

By the 1930's, when the country was beginning its industrialization and, at the same time, intellectuals and politicians were struggling with the definition of some kind of national identity, Gilberto Freyre, a Brazilian sociologist who was trained in the U.S., developed the concept of “racial democracy”. Rather than being ashamed by our majority black and mixed population, we should be proud of it, and praise it as a sign of our racial tolerance and integration. After all, we didn't have legal segregation like in the U.S. and South Africa, and we were able to get along well with all races.

After World War II, UNESCO funded an extensive research project on Brazil and its racial democracy, hoping to find insights that could help the rest of the world deal with prejudice and discrimination. But the results were different from what researchers expected. The scholars found that, although very much culturally integrated, Brazil was a place where racism, prejudice and racial discrimination were firmly entrenched. These practices were disguised by the myth of racial democracy itself, and were often explained by other means, such as class differences. The discourse of racial equality and tolerance prevailed over the reality.

During the 1960s and 1970s, discussion of racial inequality was discouraged by the military dictatorship, which suppressed most forms of free intellectual and political activity. The 1970 National Census didn't even include a question on race or color in its forms¹²⁵. During the late 1970s, a variety of social movements began to organize, seeking to improve the country's social conditions. Among them, groups referred to collectively as the Black Movement were dedicated to fight racial discrimination in Brazil. The first civilian government was elected indirectly in 1985 and the 80's were marked by important advancements in terms of political democratization.

At that time, scholars began once more to address the “race question.” Activists denounced racial inequalities and attempted to understand why the myth of racial democracy was still alive and well. In a country with huge socio-economic inequalities, it was difficult for black people to perceive that their poor living conditions were due to racial discrimination. This has begun to change due to the growing visibility of an active Black Movement, to the presence of a

¹²⁵ The question about race has been included again in the National Census in 1980.

tiny group of black intellectuals and artists who frequently raise the issue and, also to government intention to do something about this issue, creating specific agencies to deal with issues of black culture, with the situation of descendants of former slaves and anti-racist legislation.

1.1) A word about classification

The Brazilian Census asks people to classify themselves into one of these five categories: white; black; brown; indian and yellow (meaning asians). Blacks and browns constitute 45 percent of the whole population and 98.7 percent of the non-white population. The figures for 1996¹²⁶ were:

Whites:	54.4
Blacks:	4.9
Browns:	40.1
Indians:	0.1
Yellow:	0.5

In Brazil, the concept of race is more related to skin color and physical features than to ancestry. This led some scholars to analyze Brazilian race classification not as “racial groups”, but as “groups of color” (Degler, 1991: 103).

Another characteristic of Brazilian race classification relates to our historical background and to the myth of racial democracy that was previously mentioned. As Guimarães explains:

“The distinctiveness of Brazilian racism, or Latin American racism in general, comes from the fact that Brazilian nationhood was not formed, or ‘imagined’, to use Anderson’s metaphor, as a community of ethnic dissimilar individuals coming from all parts of Europe, as was the United States. Brazil is an amalgam of Creoles from different ethnic and racial backgrounds whose race and ethnicity were lost to gain Brazilian nationhood.” (Guimarães, 1995: 215).

There is considerable confusion between race, understood in terms of color (white/ black/ brown/ yellow) and ethnicity (Indian). Indians are commonly considered an ethnic group. Most Indians live in reserves, and have been historically subject to specific policies regarding their citizenship status and entitlement to land. Those Indians that migrate to urban areas live in great poverty and are often subject to the same kind of

discrimination as that faced by blacks and browns. Indians and Asians are considered minorities. But “minority” is not a term that is applied to Brazilians of African descent, since they constitute roughly half of the population.

For the 2000 Census, the Black Movement has proposed to ask people who classify themselves as “brown” (which includes people from any mixed race) if they are from “African descent”. This has been tested with a small sample, but researchers from the Census Bureau

¹²⁶ IBGE (Brazilian Census Bureau), 1996.

concluded that people had difficulties in answering the question and chose not to include it in the forms. For statistical purposes, and also considering that the flexibility of color classification in Brazil makes it difficult to differentiate both groups, researchers generally consider blacks and browns together as one category. It is also important to notice that the majority of browns is considered to be of African descent. In this text, the words “black” and “Afro Brazilians” are used interchangeably, meaning those that classify themselves as blacks and browns.

1.2) A portrait of race inequality in Brazil¹²⁷

“More than one century after abolition of slavery, manual work continues to be the place reserved for Afro-Brazilians. In opposition to what modernization theories might have led, the transition structure provided by the fast economic growth in the last decades doesn’t seem to have shortened in a significant way the social-economic distance between racial groups in the population.” (Hasenbalg, 1996:15; my translation).

Black Brazilians have made little progress entering into professions, establishing their own businesses, and finding white-collar employment. They are still consigned to unskilled manual labor. The disadvantages that accumulated throughout Brazil’s history made it difficult for the Afro-Brazilian population to succeed. Statistics illustrate the present situation.

a) Percentage of Professionals in Working Population:

White men:	8.8	White women:	9.4
Black men:	2.1	Black women:	1.6
Brown men:	2.6	Brown women:	3.3

b) Percentage of Domestic Workers:

White women:	17.8
Black women:	48.8
Brown women:	30.5

c) Income:

24.2 percent of working population receives up to US\$ 1300/year.
8.4 percent of the working population receives more than US\$ 13000/ year.
Percentage of working population that receives up to US\$ 1300/year:

Whites: 17.0
Blacks: 35.8
Brown: 33.3

Percentage of working population that receives more than US\$ 13000/ year:
Whites: 12.2
Blacks: 2.1
Browns: 3.4

¹²⁷ The sources for these figures are from IBGE (Brazilian Census Bureau), PNAD (equivalent to the Current Population Survey), 1990, otherwise noticed.

d) Education¹²⁸:

Illiteracy Rate in 1987 (people over 25):

Whites	15.0
Blacks	35.2
Browns	33.6

Percentage of people with 12 years of education or more (1987):

Whites	11.4
Blacks	1.7
Browns	2.9

e) Housing and Urban Infrastructure¹²⁹:

Percentage of the population that lived in “rustic homes” (this is the census bureau classification for shacks, typical of slums).

Whites	3.4
Blacks	13.9
Browns	13.3

Percentage of the population that lived in homes with no running water:

Whites	19.9
Blacks	42.2
Browns	50.4

Percentage of the population that lived in places where there was no waste collection.

Whites	18.3
Blacks	34.1
Browns	39.5

Percentage of the population that lived in homes with no electricity:

Whites	10.2
Blacks	21.7
Browns	28.0

Based on these and other figures, Wânia Sant’anna and Marcelo Paixão, two Brazilian researchers, calculated the Human Development Index (HDI), used by the United Nations Development Program (UNDP) to calculate the relative quality of life of the Afro-Brazilian population (blacks + browns). The HDI for the Brazilian population as a whole was 0.796 (in a maximum of 1.000). For Afro-Brazilians, the HDI was 0.573.

“The HDI for Afro-Brazilians is worse than those of all Latin American countries except Nicaragua, which comes right below, with 0.568. (...) A sad situation for the paradise of racial democracy...” (Sant’anna & Paixão, 1997:33; my translation).

¹²⁸ Source: IBGE, PNAD 1987.

¹²⁹ Source: IBGE, PNAD 1987.

1.3) Strategies against racial discrimination and racial inequalities in Brazil

Despite ample evidence of racial inequality in Brazil, those who struggle against racial discrimination still have great difficulty in promoting effective changes. For a long time, a main strategy of the Black Movement has been to point out the racial discrimination felt by non-White people in everyday, ordinary situations. These episodes of racial discrimination are often hidden and hard to identify as such, and, for that reason, are hardly punished. The main problem the Black Movement has had in its struggle against racism in Brazil is that many black people themselves do not recognize their unfavorable situation in Brazilian society as due to racial discrimination, inequality or prejudice.

However, in the last ten years or so, race discrimination and inequalities have been increasingly recognized both at the common sense level and by experts. But there is controversy over how these inequalities should be addressed. It seems that nobody can be held responsible for the disadvantaged situation of black Brazilians. Society as a whole has been caught in a collective kind of inertia, waiting for a distant moment in history when the change would come. Because racial inequalities are not seen as a relevant national issue, there is no pressure on the government to implement specific policies to redress racial injustices.

Brazilian democracy will not be real if racial discrimination and racial inequalities are not addressed both by the State and by the society as a whole. It is this idea that inspires me to reflect theoretically on the possible implementation of public policies to improve this current situation. I understand that one of the main tasks of a democratic State is to guarantee equality among its citizens. Equality can be considered one of the basic elements of citizenship, understood following Hannah Arendt's definition, as "the right to have rights".

In the Brazilian constitution, the fifth article, about fundamental rights, mentions equality in two different places: as formal equality (towards the law) and as substantive equality. As the report made by the Comissão Teotônio Villela (a Human Rights Commission) and NEV-USP (Research Group on Violence, University of São Paulo) analyses:

"[W]hen we talk about equality in the Brazilian constitution, we are saying two things at the same time: on the one hand, unequal treatment is forbidden and, on the other hand, the State has to have a positive action towards creating conditions for equality. This necessarily imposes different treatment of individuals. (...) In this sense, it is not illegal to positively discriminate with the aim of creating better conditions for a specific group, traditionally underprivileged in society." (NEV/CTV, 1993: 13-4; my translation).

On July 1996, the federal government organized the conference "Multiculturalism and Racism: the role of affirmative action in contemporary democratic states". In his opening address to the conference, President Fernando H. Cardoso declared:

"We should, therefore, seek solutions that are not simply the repetition or copy of other solutions designed for situations in which discrimination and prejudice are present, but in a context different from ours" (Souza, 1997: 15; my translation).

After the conference, a task group was organized to address specific subjects, following the recommendations raised in the meeting. Many of the proposed measures involved some kind of affirmative action program, that should be designed to promote access by more black people to jobs and education.

2) A Comparative Perspective: Affirmative Action Policies in the U.S.

The debate about race relations in the U.S. – and, as a consequence, about affirmative action – is virtually endless. It would be impossible to review and comment on the array of titles about the subject, which run the gamut of opinion about the issue. Beyond that, as Hochschild (1997) points out, the debate about affirmative action encompasses many issues that have do to with models of nation and society. In her words, affirmative action is a subject about which a “cultural war” is being fought. It is also a subject about which people hardly change their minds. Like debates about religion, abortion, and other polemics, personal assumptions are deeply rooted, promoting partial and passionate debate. The reflections that follow should be seen against this backdrop: the polemic and nonconsensual character of the debate about what W.E.B du Bois called “the problem of color line” and what Myrdal, decades later, identified as “an American dilemma.”

Before attempting to answer these questions, we must define what we mean by affirmative action. The term is very broad and controversial, with room for different interpretations. Many authors point out that the very definition of the term is already an area of theoretical and political dispute (Steeh & Krysan, 1996). Among the many definitions proposed, the following is the most complete:

“Affirmative action refers to mandatory and voluntary policies and procedures designed to combat discrimination in the workplace and to rectify the effects of employers’ past discriminatory practices. Like anti-discrimination laws, the objective of affirmative action is to make equal opportunity a reality by leveling the playing field. Unlike anti-discrimination laws, which provide remedies to which workers can appeal after they have suffered discrimination, affirmative action policies aim to prevent discrimination from occurring. Affirmative action can prevent discrimination by replacing employment practices that are discriminatory - either by intent or default - with employment practices that safeguard against discrimination.” (Reskin, 1997: 6).¹³⁰

This definition refers specifically to workplace policies. Affirmative action policies were also implemented in higher education and in government contracting. Although the principles are the same, I focus on labor market practices because it is in this arena where affirmative action policies might have a comparable application in Brazil.

Although I recognize its importance, I deliberately chose not to deal with affirmative

¹³⁰ Anti-discrimination laws were enacted in the end of World War II, first prohibiting discrimination in the defense industry, through the Executive Order 8802, issued by F. Roosevelt. In 1948, President Harry S. Truman prohibited race discrimination in the Army. Between 1948 and 1954 (when the Supreme Court decided against school segregation in *Brown v. Board of Education*), the NAACP took to court (and won) many cases that argued race discrimination as illegal.

action programs in higher education. The selection process for college admissions in the U.S. does not lend itself to practical comparison with university application procedures in Brazil.

2.1) Affirmative Action: Support and opposition

In any political debate, we are exposed to different versions of the same phenomena, which means different versions of history, that easily become different versions of “the truth.” There are many versions of “the truth” in the American debate over affirmative action policies.

Each of the books that I reviewed - Ending Affirmative Action (Eastland, 1996), Mending Affirmative Action (Kahlenberg, 1996), In Defense of Affirmative Action (Bergman, 1996), The End of Affirmative Action: Where Do We Go From Here? (McWhirter, 1996), Backfire: A Reporter’s Look At affirmative Action (Zelnick, 1996), to name just a few - tells a tale of American race relations, the Civil Rights Movement, and the implementation of affirmative action policies. Each author attempts, through different arguments, to portray himself as an inheritor of Dr. Martin Luther King’s legacy - the struggle for equality, equal opportunity and a color-blind society. These authors’ accounts do not differ much when they talk about slavery, the Civil War, and segregation laws that were passed at the end of 19th century and not enforced until the 1950s. From the 1960s on, however, different interpretations began (Skrentny, 1996).

The main point of disagreement between these versions relates to the aftermath of the first victories won by the Civil Rights Movement. Anti-discrimination laws are generally recognized as very positive. Beginning in 1964, the structures that were responsible for the implementation of anti-discrimination legislation were established: the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs (OFCCP)¹³¹.

In the mid-1960s, the idea that this legislation was not enough to combat the historical accumulated effects of discrimination began to take hold. Additional measures were needed in order to remedy past and to prevent future discrimination. It was from this perspective that affirmative action policies were created, through Executive Order 11746, signed by President Lyndon B. Johnson in 1965.

From then on, different interpretations of the implementation of affirmative action policies began. Opponents called affirmative action a deviation from the “colorblind” ideals that had mobilized consensus around the Civil Rights Movement. Supporters of affirmative action considered it an “irreversible consequence” of the civil rights struggle.

From the mid-1960s until the mid-1980s, affirmative action policies were gradually expanded and implemented in a systematic way. It could be said that the 1970s were the “golden” years of affirmative action, culminating with the Supreme Court decision in *Bakke v. Regents of the University of California*, which ruled that race was an acceptable criteria in university admissions.

¹³¹ Initially named OFCC (Office of Federal Contract Compliance).

During the 1980s, opposition to and criticism of affirmative action grew. This happened most during periods of economic recession, growing unemployment, and insecurity. Again, important Supreme Court decisions were a parameter to measure society's "mood" toward the issue. In the 1995 Adarand Constructors, Inc. v. Peña case, the Supreme Court ruled that all government affirmative action programs based on race must pass a test of "strict scrutiny," meaning that the promotion of diversity was not considered a "compelling reason" for maintaining race-based policies. This growing reaction against affirmative action found its apex in the campaign for Proposition 209 – the California Civil Rights Initiative, which was approved by a referendum in November 1996.¹³²

With this background in mind, I will summarize here the main arguments currently used on behalf of and against affirmative action. These are the most "explicit," politically accepted claims, but not all of them, and maybe not even the most important ones in contemporary debate.

a) Opposition to Affirmative Action

1. It puts the meritocracy, as a system, in jeopardy.

The first and main argument against affirmative action is the idea that it weakens the meritocratic system. Affirmative action ignores so-called "merit", because it gives preference to people using as a criteria characteristics other than their professional and educational skills. At some point, the connection was established that "different treatment meant "lowering standards."

Closely related to the lowering-standards argument is the notion that those who have benefited from affirmative action programs must have feelings of inferiority as a result. They would see themselves and be seen by colleagues as less qualified than those who were selected exclusively on "merit" criteria: "Affirmative action invites judgments about the abilities and achievements of those who are members of the targeted group" (Eastland, 1996: 8-9).

2. Affirmative action only helps well-educated blacks; it leaves the underclass out.

This argument is deeply rooted in the extensive literature that has emerged about the "underclass," a debate that emerged in the mid-1970s and that was widespread throughout the 1980s. The underclass is defined as a group of the population, black in its majority, which has become highly dependent on welfare, detached from the labor market, with a high incidence of teenage and out-of-wedlock pregnancy. These problems were and are real, but at some point in this debate, the underclass began somehow to be considered as a given assumption, with no discussion about the social processes that generated it, as if these people should just be left on their own. It was not possible to open opportunities to "those people" because they couldn't (or didn't want to) take advantage of these opportunities.

¹³² Proposition 209 has added to Article I of the California Constitution the following: "Section 31 (a) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."

The effect of this discussion in the public debate was devastating, and this can be easily measured by the welfare reform legislation (given the Orwellian title “Personal Responsibility and Work Opportunity Act”) passed in 1996. Among African-Americans, this literature identified a cleavage between the black middle class that could benefit from affirmative action and fled the inner cities and those that were not able to do so and were left behind (Wilson, 1987).

Although much of the evidence for this argument was true, the way it was sold to the public, especially by conservative activists, strengthened the belief that affirmative action was ineffective¹³³. Eastland offers an example of this strategy:

3. “Blacks and whites live in separate worlds and affirmative action is necessary to integrate the nation. To the extent that this concern is about the so-called underclass of blacks, which numbers between 2 and 3 million of the total black population of 31 million, and in which the problems of illegal drugs, criminal violence, educational failure, family instability, and homelessness are severe, it must be said that affirmative action can do very little to improve such conditions” (Eastland, 1996: 154-5).

This argument against affirmative action is probably supported by a large number of black people, who see affirmative action as a cosmetic measure, an illusion that only works to keep blacks down. They argue that it should be replaced by policies that address “serious social development and educational reform for poor people, particularly poor minorities” (Steele, 1991). It is worth mentioning that one of the best known advocates of this position is Ward Connerly, a black member of the University of California Board of Regents, who played a key role in the campaign for the approval of the Proposition 209, the California Civil Rights Initiative.

4. Discrimination is over, so there is no point in continuing to repair it.

Another common argument asserts that affirmative action is no longer needed because discrimination – or, at least, under-representation - is over. Eastland (1996), for example, states that the fire and police forces in a southern city had achieved proportional representation by the mid-1980s, and so no longer needed any kind of affirmative action program.

Affirmative action opponents also see what they call the “discovery” of diversity as something used by affirmative action supporters to make affirmative action an endless policy. They argue that the decision by large business companies and human resources professionals to implement diversity policies in the workplace only renames traditional affirmative action practices.

¹³³ Here it is interesting to recall the typology proposed by Hirschman regarding the three types of conservative rhetoric (perversity thesis; futility thesis and jeopardy thesis). About the “futility thesis”, he says: “Social change will lead to an abortive outcome; on one way or another any change is, was, or will be largely surface, façade, cosmetic, hence. Illusory, as the ‘deep’ structures of society remain wholly untouched.” (Hirschman, 1996: 64).

5. Reverse discrimination

Reverse discrimination is an unintended and perverse consequence of affirmative action programs. According to this view, because of a bias in favor of minority groups and women, white men are disproportionately harmed. “Preferential treatment” becomes the phrase that defines affirmative action. Although there were not many cases of alleged reverse discrimination in the few last decades, they have been heavily publicized and followed in the courts, bringing public attention to the potential divisive character of affirmative action.

Reverse discrimination argues that affirmative action cannot remedy discrimination that has occurred in the past. Today’s generation is not responsible for past discrimination, so it should not be deemed responsible for its consequences or made to pay for it.

6. Colorblind society

The argument that there is a tradition that the U.S., as a nation, is colorblind is defended on the basis of the liberal principle that the U.S. Constitution protects “persons, not groups”. Therefore, affirmative action is seen as a break “with the colorblind tradition that stretches back to the American founding” (Eastland, 1996: 20). What is disputed is the very meaning or existence of this tradition. In the campaign for the approval of the California Civil Rights Initiative (Proposition 209), when the proposal was introduced for the first time for discussion in the Assembly Judiciary Committee, editorials in both the Sacramento Bee and the San Diego Union Tribune declared:

“It is as American as Abraham Lincoln and M. L. King, Jr.: judge people as individuals on what they can do, on the content of their character, not on what group they belong to or the color of their skin.”

Opponents automatically draw the conclusion that “distinction drawn on the basis of race inevitably leads to racial discrimination” (Eastland, 1996: 195).

“Soon after the Civil Rights Act of 1964 became law, (...) the idea began to gain currency, especially in government and academe, that colorblind law and morality was too constraining, that the public and private sector alike needed to be able to make racial distinctions - benign ones, to be sure. A profound shift in elite opinion was taking place. Affirmative action was about to begin” (Eastland, 1996: 48).

7. The debate over immigration and multiculturalism (eligible groups).

The most recent criticism of affirmative action is that it gives preference to immigrants over native-born citizens. Eastland, for example, says that “roughly three-fourths of those who come to the U.S. each year are of a race or ethnic background that makes them eligible for affirmative action” (Eastland, 1996: 17). He makes this assertion disregarding the whole history of the country, as if it were possible to draw a clear line between the older generations of immigrants (that, after some decades, “became” Americans) and recent arrivals.

A few comments should be made about how the arguments against affirmative action are generally built. Their tone is often ironic. They commonly begin with a narrative of a “reverse discrimination” case. Eastland opened all chapters of his book with one of these cases. However, in most of them, the affirmative action plan against which a particular suit was brought had been implemented only after a court decision to redress previous discrimination.

b) Support of Affirmative Action

1. Discrimination is not over

One of the main arguments in favor of affirmative action is that race discrimination is still alive and well in American society and still has pervasive consequences for individuals that belong to minority groups. Plenty of statistical data is presented to show that the playing field is not level yet, requiring the continuation of these programs.

This is one of the biggest areas of dispute between both groups. Evidence of continuing discrimination is frequently contested by those who oppose affirmative action, who present another set of social and economic statistics that show how well black people have been doing since the 1950s. The nature of this evidence and the controversy over it will be discussed in section 2.2.

2. Structural discrimination.

Even if one agrees that race discrimination is not as pervasive today as it was some decades ago, supporters of affirmative action programs say that the effects of past discrimination can still be felt by members of minority groups: it limits their life chances. Though not easily identifiable on an individual basis, the cumulative effects of this “structural discrimination” can be seen through social and economic disparities between whites and minority groups.

There is a wide range of literature that supports this claim. Books like American Apartheid (Massey & Denton, 1993) and America Unequal (Danziger & Gottschalk, 1995) show recent patterns of growing inequality in American society and give evidence that minority racial and ethnic groups are disproportionately disadvantaged in terms of school attainment, income, and wealth.

A comprehensive study of the persistence of racial inequality in the U.S. was presented by the Advisory Commission established by President Clinton in 1995 to evaluate affirmative actions programs in the country. The White House study concluded that “economic and social disadvantages remain powerfully linked with color, and this linkage exacts an enormous toll on the perception and reality of opportunity in America.” (Edley, 1996: 71).

3. Promotion of Diversity.

Promoting diversity is often criticized by affirmative action opponents as an “intangible goal.” At the same time, it is (sometimes ironically) remarked that it is taken for granted that minorities can bring to campus or to the workplace something that a white person cannot offer.

In fact, this is one of the most widely espoused views related to the acceptance of affirmative action and equal opportunity programs in large corporations. It is very much linked to the notion that a diverse workforce will be “good for business” in a global economy with more and more diverse customers. Illustrating that view, in a section devoted to diversity programs, the IBM Web site makes the following affirmation:

“To know our markets and serve them well requires that we understand them. And understanding comes from employing people who represent those markets. Only by drawing the best people from today's vast and diverse pool will we achieve our business objectives.”

4. Under-representation of minority groups and women in more valued social positions.

It is also argued that minority groups and women are still under-represented in the more prestigious positions in society, in terms of economic and political power. The results of the Glass Ceiling Commission provides evidence that women and minorities can go just so far and no further. Established in 1991 and operative until 1996, the Glass Ceiling Commission was a 21-member body appointed by the President and Congressional leaders and chaired by the Secretary of Labor. The term "glass ceiling" refers to invisible, artificial barriers that prevent qualified individuals from advancing within an organization and reaching their full potential. Created as part of the Civil Rights Act of 1991, the Commission's mission was to identify such barriers and to expand practices and policies that promote opportunities for minorities and women to positions of power and responsibility in the private sector.

The commission's final report recognized that “it is evident that ceilings and walls exist throughout most workplaces for minorities and women. These barriers result from institutional and psychological practices, and limit the advancement and mobility opportunities of men and women of diverse racial and ethnic backgrounds” (Glass Ceiling Commission, 1995). The report showed that 97 percent of senior managers at the Fortune 1000 corporations were white males (in 1995), even though 57 percent of the American work force is female or minority or both.

Other authors emphasize the importance of promoting life chances so that blacks and other minorities can have aspirations and can succeed. Affirmative action would mean “opening up the system” to different groups, possibly influencing the choices of minority youth (Glasser, 1996).

5. Color consciousness.

American society has never been colorblind. As Marta Tienda argues, “color has always circumscribed social and economic opportunity in the U.S.” (Tienda, 1997: 4). Therefore, critics of affirmative action cannot appeal to a nonexistent tradition of indifference to color to support their argument. At the same time, it is impossible to rule overnight that society will start to be colorblind.

In the Bakke decision, Supreme Court Justice Harry Blackmun said that “to get beyond racism, we must first take race into account” This is the prevailing view: the discussion is not about being “colorblind” or “color conscious.” It is about choosing between racial progress and racial retreat (Washington, 1996: 38).

2.2) Implementation and Impact of Affirmative Action

Different versions of history contradict each other. Virtually any researcher who wants to justify or to blame affirmative action can find some kind of “empirical evidence” for such claims. The countless books, articles, and reports on the issue are crammed with bibliographical references that support their theses. But proliferating citations are yet another example of how numbers, by themselves, are not enough. It is relatively easy to twist statistics to one's purposes.

Many authors concur that the implementation of affirmative action was very much linked to the conclusions of the National Commission on Civil Disorders. Known as the Kerner Commission, it was created to analyze the causes of the race riots that took place in many cities during the 1960s. One of the commission's conclusions was that “special encouragement” was needed to guide blacks into the economic mainstream.

Some statistics were more trustworthy than others. A fundamental work by Barbara Reskin (in press), *Affirmative Action in Employment*, compiled quality social science research results that give an overview of what has been done under the label of affirmative action during the last 30 years.

Her conclusion is convincing: affirmative action has had some impact, but not a substantial one, in reducing unequal opportunities for women and minorities. She acknowledges that women's gains were bigger than minorities', and that despite the changes observed in the workplace over the last few decades, prejudice against these groups still exists. Therefore, the problem must continue to be addressed through affirmative action and other kinds of policies (Reskin, 1997).

It is hard to measure the impact of affirmative action policies. Research data demonstrate that changes have occurred, but fail to distinguish cause and effect. “The great difficulty faced by researchers is that it is almost impossible, in observing employment patterns, to separate the effects of pure antidiscrimination norms from the effects of the additional measures commonly thought of as ‘affirmative action’” (Edley, 1996: 51) or of other factors, such as general economic growth and black migration from South to North, for instance.

Comparing statistics from general employment in the private sector and government contractors is no longer useful to measure this impact, because many private firms have largely adopted voluntarily affirmative action, even if they don't call it by this name. Reskin describes significant differences between affirmative action enforced by courts and affirmative action monitored by OFCCP or implemented on a voluntary basis by businesses.

Another difficulty is that affirmative action is a term that encompasses many things.

Researchers can draw very different conclusions, depending on which data set, which period of time, and which type of business they are analyzing. An ideological component is rarely absent. A comparison of two studies designed to evaluate the impact of affirmative action and anti-discrimination policies illustrates the degree to which interpretations vary.

Heckman and Payner (1989) used data available for the textile industry in South Carolina to assess the impact of anti-discrimination laws in the desegregation process of this economic sector. They show that, given the demand for workers in the tight labor market of the late 1960s, employers “seized on the new federal legislation and decrees to do what they wanted to do anyway,” i.e., hire more black employees (p.174). Although the share of black employment remained constant in the textile industry during two world wars and the Great Depression, it grew quickly and abruptly in the mid-1960s. Heckman and Payner argue that this growth could not be entirely explained by a tight labor market or by human capital theory. To a great extent, it was due to “government activity”. The authors acknowledge that “this study cannot reject the hypothesis that it was the confluence of tight labor markets and new laws that made integration in the textile industry occur so rapidly” (p.174). However, they do not claim that “federal activity accounts for black progress in other sectors of the state” (p.174).

Although this study concentrated more on the impact of antidiscrimination laws enforced after 1965 than on affirmative action, “government activity” is still at the center of the debate about which factors have contributed most to change the social and economic situation of African Americans in the last 30 years.

Smith and Welch (1989) have a different interpretation for black economic progress in the last few decades. Analyzing census data between 1940 and 1980, their aim is to see whether the economic situation of black men has improved significantly since Myrdal’s days, in the 1940’s. They also try to “deal with the thorny problem of isolating the underlying causes of black economic progress” (p. 520).

They concluded that the factors most likely to have narrowed the racial gap were the improvement in the school attainment of blacks and shifts in their geographical location (from South to North and from rural to urban areas). Affirmative action after the 1970s and a decline in the labor force participation of less educated and low-income blacks contributed to increasing inequality between blacks and whites again. Referring to many studies done mainly during the 1970s and using reports from the EEOC, the authors show that affirmative action had a small impact on the wage gap.

“While some groups were favored in one 20-year period (1940-1960) and some in the other (1960-1980), the general pattern reveals that the racial wage gap narrowed as rapidly in the 20 years prior to 1960 (and before affirmative action) as during the 20 years afterward. This suggests that the slowly evolving historical forces we have emphasized in this essay – education and migration – were the primary determinants of the long-term black economic improvement. At best, affirmative action has marginally altered black wage gains around this long-term period” (p. 555).

However, data from business reports to EEOC cited in the article reveal a larger impact of

affirmative action – as the main form of “government labor-market policy regarding race” (p.552) – in altering the types and locations of jobs that blacks could obtain:

“Black men were almost 10 percent less likely than white men to work in covered firms in 1966 [by EEOC]. By 1980, they were 25 percent more likely to work in EEOC-reporting firms” (p. 554).

The same pattern is shown regarding managerial and professional jobs: in 1966, blacks were half as likely as whites to work in firms covered by EEOC. By 1980, blacks and whites were equally likely to be found in these firms.

These results are consistent with those reported by Reskin and Edley in their reviews. What should be highlighted here is that the EEOC and the OFCCP only cover part of the workforce. Only firms with more than 15 employees are subject to EEOC regulations. In terms of OFCCP, only firms that have contracts of more than \$10,000 are subject to the regulations. And many firms engage in voluntary affirmative action programs. According to Reskin, “44 percent of American workers in 1990 were employed in firms that had an affirmative action program or made a special effort to hire minorities” (Reskin, 1997: 13).

The main conclusion is that affirmative action had a significant impact, although it is difficult to measure. Another important issue is which group has benefitted most from antidiscrimination and affirmative action programs: women; well educated, semi-skilled, or unskilled workers; and so on. There is controversy and lack of information about this topic. However, many authors seem to agree that affirmative action was an important tool in helping to create an African-American middle class. There is also agreement on how important it has been to “open up the system” to qualified and semi-qualified blacks who, without affirmative action, would have had much more difficulty being hired or might not have been hired at all.

Affirmative action made a difference in professions that were traditionally dominated by whites and had been desegregated in many cases by court order. It is important to note, however, that the association between affirmative action and quotas, which made the policy increasingly unpopular, does not reflect the evidence. Quotas were mandated in the past to rectify situations of permanent and recurrent segregation where other efforts proved ineffective to overcome patterns of discrimination (Glasser, 1996). Edley, among others, emphasizes that quotas are illegal and cannot be established by businesses to reach race equality.

Much more frequent and widely accepted by public opinion are those practices that are often called “soft forms” of affirmative action. They include the following employer practices: targeted recruitment, open advertising, job training, monitoring diversity, and educational assistance.

Most of these measures are justified by the notion that conventional business practices – such as recruitment through “word of mouth” and informal social networks – are in and of themselves discriminatory or can lead to discriminatory practices. Reskin

and others mention, however, that institutional commitment to affirmative action is more important than filing a report or following a federal regulation. The cases of firms that voluntarily adopted affirmative action programs is an important indicator of this trend.

The affirmative action program developed by the U.S. Army since the 1950s demonstrates the importance of institutional commitment. The desegregation of the Army and its promotion of black soldiers (which was not called affirmative action at the time), had enormous implications for race relations and equal opportunity. After a study that used different data sources, Moskos and Butler (1996) conclude that “race relations can be transformed by a radical commitment to non-discrimination and high standards”. This does not mean that racism is over or has been eradicated in the Army. It does mean that discrimination must be fought all the time, and that preventing discrimination is a basic requirement for any leadership position in the organization. The other important lesson from the Army experience is the idea of opening up opportunities at all levels, making the pool of black applicants for all kinds of positions along the hierarchy large enough so that blacks effectively have an equal chance to compete.

Despite these initiatives, however, and as a backdrop for them, social inequalities among the different racial and ethnic groups in the U.S. have been growing rapidly. No matter what criteria are used to measure access to opportunities and well-being, African Americans and Hispanics are in a worse social and economic situation than whites and Asian Americans. Income differences between black and white males are large even when groups with the same educational attainment are considered. In 1994, the unemployment rate among black youth was 34.6 percent compared to 14.7 among whites (Washington, 1996: 20). There is evidence that the black/white wage gap has been widening, especially among college graduates (Reskin, p. 30). Today blacks still account for 29 percent of the poor, the same proportion as in 1960, although making up 12 percent of the population.” (Washington, 1996: 20). Even with affirmative action and other remedies, the United States has not been completely successful in its goal to promote equal opportunity.

3) Addressing Racial inequalities in Brazil: Lessons from the U.S.

The main purpose of this research was to draw from the American experience of affirmative action some lessons for the struggle against race inequality in Brazil. Given the lessons learned from affirmative action in the U.S., can this approach to achieving racial equality be applied to Brazil, and if so, how? What adaptations will need to be made so that the theory and practice can work in a Brazilian context?

The so-called “soft forms” of affirmative action can be applied in Brazil to “force open the doors.” This would give those black people who are qualified an opportunity to compete at the same level with whites for more prestigious and powerful positions in the labor market, both in private business and in public service. Although it is still a tiny group, Brazil already has a small black and brown middle class with sufficient qualifications to apply for these positions. But, because of prejudice, lack of information, and lack of networks, they do not have a chance to compete equally in the labor market.

Adopting these measures would require a commitment from firms and from the government (at all levels) to stimulate the recruitment, hiring and promotion of blacks to professional and managerial positions, especially in those occupations in which they are highly under-represented. This would also mean a special commitment to provide training for those who are already employed in less senior positions, so that they can have a possibility to advance, if opportunity is given.

Although fair and adequate for helping to “level the playing field,” these measures are only part of the strategy that would be necessary to address the huge racial inequalities faced by Brazilian society. Much, much more needs to be done. The pursuit of equal opportunity requires more than affirmative action.

Affirmative action can help to address the question of access of qualified and semi-qualified black people to the labor market. But it will not change the fact that the pool of qualified blacks constitutes a small group in Brazilian society. As we have seen in section 1.2, school attainment of blacks and browns in Brazil is very low. Although the population’s schooling as a whole is also low, less than 2 percent of blacks and 3 percent of browns had more than 12 years of education in 1987, compared to roughly 11 percent of whites. At the extreme, blacks and browns make up the majority of illiterates in the country.

Such a huge difference in education is a major source of inequality between whites and blacks. And it has to be faced in a straightforward way if we really want to fight racial inequality in Brazil. In order to promote university enrollment and graduation, which would prepare blacks for more selective positions in the labor market, special programs are needed to stimulate the enrollment, retention and successful attainment of blacks and browns in elementary and secondary school. A more accessible, expanded and universal system of education would certainly constitute one major goal here.

Of course, such incentives should not be bounded to black and brown students only. The enhancement of school achievement for the whole population in basic education should be stimulated and pursued. But since blacks and browns make up roughly half of the Brazilian population, they are most under-represented among those with college and even high school degrees. And there are historical and structural reasons for that. This is why special attention should be paid to opening educational opportunities for this group.

This raises a very important question: is Brazilian society committed to the struggle against racial inequality? Is racial inequality (and social inequality in general) a problem for Brazilian society at all? Given the complexity of this question, it cannot be addressed fully in this paper. But a few comments about this issue are in order.

The question about the willingness to fight inequality is directly related to identifying which are the “tolerable limits of inequality.” As Tienda (1997) has highlighted, these limits are often flexible and vary according to how inclusive a society seems or expects to be. Here, the perceptions about entitlement, about who has the right to benefit from society’s resources and also about who defines the political and symbolic boundaries of our “imagined communities” are crucial.

Tienda shows a shift in these perceptions and social beliefs in the past 30 years in the U.S. In the 1960s “it appeared that equal opportunity was a realistic goal; that social mobility and comfortable lifestyles were possible for all who put forth reasonable effort; and that both the War on Poverty and the Civil Rights Movement would yield high social dividends toward the twin goals of reducing inequality and promoting racial and ethnic integration. (...) But times have changed. Recent social indicators and new welfare legislation suggest that as a society, the U.S. has drifted away from commitments to equal opportunity professed during the 1960s.” (Tienda, 1997: 1).

Many factors have contributed to this shift. The economic changes that took place during the last few decades are certainly one of the most important of these patterns. A core debate in the tradition of social and political thinking is the actual meaning of equal opportunity and social and economic equality. Is equality a feasible goal? The literature is extensive and impossible to review in depth here. Taken to its limits, the debate about equal opportunity leads us to a crossroads both in philosophical and practical terms. The works of Fishkin, Hochschild and Jencks, published in Equal Opportunity (Bowie, 1988), are a good example of this theoretical exercise. Their examination shows us that we still have a long way to go in defining, understanding and applying in practice a consensual view of equal opportunity and equal rights.

This task gets even more difficult when the implementation of equal opportunity is considered in a context of immense social and economic inequalities, as is the case in Brazil and, increasingly, also in the U.S. In these circumstances, the debate about universalist or target policies, group rights and the whole question of diversity is easily challenged and treated with hostility. The debate about immigration in the U.S. is a good example of how these subjects are deeply related. As Tienda points out:

“[The] distorted public perceptions about the racial and ethnic diversity of the U.S. population exaggerate the demographic, economic and social impacts of immigration (both legal and illegal flows). (...) [I]n the current economic and political environment, the volume and diversity of recent immigrant streams challenge social cohesion by deepening and reinforcing distinctions in the social contracts of citizens, legal residents and illegal residents”. (Tienda, 1997: 3).

In a reality that is in fact, or that is perceived as, characterized by scarcity and insecurity, specific claims are easily dismissed as not legitimate and the inclusion of the less empowered and stigmatized groups becomes more and more difficult.

Even with all these difficulties, I believe that the United States in the 21st century may become a nation of inclusion, but also could turn into a nation of social isolation. It can become the “greatest multiracial democracy in the world,” as President Clinton suggested, or a country that will progressively reinforce its internal and external boundaries, leading to a greater separation among racial and ethnic groups as a consequence of cultural barriers supposedly impossible to cross. Both in the U.S. and in Brazil there is a long way to go in order to establish more social and race equality. Neither a simple analysis nor a miraculous solution is possible. Just as racial oppression is not the only barrier to the advancement of African Americans, social injustice is not the only thing that makes the majority of black Brazilians poor.

Both countries are equally capable, given the economic and social resources available, of making their own societies a place for all people, with opportunities distributed in a more equal way, independent of skin color or national origin. The fundamental step is to recognize equality as a social aim to be pursued through all available means. Then, maybe so-called “racial democracy” might begin to make sense, both here and there.

3.1) Some Policies to Address Racial Inequality in Brazil

Although it is possible to recognize some improvement both at government level and in Brazilian society as a whole in terms of the situation of black people and the issue of race relations, it is easy to conclude that there are not enough debate and concrete measures proposed to address race inequalities in the country. As a starting point for any kind of specific policy that may be proposed here, we need to open up a great debate in Brazilian society about the close relationship between democracy, social justice and the lack of opportunities experienced by most individuals classified as blacks and browns.

Of course this is not an issue that can be changed in the short term. But we evaluate that this discussion cannot be postponed. Some initiatives both at the government level and among organizations of civil society - NGOs and Black Movement - indicate that there is a greater awareness about this issue. Today it is already possible to identify throughout the country local programs that try, in their own way, to face race inequalities. One example of these programs is the project that organizes volunteer teachers to give classes to “black and poor” youth, preparing them to enter university. This initiative that has been spread all over the country can be identified with a new kind of strategy developed by part of the Brazilian Black Movement: not only denouncing race inequalities but also engaging in concrete projects that target preferentially blacks and browns. The impact of programs like these is still limited in terms of the number of people that benefit from them, because of their voluntary character and lack of material resources. But the fact that a project like this exists in a country that has historically denied the unequal socio-economic situation among individuals from different racial groups is already something that has to be taken into account.

At the government level, initiatives are still shy and can be easier identified in documents and recommendations than through practice. The National Human Rights Program dedicates a whole section to the issue of race inequalities and the task group that has been organized after the conference “Multiculturalism and Racism: the role of affirmative action in contemporary democratic states” in 1996 has proposed many programs designed to promote the access of more black people to jobs and education.

Despite these and other similar initiatives, we could hardly say that Brazilian society has a commitment to overcome race inequalities. The majority of people simply deny to take race into account when the causes of poverty and lack of opportunities are considered. But there is in general the perception that the majority of blacks and browns are poor and that the majority of poor people are blacks and browns. This perception may turn into the starting point to suggest the adoption of specific measures towards some groups.

Many Brazilians may find it difficult to perceive and recognize racism and racial discrimination. It may be easier for them to identify the accumulated results of sustained economic disadvantage in terms of lack of opportunities for black and brown people. In adopting any type of affirmative action program in Brazil, we must avoid the suspicion of lowered standards in the hiring or selection process and rally strong support from public opinion. It cannot be seen as a “black issue” only, but as a matter of seeking a more equal and fair society

Based on the American experience, effort to achieve equality must be made simultaneously in two directions. First, we should stimulate access of blacks and browns to more qualified positions in the labor market, from which they have been historically absent. At the same time, we should open avenues of opportunity that allow blacks and browns to compete. In order to do that, it is necessary to determine through specific research at what point, in an individuals’ life trajectory, the social disadvantages limit life choices, so that specific programs can be designed to address different situations. We already know that education is a fertile terrain in which inequalities are crystallized and reproduced. This is a key arena for action that will minimize the disadvantages that inhere in poverty.

In Brazil, we have to develop programs that have both a universalist and specific character. They have to be stimulated by government, but also developed by the private sector and social organizations like NGOs, churches, black organizations, and universities, to name a few.

The following measures are proposed for discussion and implementation:
Universalize access to quality high school education.

Open opportunities to groups with little access to college education, through the creation of fellowship programs, expansion of educational credit, preparatory programs, and follow-up of educational performance.

Adopt “soft forms” of affirmative action in the workplace, with the objective of expanding advertising for job openings and avoiding informal recruitment.

Increase the number of women, black, and brown candidates for professional positions in traditionally white male-dominated occupations.

Stimulate public and private sector to develop job and academic training programs for people who belong to groups that have historically experienced little social mobility.

3.2) A Research Agenda for the 21st Century

In order to accomplish most of the measures suggested, more research will be needed. Research should be designed to identify the mechanisms that reproduce inequalities in the labor market and in education. Some of these studies have already been done and can provide much information about the subjects raised here. Others are still largely unexplored and will demand mobilization from the research community.

How does Brazilian society define and perceive equal opportunity? Is there a common ground on which we could agree? What is necessary to “level the playing field?” What measures could and should be taken to promote equal opportunity among Brazilians? These are some of the questions that we will need to address through social research. Other more specific

suggestions in terms of a research agenda are:

Analyze access to information and informal networks used in the search for employment that may favor already privileged groups.

Conduct opinion polls and focus groups to get more specific information about public knowledge and attitudes towards equal opportunity and race and gender inequalities. Analyze the recruitment, selection, hiring and assessment of professionals in different fields of economic activity.

Develop comparative research about race and ethnic classification (official and informal) in the U.S., Brazil, and South Africa.

All these proposals have to be detailed and discussed with different sectors of Brazilian society, so that new strategies of implementation can be successfully designed. In this process, political and theoretical debate has to consider both universal and target policies perspectives, having as a backdrop the perception that race inequality is a crucial dimension of social and human development in Brazil.

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The Impact of Structural Adjustment on Primary and Secondary Education 1980-1995

Beulett Hunter

Introduction

Programs for structural adjustment to improve the economy dominated Jamaica's economic policy agenda in the 1980s. Since then there has been a general reduction of the government's budget to programs in the social sector. The education sector in particular has been faced with the pressures of not only reduced government funding for public education programs but a demographic pressure to increase education provision.

The outcome has been a severe reduction in resource allocation, increased enrollment and participation and a decline in the quality of school leavers. The austerity has also resulted in

lower personal incomes and family budgets for education. There is also an increased focus on encouraging private educational initiatives. Even after the adjustment period of the 80's the budget is still constrained by debt servicing. The result is a further decline in educational investment and more on private contribution. This has resulted in a Cost-sharing scheme at the secondary level.

Current trends have shown improvement on all macro economic indicators since the adjustment programs of the 80s. However, even though there has been improvement in social benefits, debt servicing still seems to establish the parameters for economic planning.

Objectives and Structure of Study

Much has been written about the severity of the social and economic impact of structural adjustment policies on Jamaica.¹³⁴ Therefore, the objective of this paper is not to determine the social and economic consequences of structural adjustment but to determine whether or not there is noticeable improvement in education after structural adjustment, since its policies were designed to improve the economic and social climate of the country.

The paper seeks to find out if there is a relationship between Structural Adjustment Policies and the provision of basic education at Grades 1-9 by the government during the period 1981-1995. It also seeks to determine if there was a crisis in education and to what extent this crisis contributed to the quality of human resource in Jamaica during the period. Although the human resource endowment cannot be measured as one measure the amount of debt; it is necessary since it represents the most important resources in the productive capacity of the society.

The paper also traces the magnitude of government expenditures and examines whether there have been improvements in the efficiency or equity of the provision of education sufficient to outweigh the reduction in expenditures.

The study is based on the review of (a) statistics from the Ministry Of Education and Culture (MOEC), (expenditures on education; cost-sharing data) (b) Survey of Living Conditions (SLC) data and (c) existing studies and documents on structural adjustment.

The paper is divided in five sections. The first gives the conceptual framework of the study and a picture of the trends in social and economic sectors and data at the macro economic level during and after the structural adjustment period.

¹³⁴ For example, Behrman Jere and Amil B. Deolalikar 1988. "Impact of Macro Economic Adjustment on the Poor and on the Social Sectors in Jamaica." Washington D.C. World Bank (Operations Evaluation Department); Boyd, D. 1987 "The Impact of Adjustment Policies on Vulnerable Groups; The Case of Jamaica, 1973-1985." In Adjustment With a Human Face, edited by Giovani, Cornia et al. UNICEF.

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Section two provides an overview of the current structure of the education system and gives a general picture of resource allocation to education during the structural adjustment period of the 80s and the impact of government fiscal policy on primary and secondary education.

A discussion of current financial trends in education financing, its implications at the primary and secondary level and an analysis of alternatives for mobilizing additional resources for education is the focus of section three.

The fourth section examines a cost sharing scheme to see to what extent it has alleviated the financial difficulty at the secondary level. It also examines briefly the current educational reform at the secondary level and improvements that have been made in the sector.

In section five, the study reflects on the state of education at the two levels under study and makes recommendations for improvement.

SECTION 1

Conceptual Framework and the Socio- economic Effects of Structural Adjustment

The decline in financial investment education might not have started during the economic crisis of the 1980s although that crisis might have exacerbated the decline. A grave consequence of the decline is what appears to be the continuing erosion in the quality of human resource exemplified by school leavers at the secondary level. This is evident in those graduates who are entering the job market. This condition can have a negative effect on the future economic development.

This study, draws from the Human Capital Theory which will be used to explore conditions of access to primary and lower secondary education. The economic aspects of education are usually seen in relation to costs and the financing of the education process. Human Capital refers to the skills, knowledge and values that raise the productive capacity of an individual. Education is an investment that increases that productive capacity of workers that is reflected in increased earnings¹³⁵. Over the last decade in Jamaica, there has been minimal increased investment in education provision although enrollments have grown significantly. Studies have shown that a strong correlation exists between per capita Gross National Product (GNP) and educational provisions¹³⁶.

An analysis of current data from the 1994 Jamaica Labor Force Survey as shown in Table 1, suggests that there is some relationship between educational attainment and occupation. In the skill areas most persons have secondary education and in most of the secondary level institutions skills training are part of the curriculum. In elementary occupations that require very little skill and knowledge, 57 percent had completed only primary education.

¹³⁵ Shultz, T. 1971 "Investment in Human Capital". New York: The Free Press.

¹³⁶ EHRTS - Latin America and the Caribbean, Educational Crisis in Latin America. USAID 1992.

Table 1 Educational attainment of employed labor force by occupation, 1994*

	% with primary education	% with lower- secondary education	% with upper- secondary education	% with post- secondary education
Professionals, senior officials, technical personnel	22.6	5.5	32.2	39.7
Clerks	11.2	9.4	56.3	23.1
Service and sales workers	37.2	12.1	43.9	6.8
Workers in agriculture and fishery	76.8	9.3	12.8	1.1
Craft and related-trade workers	43.7	12.5	37.9	6.0
Machine operators and	37.0	13.3	43.9	5.8

assemblers

Elementary occupations	57.4	13.4	25.9	3.2
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* Distribution may not add up to 100 because of rounding

Source: Tsang (1998) report on The Financing of Education in Jamaica: Table 21

In a modern economy, the level of employment generated directly depends on the level of investment activity. A highly qualified labor force will facilitate investment activity, contributing to general economic development. The more skillful and disciplined the labor force, the greater the levels of productivity that it can achieve and the greater the potential for economic development.

Expenditure on education therefore, is an investment since education has economic returns. High rate of return in investment in education is argued to be indicative of the potential contribution to economic development that increased educational provision can make to society¹³⁷. The social rates of return to primary and secondary education have consistently been found to be high. Crisis in education can contribute to continuous deterioration of the quality of human resource, which in turn may cause or exacerbate economic problems.

Targeted investment on basic education can contribute to poverty alleviation. In the Republic of Korea, Thailand, and other rapidly industrializing countries with large and expanding modern sectors, universal primary education, and high levels of enrollment in secondary schools, pre-employment vocational training and schooling have enabled students who do not have academic aspirations to enter wage employment. Thus education may contribute to social equality. It is therefore important to examine investment in primary and secondary education in Jamaica. Also, investment decisions on these two levels of education have significant implications for educational efficiency and equity.

Socio-economic Impacts of Structural Adjustment

Structural Adjustment is an economic strategy that involves the comprehensive restructuring, management and co-ordination of a country's public and private sector organizations (institutions) to increase their level of productivity, thus enabling sustained development.¹³⁸

The experience of some countries with adjustment programs, has not been satisfactory as while these programs should not be seen as the cause of the economic decline in the 1980s, they clearly have not been able to reverse the adverse conditions of the poor. Davis (1994), in analyzing the economic situation in Jamaica, during the period of structural adjustment posits that the economy experienced negative growth and high levels of inflation. Efforts by the

¹³⁷ Psacharopoulos, G. 1981 "Returns to Education: an Updated International Comparison" Comparative Education. 17 (3). 321-341.

¹³⁸ UNDP – Development and Adjustment – Stabilization, Structural Adjustment and UNDP Policy.

government to reduce fiscal deficits resulted in significant increases in the prices of goods and services. Added to all these, the rapid changes in the value of the currency contributed to an unstable business environment¹³⁹.

Jamaica has experienced prolonged economic crisis in which the economy has been tied to extensive borrowing. To restore growth, economic policies were implemented, based on International Monetary Fund agreements and World Bank Structural Adjustment loans, Sector Adjustment Loans and Programs Loans. During 1977 and 1990 there was a succession of IMF agreements and World Bank Structural Adjustment loans and program loans with later additions of IDB loans and USAID conditionality¹⁴⁰. These complimentary and interlocking agreements together set the parameters for the stabilization and adjustment experience. Structural Adjustment imposed certain conditions including reduced government spending for social programs like education. The facilities offered by these agencies were accompanied by conditions that the government did not always meet. The heavy obligations to pay interest on debt, which, together with pressures to reduce government spending, wage restrictions, new

taxes on consumer goods and ceiling on wages, created a sudden and tremendous social burden. This was felt particularly heavily on the poor and fixed income members of the society.

During the adjustment period there seemed to be a deliberate restriction on the consumption levels and living standard of the poor within the society, while providing opportunities for other groups. Local protests against the harsh conditions imposed by structural adjustment programs, and their negative effect especially on the poor became the focus of many newspaper columns, economic journals and media talk shows.

External Debt

Table 2 Total debt service as percentage of GOJ Budget 1989/90 – 1994/95

Years	% GOJ Budget
1989/90	42.2
1990/91	41.1
1991/92	47.6
1992/93	50.8
1993/94	38.8
1994/95	53.0

Source: Ministry of Education and Culture

While the structure of opportunity and the distribution of social benefits had been radically altered, the economy still flounders, and the imperative of debt servicing establishes the main parameters for economic planning. There has been increased interest payments on foreign debt resulting largely from the depreciation of the local currency. Although there has been

¹³⁹ Davies, Omar. "Jamaica Preparing For The Twenty First Century", PIOJ 1994.

¹⁴⁰ Details of the Policies and associated implementation strategies may be found in the following documents; "Structural Adjustment (1981-1987)"; "Structural adjustment Loan II (1983-1984)"; "Agricultural Sector National Planning Agency of Jamaica, "Adjustment Loan (1990-1991); Structural Adjustment of the Jamaican Economy (1982-1987)",Kingston.

fluctuations over the years, increasingly, more than half the budget is consumed by debt payments and is the single largest expenditure item during any fiscal year (Table 2).

Impact of Structural Adjustment on Households- Labor market trends

Increased austerity in the decades of the 80s saw a decrease in income per capita; hence, living conditions deteriorated and reduced the potential for contributions from households to education. In 1980, the rate of unemployment among males stood at 16, while that for women was 38.9. There has been slight fluctuations over the years, however, in 1995 female unemployment rate is still of worrying concern at 22.5 (Table 3). Perhaps the most significant and persistent labor market trend over the period under review, is the high rate of employment.

Table 3 Unemployment Rates By Sex

Years	1980	1985	1990	1995
Male	16	16.1	9.3	10.8
Female	38.9	36.6	23.1	22.5

Source: PIOJ, August 1997, *Labor Market Information Newsletter of Jamaica*, p.2

Owing to unstable economic environment the unemployment problem has tended to be chronic in nature in recent times. In 1995, for example, approximately 25.0 percent of the unemployed had been without jobs for more than 12 months and women accounted for 70 percent of this chronically unemployed group.¹⁴¹

Among the modern-day phenomena which have contributed to the persistent unemployment problem is downsizing; a by-product of structural adjustment, economic reform, and global competitiveness. The loss of jobs has had tremendous impact on families' income and their ability to improve their quality of life through basic and higher education.

Another relatively new phenomenon, is the advent of the "working poor". Persons in this category are usually employed in low-wage occupations such as household workers, office attendants, street vendors and other similar jobs requiring little or no skills. Most of the poor along with those leaving the wage sector have been increasingly involved in government micro-enterprises and the informal trade.* The informal sector has traditionally been comprised of persons in marginal activities. Data from the Survey of Living Conditions (SLC), and Labor Force Survey indicate that in 1993, approximately 22.0 percent of the employed were classified as the "working poor", living below the poverty line.

There are also a number of persons who have been achieving economic mobility by utilizing "non educational" route. These persons are engaged in entrepreneurial activities that developed during the structural adjustment period when many had very little hope in education or finding a job when many were losing theirs. These income-generating activities have been very successful and have allowed upward mobility into the middle class. Though these persons have benefited from the policies of structural adjustment they are not only poorly educated but also poorly trained.

¹⁴¹ PIOJ, "Labour Market Trends" in Labour Market Information News Letter, August 1997.

Over one half (56.0 percent) of the total number of unemployed persons in Jamaica is under the 25 age cohort. Females alone in this category account for 35.6 percent of the total. These indicators are particularly worrying if our human resource is the medium through which we seek to solve our economic problems.

SECTION 2

Current Structure of the Education System

Jamaica's education and training system has its origins in the British system; hence there is a formal education system with four levels. These four levels were established by the Education Act of 1980: early childhood, primary, secondary, and tertiary.

Early Childhood education is provided for children in the age group 4 to 5 years in Infant and Basic schools, Infant departments of Primary and All -Age schools as well as 3 to 5 years in Nursery and Kindergarten schools. Although Basic schools are community operated, those recognized by government receive government subsidies to supplement teachers' salaries, provide instructional materials and meals.

Primary education is offered to pupils 6 to 11 years old, in grades 1 to 6 of Primary, All-Age, Junior High, Primary & Junior High, and Preparatory schools.

Secondary level education is offered in two cycles within a highly stratified and unequal set of institutions with a large variation in educational quality. The first cycle is offered in New Secondary, Junior High, All-Age, Primary & Junior High, Secondary High, and Comprehensive High schools and a second cycle in grades 10-11 offered in New Secondary, Secondary High, Comprehensive, Technical, Vocational and Agricultural schools.

Special education spans these first three levels of the education system. It caters to children with learning disabilities who find it difficult to function in the regular school setting without specialized support services. Special education provides for the blind, deaf and hearing impaired, mentally handicapped, and physically handicapped, the learning disabled and the gifted.

Tertiary level education is offered to persons who have successfully completed secondary education and are desirous of pursuing further studies. A variety of post-secondary programs are offered at universities and colleges. Technical and vocational programs are offered at the University of Technology and other skill training institutions.

The Impact of Debt Crisis on Education

Education is administered by the central Government through the Ministry of Education and Culture (MOEC) and a few Non Government Organizations (NGOs). The budget of the MOEC is used to fund expenses at the six regional offices and the government aided institutions at all levels of the education system. Private educational institutions do not receive funding from the government. Expenditures in education as those for any other public spending, are generally

divided in two major categories: current and capital. Current expenditures are those dedicated to operational expenses thus enabling the system function at acceptable levels. Its main components are salaries and other personal emoluments. Capital expenditures are those dedicated to expanding or replenishing the physical facilities by building and replacing physically depreciated buildings. The funds and resources required for the education system comes from a variety of sources. The principal sources for government direct or indirect financing are the central government revenues, official development assistance from donor agencies and private and institutional resources.

During a period of economic decline or instability it is the social sector that suffers the most. Authors such as Lewin 1986 & Lourie 1986,¹⁴² state that in a period of financial difficulties the social services will suffer from relatively greater cutbacks than any other sectors of the economy. One explanation for this is that the services that are provided in this sector are not always seen to contribute directly and immediately to economic production. Also the sector itself is often the largest spender of public funds and the most obvious target for cuts and reductions.¹⁴³ The result is reduced government spending for public education programs. There is also an increased focus on encouraging private educational initiatives, which only some families can afford.

Despite the tendency for the resource levels to decline and for cost to rise the education system was under pressure to maintain, expand and improve the services it provided.

Table 4: Macro-economic context of Actual Expenditures by the MOEYC 1980-1996
(current prices)

Year	Share of Public Recurrent	expenditure % Capital	Total	Share of GNP
1980	19.3	1.4	13.1	7.0
1982	18.9	1.9	13.7	6.8
1984	16.6	1.9	13.2	5.6
1986	16.2	0.5	10.8	5.2
1988	16.7	2.4	11.5	5.3
1990	18.0	5.2	13.5	5.4
1992	16.4	2.4	10.5	4.1
1994	14.3	2.2	9.1	
1996	16.1	2.2	11.1	

Source: MOEYC “*The Debt Crisis And Its Impact On Jamaican Education*” Caribbean Consultation World conference On Education For All, November 22-24, 1989.

- MOEC, Planning Division

¹⁴² J. Lourie, “The Impact of Recession and Adjustment on Education”, Paper presented at the North – South Round Table on Development: The Human Dimension; Salzburg, September7-9, 1996.K. Lewin, “Educational Finance In Recession”, Prospects XVI (2) No.58. 215-230.

¹⁴³ “Education in a Declining Economy – The Case of Zambia 1975-1995”, EDI Development Policy Case Studies #8, Economic Development Institute of the World Bank

An analysis of the trend in government expenditure during the adjustment period between 1980 and 1996 will illustrate this. This picture of overall resource allocation to education seems somewhat gloomy.

An analysis of the data reveals that MOEYC share of public expenditure declined from 13.7% in 1982 to 10.8% in 1986. Its share of the GNP also declined from 7% in 1980 to 5.2% in 1985. External debt service payments for the financial year represented 42 per- cent of total public expenditure.

During the adjustment period 1977 and 1987, expenditure on primary education declined in real terms by 30 percent. These cutbacks were combined with rapid increases in the cost of living, and both parents and teachers found it difficult to maintain their commitment to education. Many of the qualified teachers left the system for the private sector where the pay was much better. The result was an increase in teacher pupil ratio, low attendance patterns and mediocre teacher quality and a decline in performance levels of students.¹⁴⁴

The Ministry of Education and Culture eliminated welfare programs such as the provision of school uniforms for primary school pupils and financial assistance for needy secondary school students. One teachers' college and a teacher education department in a community college were closed in 1985. This resulted in a shortfall of trained teachers and a slight increase (3 percent) in the number of unqualified teachers in the system.

The share of recurrent budget allocated to literacy program also declined from 1.8 percent in 1983 to 0.5 percent between in 1986. School maintenance was reduced to very low levels. Both students and teachers lacked basic furniture and equipment. One survey revealed that up to 30 percent of pupils in grade 1 and 2 lacked writing implements.

The primary level was also characterized by low teacher quality. This is due in part to the increased number of untrained teachers at this level. Even though budgetary allocations have been increasing, low levels overtime have severely affected the educational quality compounded by a curriculum that is badly in need of revision.

Educational provisions at the primary level expanded during the period and enrollment increased to 98% in 1987. However, the level of government provision was not able to keep up with the increase participation and overcrowding, inadequate facilities and high teacher pupil rates. The growth in enrollment figures was not matched by any corresponding improvement in the relevance or quality of the education provided.¹⁴⁵

Low quality primary education does not adequately prepare students for secondary education and the world of work. A large percentage of students leave primary schools barely literate to go to secondary and all age schools with low qualified teachers and limited resources. In the case of all age schools, these did not provide the minimum quality to promote learning.

¹⁴⁴ Elsie Le Franc, ed., Consequences of Structural Adjustment: A Review of the Jamaican Experience, Canoe Press, UWI, 1994.

¹⁴⁵ Errol Miller, Primary School Performance and Its Measurement: in Final Report on Jamaican Primary Education Policy Study. Prepared by Trevor Hamilton and Associates, for USAID, 1990.

These include textbooks, no set curriculum and teaching materials and very few teachers trained to teach at the secondary level. The result is that these students go through the system and leave with very little if any in educational attainment.

In the secondary level institutions a book rental scheme was instituted. Core texts could be rented at a minimal cost but a number of students still could not afford them or other needed materials. The secondary cycle of the all age schools even though its population is comprised of students mostly from the lower quintiles did not enjoy the educational “luxury” of the book rental scheme. It was not until 1995 that the Textbook Rental Scheme was introduced at the All-Age schools. However, these schools receive only foundation textbooks. These are books that have been developed and produced by the Secondary School Textbook Project for students who are reading below their grade level. This speaks to a large percentage of the population at this level and for the few, who are capable, there are very little challenges or enrichment programs for them. One can understand why the educational quality at this level is so low as it has suffered from a critical shortage of textbooks, instructional materials and trained teachers to teach at the secondary level. There are also structural imbalances in the financing of education that became more severe during and after the adjustment period. These imbalances occurred in the allocation of resources between educational levels (primary and secondary) and within levels (all-age, new secondary, comprehensive, technical and high schools).

Reduction in education expenditure was not a phenomenon of Jamaica alone and seems to have been associated strongly with structural adjustment programs in many countries.¹⁴⁶ These studies seem to underscore the assumption that education and human resource development were not at the center of the economic strategy for development during adjustment period. It is little wonder that after the adjustment years, Jamaica’s education system is still struggling with the elusive concepts of equity, quality and access.

While this is happening, illiteracy rate among primary, all-age and new secondary school leavers still ranks high on the country’s education agenda.

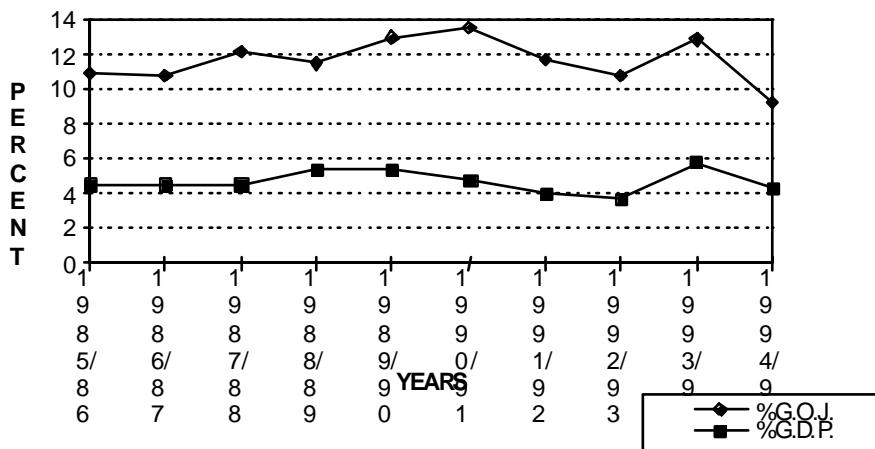
SECTION 3

Resource Mobilization for Education in the 1990's Trends In Educational Financing, 1991 – 1995/96

The MOEC total budget as a percentage of the national budget fluctuated during the 80s, moving from 15.8 percent in 1980/81 to 10.9 percent in 1985/86 and rising to 13 percent in 1988/89. Data presented in figure 1 showed that by 1994/95 the MOECs budget had fallen to a low of 9.2 percent of total government budget.

¹⁴⁶ F. Raimers and L. Tiburco, *Education, Adjustment and Reconstruction: Options for Change*. A UNESCO Policy Discussion Paper, UNESCO 1995.

FIGURE 1. MOEY&C BUDGET AS A PERCENTAGE OF THE NATIONAL BUDGET AND THE GDP



The data also indicate that as a percentage of GDP, educational expenditure declined steadily from 7.1 percent in 1980 to 4.2 percent in 1985/86. In real terms Government of Jamaica's expenditure on education in 1994/95 barely exceeded that of 1982/83.

As with other developing countries, debt obligations pre-empted a considerable share of Jamaica's resources. In 1985/86 debt repayment represented as much as 43 percent of total expenditure. Interest payments alone were equivalent to 11.5 percent of GDP, 15 percent higher than 1984/85 and 40 percent higher than 1983/84. Its no wonder therefore, that in real terms, expenditure on education and training between 1987 and 1991 had an average growth of -10 percent.¹⁴⁷

In 1992 public debt totaled 103,619 J\$M that amounted to 1.4 times GDP in the same year and by 1995 it had escalated to 175,224 J\$M.

Table 5 Public External Debt

	1992	1993	1994	1995
Public Debt				
Total public debt, J\$M	103,619	116,196	170,003	175,224
Domestic debt, J\$M	19,025	24,390	49,122	59,582

¹⁴⁷ Ministry of Education and Culture, "Financing Secondary Education: The Cost Sharing Scheme", 1996

External debt, J\$M	84,594	91,806	120,881	115,642
Total public debt as %	141.5	119.0	131.5	106.0
GDP				

Source: Tsang (1998) *The Financing of Education in Jamaica*, p.20

Interest payment on debt still remains a significant burden on the government's fiscal resources and has severely constrain the government's ability to finance activities in all sector and in particular education.

Within the education sector, approximately two thirds of the expenditure goes to primary and secondary levels. Since 1993 there has been a shift in subsectors. Primary education suffered a 3% drop in its share of educational resources in 1995, even though primary education improvement was the focus of the government during that period (Table 6). The allocation to secondary level had been trending downward but by 1994 the cost-sharing scheme had started as a means of mobilizing private resources for education. This will inject more money at this level for improvements.

Table 6 MOEYC Recurrent Expenditure by Program 1990-1996
Percentages of Recurrent Education Allocation to Education

<u>Years</u>	<u>Primary level</u>	<u>Secondary level</u>	<u>Tertiary level</u>
1990/91	34.4	33.6	21.4
1991/92	33.9	33.7	22.7
1992/93	32.3	31.1	24.9
1993/94	34.5	35.7	20.3
1994/95	30.0	33.4	25.7

Source: Ministry of Education 1996, The Financing of Education - The Cost Sharing Scheme, 1997. Table 1

Unit Expenditure on Education

Over the years the tendency is for the government to spend less on the most important levels of Early Childhood and Primary education and more on the higher levels (Table 7).

It should be noted that the impact of investment in education could only be positive if equity is maintained between investment at the primary and other levels of the education system. This balance is important so that the country does not end up with a high quality higher education or an enriched primary school where children languish intellectually at the secondary level.

Table 7 Per- student expenditure on education, 1992/93 - 1994/95

	1992/93	1993/94	1994/95
Amount, in 1992 J\$			
Early childhood education	546	966	789
Primary education	2,315	3719	2,939
Secondary education	5,029	8,460	6,920
Tertiary education	36, 877	43,084	45,675

Source: IDB, *The Financing of Education In Jamaica: Issues And Strategies*, March 1998, p12

Household Contribution to Education

Parents have always contributed to the education of their children through spending on books and materials, uniforms, transportation, boarding, private lessons and indirectly through the compulsory ‘education’ tax. The financial crisis has seen a greater reliance on household to be the major source of funding for the operating of schools. Table 7 shows household contributions to education during 1990-1995. According to the Survey of Living Conditions (SLC) 1996, household contributions showed slight fluctuations over the period, moving from 1.4 percent of total household consumption to 2.9 percent in 1995. The overall tendency is for contributions to increase which means that there is a greater burden on households already reeling from severe economic conditions.

Table 8 Household expenditure as a percentage of household consumption

Years	1991	1992	1993	1994	1995
HEE as a percentage of household consumption	1.4	2.7	2.3	2.4	2.9

Source: PIOJ, *Survey of Living Conditions* 1996, p.16.

The actual cash incomes of most households have not been increasing and paying for school items and school fee is a considerable burden for most families, especially when there is more than one child. Most people make considerable sacrifice to pay for essential learning materials and school fees. There are many families however, in the poor inner cities and in the rural areas that are so destitute that they cannot afford to pay for educational supplies or school fees (table 9).

Table 9 Mean annual household expenditure on school related items, 1995 (J\$)

Household groups	Tuition & fees	Extra lessons	Books	Other supplies
(1) By geographical area				
Kingston Metropolitan Area	2,467	2,406	1,173	416
Other Towns	1,932	1,730	960	345
Rural Areas	1,603	1,170	822	394
(2) By consumption quintile				
1 (lowest)	909	1,660	525	416
2	1,369	1,430	718	402
3	1,748	1,290	831	419
4	1,915	2,432	1,326	534
5 (top)	4,108	1,877	1,607	534
Nation	1,971	1,768	961	390

Source: IDB report on *The Financing of Education in Jamaica: Issues And Strategies*. March 1998, page 29

Development Assistance for Education

The economy has experienced some recovery in the 1990's; but the drying up of resources has led the government to rely more on external donors and private sources to finance capital projects in education. Although there are many donors the two major ones have been the World Bank (WB) and Inter-American Development Bank (IDB)

Table 9 - age distribution of bilateral/multilateral projects in education

Subsectors	1993/94	1994/95	1995/96
Primary education	47.26	41.73	33.95
Secondary education	26.00	31.43	28.20
Teacher education & training	6.85	2.74	2.01
Other	18.89	24.10	35.84
All	100.00	100.00	100.00

Source: IDB report on *The Financing of Education in Jamaica: Issues And Strategies*, March 1998, p. 18

Aid has become more and more important and seems to be the only source of educational development. The expansion of the aid program reflects the crisis in the education sector and the country's economic circumstances. It however also reflects the country's deep commitment to education as an important source in overcoming our economic problems.

SECTION FOUR

Alternative Source of funding

As was noted earlier, accompanying adjustment, was the increased tendency to fall on sources outside the government for inputs needed to maintain and develop the educational system. One such alternative was to ask parents to make a contribution to the economic cost of their children's education through paying a fee.

Jamaica's recourse to this source is not new. What is new is the extent of the reliance that is being placed on the fees. Parents have always contributed to the financing of their children's education in the form of uniforms, transportation, school fees, private lessons, books and other educational supplies and boarding. Parents are required to contribute to several other funds such as those determined by the parent teachers association for other development costs. Although some schools practiced the collection of fees, the system was not endorsed by the MOEYC until 1994. This is known as the Cost- Sharing Scheme. The cost sharing was a direct impact from the continued reduction of government spending on the social services and in particular education.

Prior to 1994 the Ministry of Education, Youth and Culture (MOEYC), provided a monthly subvention to all types of schools to meet most of their operational costs. These were for related expenses such maintenance, instructional materials, and public utilities. In 1993/94 only about one per cent of the Ministry's allocation to schools went to class materials and other supplies. The majority of the expenditure, approximately 95 per cent, went to salaries and related expenses.

With the introduction of the cost-sharing scheme, school fees became the major source of funding for the operating costs of the secondary schools. Contributions from community members, alumni associations, church- related organizations, civic groups and business firms also became increased source of funding for public schools, especially in the areas of physical facilities and financial assistance to students.

The Cost-Sharing Scheme

In 1994 The Ministry of Education Youth and Culture (MOEYC) endorsed user fees at the secondary level. The policies and procedures that should guide the scheme are outlined in the paper: *Policies and Procedures for Administering the Cost-sharing Scheme for Financing Secondary Education, Ministry of Education Youth and Culture, June 1994*. They included the following:

-Fees are defined as charges made on parents or guardians by the school to defray the cost of class materials, books, supplies, utilities, maintenance of classrooms, equipment,

laboratory, sports and other facilities, use of medical, library and other special services and materials, board and lodging. Fees may only be charged for capital development where the Ministry has given prior approval for the plans and method of financing.

- beneficiaries of the public education system should contribute to the development and operation of the institutions in which their children are enrolled. Contributions are made primarily through fees.
- The payment of fees is obligatory and is a condition of registration and attendance. At the same time the Government will as far as resources allow make every effort to assist those who are genuinely unable to pay fees.
- Fees are chargeable on a per capita basis for enrolled students.
- Fees are the property of the Government of Jamaica and must be collected and legally accounted for in accordance with the Financial Administration and Audit Act.
- Schools will retain all revenues collected for the purposes of financing the development and operation of the institution.
- The Ministry of Education and Culture operates a Financial Assistance Scheme to assist students who are considered unable to pay the full fees.
- The Minister of Education and Culture will appoint a review board to monitor the system of cost sharing for Secondary Schools.

Table 10 the Status of Cost- sharing 1995/96

Number of schools reporting	137
Total enrollment	165,061
Total fees collected	\$321,084, 961
Number of students who paid in full	100,126
Number of students who paid in part	25,619
Number of students who sought full support	5,057
Number of students who sought part support	8,806
Number of students who neither paid nor sought support	29,568

Note: 1. Discrepancies are due to the fact that the categories are not mutually exclusive.

2. Compiled from Cost Sharing Monitoring Instruments
3. Vocational and Agricultural schools not included

Source: MOEC 1996, Financing Secondary Education - The Cost Sharing Scheme, Table 2.

Data from MOEC revealed that after one year and a term in operation over 100,000 students, which comprised 60.6 per cent of the enrollment in 137 of 139 schools, had paid in full, 15.5 percent paid part, while 17.9 percent neither paid nor sought assistance. The other six percent is included in those who sought assistance, but there is no indication as to whether or not these students had paid anything.

There was no information available on students who did not pay. It is therefore not clear if their parents could not pay or did not know of the existence of the financial assistance program. Thus this is an area for further research.

Table 11 Compliance rate by school type 1995/96

School Type	Compliance	Rates	Average
	Minimum	Maximum	
All Schools	40.0	100.0	82.6
New Secondary	40.0	98.8	74.5
Secondary High	59.8	100.0	87.5
Comprehensive High	44.4	100.0	80.0
Technical High	65.4	100.0	87.4

Source: MOEC, 1996

Compliance rates ranged from a low of 40 percent to a high of 100 percent. It is important to note that the secondary schools, most of whose population is from the poorer quintiles had the lowest average compliance rates. A Ministry of Education and Culture (MOEC) policy paper posits that a possible reason for this was that parents might not be keen in paying fees because of their perception of these schools.¹⁴⁸

These schools were perceived as ill equipped to offer quality education to its population, and students who attended were seen as low achievers. Even the MOE&C seem to substantiate this theory as its budgetary allocations prior to 1994 to this level as always been below their counterpart, the secondary high schools.

The survey shows that approximately J\$321M (71.0%) of the expected income of J\$453.8M had been collected from 137 schools responding. Data from the schools on the fees collected showed that of the funds expended up to December 1995; 27.5 percent had been spent on class materials; 21.0 percent on other materials and equipment; 15.1 per cent on utilities and 26.0 percent to effect minor repairs.

Although the cost sharing scheme allows for greater resources to be spent on quality education, the continued decline of resources at the secondary schools does not auger well for the quality of human resources development. Also of concern is the fact that of the 13,100 applications for financial assistance submitted to the MOE&C from 120 schools, the new secondary schools made the most use of this facility as 14 percent of the student attending applied for assistance. A cursory look at the fee structure will reveal that the average fee for new secondary schools was very low when compared to the other school types and was less than half of the national average (See Table 12). Even though the fees seem "reasonable," it is from this group that the most assistance was sought from the government.

¹⁴⁸ MOEC, "Financing Secondary Education: The Cost Sharing Scheme", 1996.

Table 12 Actual fees by school type

School Type	Actual Fees for No.	1995/96 Minimum	Maximum	Average
All Schools	139	\$850	\$6,995	\$2,558
New Secondary	27	850	2,000	1,217
Secondary High	56	1,500	6,995	3,641
Comprehensive	43	1,000	3,000	1,731
Technical High	13	1,580	4,600	3,415

Source: MOEC, *Financing Secondary Education - The Cost Sharing Scheme*, 1996 Table 4.

It should be noted that the fees at the New Secondary level is far less than the other secondary school type even though they have similar educational offerings. This is due to the fact that most students at this level are from the lower socio-economic group and increases school fees would have severe negative impact on their attendance. The All-Age school students do not pay fees so they continue to receive the meager resources of the government while they offer sub-standard education to students.

The Reform of Secondary Education

During the early 1990s, the quality of education offered to students at the secondary level continues to be varied and unequal at the various secondary level school types. Traditional secondary high schools were still seen as providing the highest quality education, while the program offered within the All-Age schools tended to be a continuation of the primary level education. That situation, along with an average enrollment rate of approximately 70 percent for the 12 to 15 age groups, indicated the need for positive changes in secondary level education. The Ministry of Education, and Culture (MOEC) sought to address the need by implementing the Reform of Secondary (ROSE) project. This project is designed to change the profile of secondary school graduates by facilitating qualitative improvements as well as equal opportunities for all students in the first cycle (grades 7-9) of secondary education.

In 1995 over 128 Primary and Junior High, Comprehensive High, and Secondary High schools were currently participating in the ROSE Project. This was well in excess of the original target of 77 schools. Unfortunately, the resources available for this phase of the Project preclude its immediate extension to other schools. A clear objective of the Ministry of Education and Culture is to extend the reform, incrementally, to all students in Grade 7-9. In fact, the Minister of Education has announced that with effect from September 1999, the ROSE curriculum will be implemented in all High Schools with Grade 7-9 students.

The ROSE program has, as its centerpiece, a core curriculum comprised of five subjects, Language Arts, Mathematics, Science, Social Studies and Resource & Technology. Guidance and Counseling and Career Education are infused into this core of subjects. This specially designed curriculum, supported by textbooks, instructional materials, training and supervision is being positively received in participating schools. These positive considerations give rise to considerable optimism in the improvement of our human resource quality despite the continued gloomy economic prospects.

SECTION 5

The State of Education - Whither improvement?

There are a number of issues which must be given attention in the education sector particularly at the primary, and lower secondary level of education if education is to contribute in any meaningful way to national development in Jamaica.

The vast majority of the 6-11 age group is enrolled in the primary and all-age schools with a small portion enrolled in private preparatory schools. Data from the Ministry of Education Youth and Culture (MOE&C) revealed that the average daily attendance rate at this level range from between 70 to 78 percent. It seems therefore, that a large number of students are not attending primary school in any consistent way. It would be interesting to know how many of these students are not attending schools at all. It is interesting also to note that a large percentage of students do not go on to pursue further studies after leaving primary schools. The administrators of the Jamaica Advance Movement for Adult Literacy (JAMAL) have reported that the program which should cater for persons over 15 years have been picking up hundreds of under 15 children who are not receiving any kind of formal education and who were either totally or functionally illiterate.

At the secondary level students are mostly spread out across the various types of secondary institutions. It is argued that the average non-attendance at the secondary schools approximates 20-25 percent of students enrolled. These students are enrolled in a secondary school but for one reason or another does not attend consistently. This drop in rate is in part a reflection of the low quality of the education system over the years.

On the other hand a large number of those who remain do not learn. This is because schools do not provide the minimum quality to promote learning. Added to this are the dilapidated buildings and overcrowded classrooms in which students and teachers have to work with limited resources. The continued economic crisis still constrains parental resources to education.

Another problem at the secondary level is the substantial disparity in terms of materials and other resource allocations in the new secondary and all-age schools compared with the secondary high schools. The reduction in expenditure has resulted also in some input to the education process being forgone; enough to reduce the quality of the education provided. Thus the financial situation and resource allocation in education in the 90s have shown very little improvement over the structural adjustment period of the 80s.

Table 14 Disparities among different types of secondary schools

School type	Teacher Quality (% with university degree) 1993/94	Per-student spending by govt., 1993/94 J\$	Student to teacher ratio, 1993/94
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Secondary High	29.8	11,274	18
Technical High	18.6	13,109	19
Comprehensive High	9.4	9,173	21
New Secondary	10.9	9,871	18
All-Age (grades 7-9)	6.0	4,701*	32

* Average spending for grades 1-9

Source: MOEYC *Educational Digest*, 1993/94 & IDB *The Financing of Education In Jamaica: Issues And Strategies*, March 1998

In 1994 the age group 14-29 constituted 29.7 percent of the labor force. Just under half of this group is unemployed. A high proportion of these youths is involved in unskilled jobs and is deprived of vocational skills.

Evidently the continued decline in resources to education from government and household has severely affected the quality of school leavers. For the economy to grow and rid itself of the burden of debt, the productive capacity of the economy must be improved. This can only be done through education in order to improve the quality of the labor force.

The government has pledged its commitment to the development of education and the growth of its human resource capacity. This commitment was underscored in the Prime Minister's budget presentation in 1992 when he emphasized that "the level of economic development in any country is invariably related to that country's investment in human resource development ... Education is the key to individual opportunity and our national development."*

Discussions and conclusion

The foregoing analysis of aspects of Jamaica's education system supports the view that there is a decline in educational quality at the two levels described during and after the adjustment period. Consequently the real amount spent on education has been declining; with the most vulnerable groups- the primary, all-age and new secondary schools bearing the brunt of the cutbacks. Enrollments in secondary education relative to the population are declining and students are still suffering from low quality education, as schools are not providing the minimum quality to promote learning. Quality refers to quality of inputs - teachers, textbooks, curriculum and teaching materials and the process.

-The continued decrease in the sector has forced the government to rely more on parents and the private sector for support. This however, still seem to be contributing to the inequality and inequity in the system.

-There is great emphasis on achieving universal enrollment at both levels of the system discussed with very little attention to educational quality. The result is a large number of students leaving primary and secondary level schools either illiterate or functionally illiterate with very little if anything to contribute to the ailing economy and productive sector. There is the further strain on the government to expand provisions of illiteracy and skills training programs which could have been avoided.

-Deteriorating teacher quality still pervades the system as the ages of untrained teachers used to alleviate the crisis in the 80s continue to rise sharply. The age of untrained teachers at the primary level has increased from 6.6 per cent in 1988/89 to 21.3 per cent in 1993/94 and at the secondary level 18 per cent of the teachers are untrained.

-The decline in household incomes in particularly the poor should have required the increased efforts from government to maintain levels of education compensating for these losses but education expenditure tended to decline in real terms. This expresses the fact that education was not a critical concern of adjustment policies.

-Low levels of funding for primary, all-age and new secondary schools has resulted in schools with poor physical conditions, overcrowded classrooms

Amid the continued gloomy economic picture, there are encouraging signs that effort is being made to improve standards and quality lost prior to and during the adjustment period. The Reform of Secondary Education (ROSE) and the Primary Improvement Project (PIEP) is designed to facilitate qualitative improvements in the first cycle secondary and primary level respectively.

Recommendations

-The government must recognize that at least nine years of schooling is a noble goal that must be attained. However, this cannot be accomplished with the current resources allocated to education. Every effort should be made to strengthen government's resource allocation for the delivery of basic education.

-The cost-sharing scheme should be refined at the secondary level to ensure that all secondary schools achieve a minimally adequate level of spending on essential operating inputs and to eliminate excessive disparities in operational spending.*

-There needs to be an increase in education's share of the total government budget paying particular attention to primary and secondary level in preparing adequate classrooms and stimulating learning environment.

-The ROSE program needs to be accelerated so that All-Age schools can be upgraded to improve the quality of education offered to students from poor backgrounds. The introduction of skills training should be a vital part of the curriculum since most students do not go on to further education.

-The cadre of trained teachers needs to be increased at this level in order to improve the quality of students. Success in national development depends on success in the education sector and failure to invest and improve the sector will condemn the country to perpetual underdevelopment.

Los Derechos Humanos en la Formulacion de La Politica Exterior de los EEUU: El Caso del Peru

Julissa Mantilla Falcón¹⁴⁹

Presentación

Cuando en su Discurso Inaugural de 1977 en la Universidad de Notre Dame, Jimmy Carter reafirmó el compromiso de su gobierno con el tema de los derechos humanos, considerándolo como un elemento fundamental en la formulación de la política exterior de los EEUU¹⁵⁰, muchos de los analistas políticos pensaron que una nueva era se iniciaba en las relaciones entre EEUU y el resto del mundo, especialmente en el caso de Latinoamérica, donde se verificaban gran parte de las violaciones de estos derechos. Y es que frente a la casi indiferencia de Nixon y Kissinger hacia el tema, se presentaba ahora una posibilidad diferente, que tenía sus antecedentes en la Alianza para el Progreso iniciada por el Presidente Kennedy hacia 1960¹⁵¹.

Pero, ¿fue realmente el inicio de una nueva era? ¿EEUU incorporó el tema de los derechos humanos como un instrumento primordial y definitivo en el manejo de sus relaciones exteriores? ¿Puede afirmarse que existe efectivamente una “política exterior norteamericana en materia de derechos humanos” o lo que realmente sucede es que el tema se ha manejado de diferente manera en función a factores como las diferentes entidades del gobierno norteamericano, otros intereses en juego y las diferentes administraciones?

El tema no sólo es fascinante y amplio, sino bastante complicado, especialmente si se tiene en cuenta la cantidad de elementos políticos que se conjugan en el sistema de gobierno de los EEUU, a los cuales deben sumarse los elementos legales que dan el marco de acción a las instituciones de gobierno, tanto a nivel internacional como a nivel interno.

Sin embargo, resulta importante profundizar en la materia porque sólo de esta manera se podrá establecer un nivel de negociación adecuado de parte de quienes tienen a su cargo el manejo de las relaciones exteriores de cada nación, especialmente en el caso de un país como el

¹⁴⁹La autora desea agradecer al Profesor Thomas Buergenthal, Director del International Rule of Law Institute de The George Washington University, por su asesoría en la elaboración de este trabajo. Demás está decir que cualquier error u omisión debe atribuirse exclusivamente a la autora. Asimismo, un profundo reconocimiento al Woodrow Wilson Center por el apoyo brindado para la realización de esta investigación.

¹⁵⁰ Jimmy Carter, “Commencement Address at the University of Notre Dame, May 22, 1977,” en Human Rights and American Foreign Policy, Donald P. Kommers and Gilbert D. Loescher (Indiana: University of Notre Dame Press, 1979, 333).

¹⁵¹ En líneas generales, puede decirse que la Alianza para el Progreso implicaba el compromiso de los EEUU en el apoyo en un programa de asistencia a largo plazo, orientado a facilitar el crecimiento económico, modernización social y democratización de América Latina. David Dent, US-Latin American Policymaking: A reference handbook (Greenwood Press, 1995, p. 258).

Perú en el cual los problemas en materia de derechos humanos han sido uno de los rasgos saltantes en nuestra imagen internacional por muchos años¹⁵².

Por todo ello, el presente trabajo pretende dar cuenta de cuáles son los principales elementos que deben tomarse en cuenta al tratar de entender cómo ha sido manejado el tema de los derechos humanos por el Gobierno de los EEUU en sus relaciones internacionales y, para el caso que nos interesa, con respecto del Perú.

En este sentido, iniciaremos nuestro trabajo dando cuenta de cuáles son los actores que tienen un rol predominante en la elaboración y ejecución de la política exterior norteamericana, esto es, la Rama Ejecutiva y Legislativa del Gobierno, así como la Administración de Justicia, explicando cuál es el rol que cumplen en relación al tema de los derechos humanos.

Posteriormente, haremos referencia del marco normativo que rige el tema de los derechos humanos en los EEUU, tanto a nivel internacional como en el ámbito interno.

Con esto claro, entraremos al estudio de las relaciones entre EEUU y el Perú, centrándose nuestro análisis en el Gobierno del Presidente Alberto Fujimori en sus dos períodos (1990-1995 y 1995-2000) y cómo es que todos los elementos anteriormente descritos se conjugan en este caso y cuáles son los temas que resultan prioritarios en las relaciones entre ambos países¹⁵³.

2. Principales Actores

Para esta investigación, nos centraremos en los actores que tienen el rol primordial en el manejo de las relaciones internacionales de los EEUU en el tema de los derechos humanos.

2.1 El Poder Ejecutivo

Según el Art. II de la Constitución de los EEUU, el Poder Ejecutivo está representado por el Presidente de los EEUU, el cual es elegido por un término de 4 años, al igual que el Vice-Presidente. Adicionalmente, existe lo que se denomina la Oficina Ejecutiva del Presidente, cuyas agencias integrantes varían en función a los objetivos de las diferentes administraciones. Entre estas agencias tenemos la Oficina de la Casa Blanca, la Oficina del Vice-Presidente, el Consejo de Asesores Económicos, el Consejo de Calidad Ambiental, el Consejo de Seguridad Nacional, la Oficina de Administración, la Oficina encargada de la Política Nacional de Control de Drogas y la Oficina del Representante de Comercio de los EEUU.

¹⁵² Por ello, uno de los objetivos de esta investigación es difundir el conocimiento adquirido y plasmado en este trabajo a nivel de las diferentes instancias que tienen que ver con la política exterior y el manejo del tema de los derechos humanos por parte del Gobierno Peruano, las diferentes ONGs, el medio académico, etc.

¹⁵³ Cabe destacar que adicionalmente al material bibliográfico revisado, para esta investigación se han realizado una serie de entrevistas con personalidades como Cinthia McClintock (George Washington University), Michael Shifter (Inter American Dialogue), Coletta Youngers (Washington Office on Latin America), Francisco Rivarola (Embajada del Perú en los EEUU), Beatriz Ramacciotti (Misión del Perú ante la OEA), José Miguel Vivanco (Human Rights Watch), entre otros.

Asimismo, tenemos el denominado Presidential Advisory System¹⁵⁴, el cual está integrado por un conjunto de Departamentos Ejecutivos, diseñados con el objetivo de asesorar al Presidente en cualquiera de los temas sobre los que solicite información. Ellos son los Departamentos de Estado, Agricultura, Comercio, Defensa, Educación, Energía, Salud y Servicios Humanos, Vivienda y Desarrollo Urbano, Interior, Trabajo, Transporte, Tesoro, Asuntos relativos a los Veteranos y la Oficina del Fiscal General.¹⁵⁵

2.1.1 El Presidente de los EEUU

Al Presidente le corresponde la responsabilidad general de la política exterior de los EEUU¹⁵⁶, lo cual hace que muchos autores lo consideren –junto con el sistema constituido por el Departamento de Estado, de Defensa, el Consejo de Seguridad Nacional y la Agencia Central de Inteligencia- el actor más importante en la formulación de la política exterior de los EEUU¹⁵⁷.

La Constitución, por su parte, establece en la Sección 2 del Artículo II que el Presidente es el Comandante en Jefe de las Fuerzas Armadas y de Marina y tiene el poder de celebrar tratados, siempre y cuando cuente con la asesoría y consentimiento de al menos dos tercios de los miembros del Senado. Asimismo, puede firmar Acuerdos Ejecutivos, sin necesidad de contar con la aprobación del Senado. De otro lado, el Presidente tiene el poder de nombrar a los funcionarios relacionados con la política exterior, tales como los Secretarios de Estado y de Defensa, el Director de la CIA y de la Agencia de Información de los EEUU, de los embajadores, etc.¹⁵⁸

A estas atribuciones que pueden denominarse “formales”, cabe añadir las “informales”, es decir, aquéllas que proceden de las necesidades de cada contexto y que tienen que ver con el manejo de información, uso de los medios de comunicación, administración de fondos públicos, etc.¹⁵⁹ En general, puede decirse que el Ejecutivo tiene muchas herramientas en el manejo de la política exterior de los EEUU¹⁶⁰: diplomacia, sanciones relativas a la suspensión de la ayuda

¹⁵⁴ Si bien este documento se elabora en español, en algunas circunstancias se han mantenido ciertas denominaciones en inglés, especialmente cuando se trate de términos técnicos o cuando se corría el riesgo de perder el sentido original de la frase.

¹⁵⁵ Officer of the Federal Register. National Archives and Records Administration, The United States Government Manual 1997-1998, (Washington, DC: 1997, p. 89).

¹⁵⁶ Officer of the Federal Register. National Archives and Records Administration, Op. Cit., p. 389.

¹⁵⁷ Howard Wiarda, “Foreign Policy without Illusions: How Foreign Policy-Making Works and Fails to Work in the United States” in David Dent, Op. Cit., p. xxiii.

¹⁵⁸ Ibid., p. 250.

¹⁵⁹ Louis Henkin, Foreign Affairs and the United States Constitution (Oxford: Clarendon Press, 1996, p. 31).

¹⁶⁰ Donald Fraser, “Congress’s Role in the making of International Human Rights Policy” en Human Rights and American Foreign Policy, ed. Donald P. Kommers and Gilbert D. Loescher (Indiana: University of Notre Dame Press, 1979, p. 251).

militar y bilateral, suspensión de créditos provenientes de las financieras internacionales en las cuales los EEUU tienen gran influencia, etc.

2.1.2 El Departamento de Estado

Para el tema que nos interesa, debemos detenernos en el Departamento de Estado, que fue creado por el Congreso hacia 1789 con la función primordial de asesorar al Presidente en la formulación y ejecución de la Política Exterior, con el objetivo fundamental de promover la seguridad y bienestar de los EEUU. La labor primordial de los funcionarios del Departamento de Estado es analizar los hechos relacionados con los intereses de los EEUU en el exterior, haciendo recomendaciones para la ejecución de la política existente sobre el tema y para el diseño de políticas futuras.¹⁶¹

En el desarrollo de su labor, los funcionarios del Departamento de Estado se relacionan permanentemente con miembros de otros Departamentos y del Congreso; se vinculan con gobiernos extranjeros; representan a los EEUU en la ONU y en más de 50 organizaciones internacionales y participan en más de 800 conferencias internacionales.¹⁶²

Este Departamento se estructura en base a seis Bureaus Regionales, divididos geográficamente en función a los asuntos exteriores de los EEUU en cada área: África, Europa y Canadá, Asia Oriental y el Pacífico, Latinoamérica y el Caribe, Cercano Oriente y el Sur de Asia. Cada Bureau está encabezado por los Secretarios Asistentes, quienes reciben asistencia de los Directores de Oficina y los Country Desks, funcionarios que son responsables de la coordinación entre Departamentos y que trabajan cercanamente con las Embajadas de los EEUU a lo largo del mundo y con las Embajadas extranjeras en Washington¹⁶³.

A nuestro juicio, la importancia del Departamento de Estado en materia de derechos humanos, se debe a que esta entidad ha venido estableciendo los lineamientos de gobierno a través de sus Reportes Anuales al Congreso con relación a las prácticas sobre derechos humanos en los diferentes países¹⁶⁴, los cuales son usados como un recurso al momento de la toma de decisiones en la política exterior de los EEUU, especialmente a la hora de distribuir la ayuda humanitaria.

Estos Reportes se elaboran en cumplimiento de la Sección 116 (d) (1) y la Sección 502 (B) de la Foreign Assistance Act, y la Sección 505 (c) de la Trade Act de 1974.

¹⁶¹ En la actualidad la Secretaría del Departamento de Estado la ostenta Madeleine K. Albright. Asimismo, se debe mencionar que el Sub-Secretario para los temas de Democracia, Derechos Humanos y Trabajo es John Shattuck, mientras que el Sub-Secretario para Asuntos Interamericanos es Jeffrey Davidow. *Officer of the Federal Register. National Archives and Records Administration, Op. Cit., p. 389.*

¹⁶² Ibid. p. 389-390.

¹⁶³ Dispatch, Noviembre 23, 1992, 848.

¹⁶⁴ Dwayne O. Leslie, “The Human Spirit Cannot Be Locked Up Forever: An analysis of the New Agenda on Human Rights from the Bush Administration”, *Florida Journal of International Law* 6, no. 1 (1990): 124.

Para la preparación de estos Reportes¹⁶⁵, las Embajadas de los EEUU a lo largo del mundo reúnen la información correspondiente al año anterior y para ello utilizan diferentes fuentes: juristas, representantes de las fuerzas armadas, miembros de sindicatos, promotores de derechos humanos, etc. Esta información es enviada a Washington, donde es revisada cuidadosamente por el Bureau correspondiente y complementada por los datos obtenidos por el resto de Oficiales del Departamento de Estado. Básicamente, los Reportes cubren la situación de los derechos civiles y políticos, especialmente en lo que se refiere a los casos de tortura, detención prolongada sin expresión de cargos, desapariciones, etc. Asimismo, se ocupa de los derechos de libre expresión, el derecho de asociación, las condiciones de trabajo, etc.

El primer grupo de Reportes se dio hacia 1977 y provocó las reacciones airadas de los países que fueron criticados en los mismos; incluso, cinco de los países latinoamericanos que fueron cuestionados expresaron su rechazo total a la ayuda militar proveniente de los EEUU. Al interior del Gobierno de los EEUU las reacciones no se hicieron esperar, ya que muchos funcionarios consideraban que estos documentos provocarían fricciones con los países involucrados y generarían inconvenientes para los EEUU¹⁶⁶.

Resulta interesante referirse al Bureau para la Democracia, Derechos Humanos y Trabajo cuyo antecedente se encuentra en el Coordinador para Asuntos Humanitarios creado por el Congreso hacia 1976 con la responsabilidad de ocuparse de los temas de derechos humanos a nivel del Departamento de Estado. Sin embargo, este funcionario no resultó un elemento importante para la política exterior de los EEUU, debido a que contaba con un staff pequeño, no lideraba un bureau independiente y estaba excluido de las decisiones referidas a la asistencia por razones de seguridad¹⁶⁷.

Hacia 1977, el Congreso dispuso que el Coordinador se constituyese en un Asistente del Secretario de Estado para el tema de Derechos Humanos, con un status comparable al de los Bureaus Regionales y la facultad de participar en las decisiones sobre asistencia por razones de seguridad¹⁶⁸. Durante la Administración Clinton, se cambió la denominación del Bureau de Derechos Humanos y Asuntos Humanitarios por la de Bureau para la Democracia, Derechos Humanos y Trabajo, asignándosele la responsabilidad de la preparación de los Reportes sobre Derechos Humanos en el marco de la Sección 116 y 502 (B)¹⁶⁹

¹⁶⁵ Al respecto, se recomienda revisar: Department of State, Country Reports on Human Rights Practices for 1983, (Washington, DC: U.S. Congress, 1984).

¹⁶⁶ Joshua Muravchik, *The Uncertain Crusade. Jimmy Carter and the Dilemmas of Human Rights Policy* (Hamilton Press, 1986, p. 231).

¹⁶⁷ Jeffrey D. Merrit, "Unilateral Human Rights Intercession: American Practice under Nixon, Ford and Carter," en *The Diplomacy of HHRR*, ed. David D. Newsom (Washington, DC: University Press of America, 1986, p. 45). Ver también: Roberta Cohen, "Human Rights Decision-Making in the Executive Branch: Some Proposals for a Coordinated Strategy," en *Human Rights and American Foreign Policy*, ed. Donald P. Kommers and Gilbert D. Loescher (Indiana: University of Notre Dame Press, 1979, pp. 219-220).

¹⁶⁸ Roberta Cohen, Op. Cit., p. 261-262.

¹⁶⁹ Thomas Buergenthal, *International Human Rights in a Nutshell* (Minnesota: West Publishing Co., 1995, p. 308).

2.1.3 El discurso sobre los derechos humanos en las diferentes administraciones

Es importante señalar cómo el discurso en relación al papel que le corresponde al tema de los derechos humanos en la política exterior ha variado a través de las diferentes administraciones de gobierno, tomando como punto de partida la prioridad que se le daba a aspectos como la soberanía y la negación del intervencionismo –elementos que priman en el discurso de Nixon y Kissinger¹⁷⁰– hasta la preocupación y relevancia que se le da a la materia durante el mandato del Presidente Jimmy Carter. A continuación, haremos una breve referencia al manejo del tema en las más recientes administraciones norteamericanas.

a. Jimmy Carter (1977-1981)

Uno de los principales rasgos del Gobierno de Carter fue su cercanía a los países latinoamericanos, al punto que uno de sus primeros actos al asumir su mandato fue el reinicio de las negociaciones con Panamá en relación al Canal.¹⁷¹

El Presidente Carter ha sido reconocido por la mayoría de los sectores políticos como el principal impulsor del tema de los derechos humanos, siendo su preocupación central lograr que los EEUU ratifiquen los principales tratados internacionales sobre el tema.¹⁷² Asimismo, impulsó muchas de las actividades que la OEA venía desarrollando en este tema y apoyó la labor de investigación de las violaciones de derechos humanos a cargo de la ONU¹⁷³. Asimismo, se le

¹⁷⁰ Como ejemplo, podemos citar uno de los discursos de Kissinger quien, al explicar su posición ante los gobiernos acusados de violaciones contra los derechos humanos, sostiene: “Doquiera que podamos, estamos tratando de orientar estos regímenes en una dirección que resulte compatible con nuestros valores. Pero pretender que podemos simplemente expresar cuáles son nuestros valores y transformar el mundo tiene un alto riesgo de llevarnos hacia una política de constante intervencionismo en el mundo entero y entonces nos veríamos afectados con las consecuencias” (Traducción propia). Jeffrey D. Merrit, Op. Cit., p.45. Ver también: Roberta Cohen, Op. Cit., p. 216-246.

¹⁷¹ David Dent, Op. Cit., p. 264.

¹⁷² Nos estamos refiriendo al Pacto Internacional de Derechos Civiles y Políticos, la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial, el Pacto Internacional de Derechos Económicos, Sociales y Culturales y la Convención Americana de Derechos Humanos. Véase al respecto: Marian Nash, “Contemporary Practice of the United States relating to International Law”, American Journal of International Law ‘89 no. 1 (1995): 109; Amy Young, “Human Rights Policies of The Carter and Reagan Administrations: An Overview”, Whittier Law Review 7, no. 3 (1985): 690.

¹⁷³ John Salzberg, “The Carter Administration and Human Rights”, en The Diplomacy of HHRR, ed. David D. Newsom (Washington, DC: University Press of America, 1986, p. 62). En este sentido, cabe referir que hacia 1970, durante el Gobierno ya había apoyado a la ONU, al haberse respaldado la Resolución 1503 del ECOSOC. Hurst Hannum y Dana D. Fischer, U.S. Ratification of the International Covenants on Human Rights (Washington, DC: American Society of International Law, 1983, p. 14). Ver también: Sandra Vogelgesang, “What price principle? US Policy on Human Rights,” en Human Rights and American Foreign Policy, ed. Fred E. Baumann (Ohio: Public Affairs Conference Center, 1982, p. 17).

reconoce el mérito de haber rechazado el argumento sostenido por Kissinger, según el cual se decía que la promoción de los derechos humanos ponía en peligro otros objetivos de la política exterior norteamericana¹⁷⁴.

Sin embargo, una de las principales críticas que la Administración Carter ha recibido se centra en la medida que tuvo dicho gobierno para denunciar a ciertos regímenes como violadores de derechos humanos, crítica que ha sido una constante en la mayor parte de los estudios revisados, señalándose que allí donde existían otros intereses en juego –como por ejemplo la Seguridad Nacional- el tema de los derechos humanos pasaba a segundo plano, originando una suerte de “doble standard” ampliamente cuestionado por la mayor parte de analistas y defensores de dichos derechos¹⁷⁵. Esto se comprueba, por ejemplo, en el hecho que el Gobierno de Carter nunca calificó formalmente a ningún gobierno como violador de derechos humanos en el marco de la Sección 502 (B) –de la que nos ocuparemos más adelante- y, en aquéllos casos en que en que se cortaba o disminuía la ayuda de los EEUU por haber encontrado responsables a los gobiernos de abusos contra los derechos humanos, no se ponía el énfasis adecuado ni se denunciaban estos hechos abiertamente¹⁷⁶.

En este sentido, podemos señalar que en muchas circunstancias, el Gobierno de Carter tuvo que retractarse de sus críticas y acciones en contra de ciertos regímenes violadores de derechos humanos, especialmente si consideraba que otros objetivos de su política exterior se ponían en riesgo¹⁷⁷.

Sin embargo, esta situación correspondía en gran medida a los problemas que el Presidente tuvo que enfrentar a nivel interno en relación a la inclusión de los derechos humanos en el diseño de la política exterior de los EEUU. Pensemos, por ejemplo, que Carter tuvo que enfrentarse a los funcionarios del Servicio Exterior que tenían a su cargo el manejo de los Bureaus correspondientes a África, Asia Oriental, Europa, Latinoamérica y el Cercano Oriente. Estos funcionarios consideraban que para el desarrollo efectivo de las relaciones de los EEUU

¹⁷⁴ Roberta Cohen, Op. Cit., p. 222-223.

¹⁷⁵ Ver al respecto: Dwayne O. Leslie, Op. Cit., p. 126; John P. Salzberg, Op. Cit., 1986, p. 64; Roberta Cohen, Op. Cit., p. 224-225; Edward S. Greenberg, “In order to save it, we had to destroy it: Reflections on the United States and International Human Rights,” en *Human Rights and American Foreign Policy*, ed. Fred E. Baumann (Ohio: Public Affairs Conference Center, 1982, p. 62-63).

¹⁷⁶ Durante la Administración Carter, sólo ocho países sufrieron el corte de la ayuda financiera de los EEUU, en virtud de la aplicación de la legislación sobre derechos humanos: Argentina, Bolivia, El Salvador, Guatemala, Haití, Nicaragua, Paraguay y Uruguay.

¹⁷⁷ En el caso concreto de América Latina, se puede referir el caso de El Salvador, nación hacia la cual la Administración Carter suspendió la ayuda económica de su Gobierno en vista de la crítica situación de los derechos humanos, ayuda que tuvo que restablecer dos semanas después, debido a una inminente ofensiva marxista. Diane F. Orientlicher, “The Power of an Idea: The Impact of U.S. Human Rights Policy” *Transnational Law and Contemporary Problems* 1 (1991): 50-51. Ver también: Richard B. Bildner, “The Status of International Human Rights Law: An Overview,” en *International Human Rights Law and Practice*, ed. James Tuttle (Philadelphia: 1978, p. 1-13).

con las regiones que tenían a su cargo, la ayuda militar y venta de armas tenían un rol fundamental, por lo cual se oponían a la aplicación efectiva de la Sección 502 (B)¹⁷⁸.

Al respecto, resulta útil citar a Orrego Vicuña, para quien el tema de los derechos humanos fue visto como una cuestión estratégica, es decir, que respondía a los intereses políticos, económicos y militares de los EEUU, más que a motivos humanitarios, todo lo cual hizo que las sanciones que se aplicaron por dicho concepto pudieran ser vistas como una suerte de imperialismo norteamericano sobre la región¹⁷⁹.

b. Ronald Reagan (1981-1989)

La Administración Reagan se separa radicalmente de la posición de Carter. Así, el punto de partida en las relaciones exteriores de los EEUU durante este gobierno se encuentra en la distinción que se plantea entre gobiernos “totalitarios” y “autoritarios”, como lo señala Jeane Kirkpatrick, quien ocupara el cargo de Embajadora de los Estados Unidos ante la ONU durante esta administración.¹⁸⁰

Para esta autora, mientras un gobierno totalitario era aquél que desconocía radicalmente todas las normas internacionales en materia de derechos humanos, un gobierno autoritario podría derivar en una democracia en la cual los derechos de los individuos serían finalmente respetados y, por lo tanto, eran países que merecían el respaldo de los EEUU. Este es el argumento que fue utilizado para justificar el apoyo de los EEUU hacia ciertos gobiernos que eran acusados de graves violaciones de derechos humanos.

En esta línea de pensamiento debe entenderse las críticas de la autora hacia la Administración Carter, la cual – a juicio de Kirkpatrick- dirigió su política exterior en la materia contra los países “no democráticos pero aliados” de los EEUU, con lo cual habría disminuido la influencia de los EEUU en el mundo¹⁸¹.

¹⁷⁸ Roberta Cohen, Op. Cit., p. 257; David P. Forsythe, *Human Rights and US Foreign Policy: Congress Reconsidered* (Florida: University of Florida Press, 1988, p. 53).

¹⁷⁹ Francisco Orrego Vicuña, “Domestic Policies and external influences on the Human Rights debate in Latin America,” en *Foreign Policy and Human Rights. Issues and Responses*, ed. R.J. Vincent (Cambridge University Press: p. 109).

¹⁸⁰ Jeane J. Kirkpatrick, “Dictatorships and Double Standards,” en *Human Rights and US Human Rights Policy. Theoretical approaches and some perspectives on Latin America*, ed. Howard J. Wiarda (American Enterprise Institute Studies in Foreign Policy, 1982, p. 5-29).

¹⁸¹ Un ejemplo de ello se encuentra en las críticas que recibió Carter por parte de la Administración Reagan en el caso de Nicaragua, cuando se dijo que el ex Presidente había puesto en juego los intereses de Seguridad Nacional de los EEUU al haber quitado su apoyo a Somoza, a quien se calificaba como un “autécrata moderado”. Jeane J. Kirkpatrick, “Human Rights and Foreign Policy,” en Fred E. Baumann, Op. Cit., p. 5.

Como era de esperarse, la tesis de Kirkpatrick ha recibido severas críticas. Entre los autores que se le oponen, podemos mencionar a Shestack¹⁸² quien sostiene que el mantener la asistencia hacia un gobierno autoritario, conlleva mantener ese autoritarismo y de ningún modo favorecer la vuelta hacia una democracia.

En líneas generales, podemos resumir los principios¹⁸³ que guiaron la Administración Reagan en materia de política exterior:

- a) La primacía de la Seguridad Nacional sobre los derechos humanos¹⁸⁴.
- b) La preferencia por la diplomacia moderada frente a la abierta confrontación.
- c) La efectividad como objetivo primordial.
- d) La ausencia de una real preocupación por las normas internacionales¹⁸⁵.
- e) La prevalencia de los derechos civiles y políticos sobre los económicos y sociales¹⁸⁶.
- f) La promoción de los derechos humanos como una “guerra” al comunismo¹⁸⁷.

Cabe en este punto hacer una breve comparación entre ambas administraciones, ya que en los dos casos se presenta una dicotomía entre el discurso y la práctica, no obstante la actitud de Carter de anunciar un mayor compromiso con el tema.

¹⁸² Jerome J. Shestack, “An Unsteady Focus: The Vulnerabilities for the Reagan Administration’s Human Rights Policy,” Harvard Human Rights Yearbook 25 (1989): 29.

¹⁸³ Amy Young, Op. Cit., p. 695-696.

¹⁸⁴ En este sentido se expresa Forsythe en relación a la actitud del Gobierno de Reagan frente a los regímenes de Filipinas, Chile y Haití. Para este autor, la actitud de Reagan obedecía más a la protección de la Seguridad Nacional de los EEUU que a la preocupación por los récords sobre derechos humanos de estos gobiernos. David Dent, Op. Cit., p. 443.

¹⁸⁵ Forsythe, por ejemplo, sostiene que la Administración Reagan consideraba el Derecho Internacional como un “self-serving afterthought to policy decisions”. David Forsythe The Politics of International Law. US Foreign policy Reconsidered (Lynne Rienner Publishers, 1990, p. 2-3).

¹⁸⁶ Al respecto, es famoso el Memorándum Haig en el cual Richard Kennedy sugiere que se mantenga el tema de los derechos humanos en la agenda política de los EEUU pero definiéndolos de manera tal que sólo abarquen el ámbito de las libertades individuales. David Dent, Op. Cit., p. 442.

¹⁸⁷ Esa política anti-comunista se vio reflejada claramente en la actitud de la Administración Reagan hacia América Central, donde –entre 1981 y 1989– se emplearon 5 billones de dólares en ayuda militar y económica en El Salvador, con el objetivo de prevenir una victoria de las guerrillas de izquierda. Asimismo, el Gobierno de los EEUU organizó y financió el ejército de los “contras” que desarrollaron la guerra contra los sandinistas desde Honduras, actividad para la cual recurrió al apoyo de otros gobiernos y a la venta sobrevalorada de armas a Irán, con cuyos excedentes pudo financiar esta campaña. Ibid., p. 266.

La mayor diferencia se presenta en el concepto de derechos humanos que se maneja en cada gobierno. Así, la Administración Carter incluye en su definición no sólo los derechos civiles y políticos, sino también los económicos y sociales. Por otro lado, se sostiene que mientras en la Administración Carter se condenaba los “síntomas” de las manifestaciones de las violaciones de los derechos humanos (tortura, desapariciones, etc.), el propósito de Reagan era combatir lo que ellos consideraban sus causas, esto es, el comunismo¹⁸⁸.

Para ello, basta comparar los Reportes Anuales de 1979 y 1982, producidos por el Departamento de Estado¹⁸⁹. En el primero de ellos, se incluyen tres categorías de derechos:

- a) El derecho a estar libre de cualquier abuso de los gobiernos que atenten contra la integridad de la persona (tortura, trato cruel, inhumano o degradante, arresto o prisión arbitraria, negación de un juicio público, etc.)
- b) El derecho a la satisfacción de las necesidades vitales como comida, vivienda, salud y educación.
- c) El derecho a disfrutar de las libertades civiles y políticas (libertad de expresión, prensa, religión, etc.); a participar en el gobierno; a viajar libremente dentro y fuera del país; a estar libre de la discriminación por raza o sexo.

En el segundo Reporte, por su parte, se hace referencia a la dificultad de interpretar la información relativa a las condiciones económicas y sociales y, además, se dice que esta información desviaba la atención del núcleo de los derechos humanos, el cual estaba constituido por los derechos civiles y políticos.

c. George Bush (1989-1993)

Con la llegada de George Bush al poder, el énfasis en el tema de los derechos humanos estuvo dado hacia países como El Salvador y Guatemala, los cuales prosiguieron recibiendo ayuda de la administración norteamericana, aunque en un nivel más reducido, debido a su récord de abusos en materia de derechos humanos.

En esta época, uno de los hechos más resaltantes fue el Informe Publicado por la llamada Comisión de la Verdad, auspiciada por la ONU, la cual denunció que un 90% de los abusos contra los derechos humanos cometidos en El Salvador hacia 1980 eran de responsabilidad de las fuerzas armadas y de los llamados “escuadrones de la muerte”, los cuales estaban vinculados con las fuerzas de seguridad que las Administraciones Reagan y Bush habían respaldado¹⁹⁰. Otro de los hechos que destacan es el respaldo que la Administración Bush otorgó al Plan de Paz en

¹⁸⁸ Diane F. Orentlicher, Op. Cit., p. 53.

¹⁸⁹ Cyrus Vance, “Law Day Address on Human Rights Policy” en Human Rights and American Foreign Policy, ed. Donald P. Kommers and Gilbert D. Loescher (Indiana: University of Notre Dame Press, 1979, p. 309-315).

¹⁹⁰ David Dent, Op. Cit., p. 445.

Centroamérica, diseñado por el Presidente de Costa Rica, Oscar Arias, hacia 1987, así como la suspensión de la ayuda económica hacia “los contras”, hasta que se verificaran las elecciones en Nicaragua, las cuales se llevaron a cabo en 1990¹⁹¹.

Sin embargo, uno de los puntos críticos en relación a esta Administración se encuentra en el recuento de serios hechos concretos que demuestran que su compromiso con el tema de los derechos humanos no era tan serio como se pretendía. Tomemos como ejemplo la actitud complaciente que asume ante las Filipinas, cuyo gobierno fue acusado reiteradamente de serias violaciones de derechos humanos, la obstrucción de la investigación de ciertas muertes en El Salvador y su oposición hacia el endurecimiento de las sanciones contra China por los hechos en la Plaza Tíannamen¹⁹².

Conviene mencionar el Reporte Anual de 1990 del Departamento de Estado, en el cual se expresa que el concepto de derechos económicos, sociales y culturales resulta sumamente confuso. Asimismo, dicho Reporte señala que –con la excusa de satisfacer estos derechos- los gobiernos represivos acostumbran denegar el derecho a la integridad de sus ciudadanos, así como los derechos civiles y políticos. Por esta razón, la Administración reafirmó en este Reporte su voluntad de centralizar su atención en las violaciones de estos derechos ya que “si estos derechos no resultan protegidos, según demuestra la experiencia, el desarrollo económico tampoco será posible”. Asimismo, se considera como de interés nacional la promoción de los procesos democráticos con el objetivo de favorecer el respeto de los derechos humanos¹⁹³.

Complementariamente a lo anterior, podemos señalar que hacia 1992 se distinguen cinco prioridades básicas de la Administración Bush en relación a América Latina y El Caribe¹⁹⁴: la consolidación de la democracia y el progreso de los derechos humanos; el impulso de las reformas económicas y de desarrollo con las cuales se beneficie a la población pobre; la promoción de la paz en la región; la liberación del hemisferio del flagelo de las drogas; y la colaboración con las naciones del hemisferio para proteger el medio ambiente y detener el desarrollo de los misiles y de las armas nucleares alrededor del mundo.

d. William Clinton (1993-1998)

¹⁹¹ Ibid., p. 267.

¹⁹² Nos referimos al caso de los seis sacerdotes jesuitas asesinados en El Salvador en 1989, sucesos sobre los cuales se acusó a los oficiales norteamericanos de estar previamente informados. Diane F. Orentlicher, Op. Cit., p. 61. En el caso de China, sirva como ejemplo el discurso del Sub-Secretario para Asuntos Políticos, Arnold Kanter por el Día de los Derechos Humanos en 1992, cuando tras declarar que su gobierno había adoptado una férrea posición de condena contra los abusos del Gobierno Chino en materia de derechos humanos, sostiene que una política de aislamiento o confrontación con esta nación sería contraproducente. Por ello, sostuvo Kanter en esa oportunidad, EEUU prefería continuar involucrando al Gobierno de China en el tema de los derechos humanos, para lograr un cambio de actitud en ese tema mediante el apoyo a la liberalización de la economía china. Arnold Kanter, “America’s Commitment to Human Rights,” Dispatch, Diciembre 21, 1992, 904.

¹⁹³ Traducción propia. Dispatch, Febrero 11, 1991, 104.

¹⁹⁴ Bernard Aronson, “U.S. Policy and Funding Priorities in Latin America and The Caribbean for FY 1992”, Dispatch, Marzo 18, 1991, 187.

Desde el inicio de su gestión, el Presidente Clinton resaltó la interrelación existente entre los asuntos internos de los EEUU y los temas internacionales, y reafirmó el rol de liderazgo que su país mantiene¹⁹⁵. Por su parte, el Secretario de Estado Christopher al momento de presentarse ante el Congreso y repasar los cambios que caracterizan la nueva era, reconoce los nuevos retos en materia de derechos humanos, relacionados con la protección hacia las minorías étnicas y los disidentes políticos. Asimismo, da cuenta de los principales pilares sobre los que descansaría la política exterior a cargo de su gobierno: la seguridad económica de los EEUU, la preservación del poderío militar de los EEUU y la promoción de la democracia a lo largo del mundo¹⁹⁶.

Estos ideales fueron reafirmados en el discurso de Alexander Watson al momento de presentarse ante el Congreso como el nuevo Secretario Asistente para Asuntos Interamericanos. En dicha oportunidad, al momento de referirse a la democracia a nivel de los países latinoamericanos¹⁹⁷, Watson hizo mención del problema del narcotráfico como una de las mayores amenazas a las democracias latinoamericanas. Posteriormente, se añadirá como cuarto principio de la política exterior de los EEUU la intención de desarrollar sólidas relaciones con el resto de potencias, tanto con los aliados en Europa Occidental y Japón, como con los adversarios que se tenía en Rusia y China¹⁹⁸.

Poco a poco, el discurso relativo a la política exterior y a los derechos humanos va centrándose en los esfuerzos por combatir el crimen organizado, el tráfico de drogas y el terrorismo internacional, manteniéndose la prioridad de la promoción de la democracia e incluyéndose las medidas destinadas a preservar el medio ambiente¹⁹⁹.

Al respecto, resulta interesante revisar los Dispatchs del Departamento de Estado correspondientes a 1997 y 1998²⁰⁰, en los cuales se aprecia claramente cómo en las prioridades de los EEUU, Latinoamérica (y lógicamente el Perú) ha dejado de tener importancia en todo aquello que no tenga que ver con la lucha antidrogas. En el tema de los derechos humanos, por ejemplo, China mantiene relevancia, lo cual se demostró con la reciente visita del Presidente Clinton a ese país. Asimismo, en lo que tiene que ver con la lucha contra el crimen internacional, los EEUU han impulsado la creación del Tribunal Penal Internacional destinado a juzgar a los responsables de genocidio, crímenes de guerra, crímenes contra la humanidad, etc.²⁰¹. En cuanto

¹⁹⁵ Dispatch, Enero 25, 1993, 45.

¹⁹⁶ Dispatch, Enero 25, 1993, 46.

¹⁹⁷ Dispatch, Mayo 24, 1993, 384.

¹⁹⁸ James B. Steinberg, “Policy and Principles: The Clinton Administration’s Approach,” Dispatch, Febrero 5, 1996, 6.

¹⁹⁹ Madeleine Albright, “Building a framework for American Leadership in the 21st Century,” Dispatch, Febrero 1997, 8-9.

²⁰⁰ Para ello, recomendamos revisar: <http://www.usa.gov>, página que contiene los Dispatch correspondientes a 1997 y 1998.

²⁰¹ David J. Scheffer, “Responding to Genocide and Crimes against Humanity,” Dispatch, Mayo, 1998, 23.

a democracia se refiere, la situación en Arzebaijan, Burma, Belarus, Turkmenistán, Armenia y Ucrania, recibe la mayor atención por parte de los EEUU.

En el caso concreto de Latinoamérica, las prioridades en las relaciones con EEUU son la promoción del libre comercio y de la integración económica; la consolidación de la democracia; el combate al tráfico de drogas y el desarrollo de programas de desarrollo sostenible y disminución de la pobreza con el objetivo de mejorar los estándares de vida de los pobladores de la región²⁰².

2.2 El Congreso de los EEUU

El segundo actor que interviene en el tema, es el Congreso de los EEUU, el cual está constituido por el Senado y la Cámara de Representantes, tal como lo establece el Artículo I de la Constitución norteamericana. En líneas generales, podemos indicar que el Senado está compuesto por 100 miembros, los cuales son elegidos por un término de 6 años, mientras que los miembros de la Cámara de Representantes son 435 y son elegidos por un período de 2 años.²⁰³

Al interior del Congreso existe una serie de Comités Permanentes y Especiales, pertenecientes tanto al Senado como a la Cámara de Representantes, los cuales pueden estar compuestos por miembros de ambos.

Ahora bien, en lo que se refiere a las atribuciones del Congreso sobre política exterior, podemos mencionar la Sección 8 del Artículo I de la Constitución, la cual señala que las facultades del Congreso en esta materia están relacionadas básicamente con el comercio con otras naciones y la declaración de guerra.

En relación al tema de los derechos humanos, el Congreso ha jugado un rol determinante a través de las Audiencias de discusión -las cuales permitieron atraer la atención de la opinión pública sobre el tema- y el dictado de legislación interna estableciendo los estándares legales sobre derechos humanos que el Ejecutivo usará al momento de elaborar los programas de asistencia económica al resto de países²⁰⁴.

Debe resaltarse que entre 1973 y 1978 se celebraron más de 150 audiencias destinadas a evaluar las relaciones de los EEUU con el resto de gobiernos²⁰⁵, las cuales constituyeron el punto de partida de la llamada “diplomacia de los derechos humanos” a nivel del Departamento de Estado²⁰⁶.

²⁰² Jeffrey Davidow, “US Foreign Policy Objectives in Latin America and the Caribbean,” Dispatch, marzo/abril 1997, 29.

²⁰³ Officer of the Federal Register. National Archives and Records Administration, Op. Cit., p. 28.

²⁰⁴ Donald Fraser, Op. Cit., p. 247.

²⁰⁵ Entre ellos tenemos: Chile, Nicaragua, El Salvador, Argentina, Cuba, Filipinas, Corea del Sur, Indonesia, Sudáfrica, Israel y URSS.

De esta manera, el Congreso se aseguraba que –no obstante la no ratificación de los tratados sobre derechos humanos- los EEUU se vieran obligados a exigir la observancia de los estándares internacionales sobre derechos humanos en sus relaciones bilaterales²⁰⁷.

Es importante notar que la influencia del Congreso en política exterior tiene que ver también con el control que tiene esta institución sobre el Presupuesto Federal, específicamente en el presupuesto de las Agencias que ejecutan la Política Exterior y los fondos que financian los programas de asistencia desarrollados por los EEUU. Asimismo, el Congreso legisla en temas de inmigración, comercio exterior y acuerdos monetarios internacionales²⁰⁸.

Cabe mencionar, de otro lado, que la legislación relativa a la política exterior es elaborada con la participación de los miembros de los respectivos Comités, entre los cuales, los mas importantes son la Cámara de Asuntos Exteriores y el Comité de Relaciones Exteriores del Senado.

Al respecto, algunos autores como Henkin²⁰⁹, le atribuyen al Congreso un rol más importante que el que tiene el Presidente en la política exterior e, incluso, este autor llega a sostener que el Presidente conduce la política exterior en base a lo diseñado por el Congreso.

Fraser, por su parte, resume el rol del Congreso en relación a los derechos humanos, en los siguientes hechos²¹⁰:

- a) La atribución de mayor importancia a la actuación en derechos humanos de los gobiernos receptores de ayuda militar y económica.
- b) La creación del Coordinador para Derechos Humanos y Asuntos Humanitarios en el Departamento de Estado.
- c) El establecimiento de los Reportes en derechos humanos como una función regular de las embajadas norteamericanas a lo largo del mundo.
- d) La presión ejercida sobre el Departamento de Estado para tomar posiciones en las Audiencias relativas a la situación de derechos humanos en los diferentes países.

De otro lado, corresponde hacer una breve referencia la actuación de algunos legisladores que tuvieron un rol primordial en el manejo del tema de los derechos humanos en la agenda política norteamericana.

²⁰⁶ David D. Newsom, Op. Cit.

²⁰⁷ Diane F. Orentlicher, Op. Cit., p. 47-48.

²⁰⁸ Dispatch, Noviembre 23, 1992, p. 848 .

²⁰⁹ Louis Henkin, Op. Cit., p. 79.

²¹⁰ Donald Fraser, Op. Cit., p. 252-253.

En este sentido, podemos mencionar al Senador Bricker, líder de un movimiento que hacia los años 50 buscaba modificar la Constitución norteamericana de manera que los EEUU no pudieran adherirse a nuevos tratados sobre derechos humanos. El fundamento de este movimiento era que los derechos humanos correspondían a la jurisdicción interna de cada nación y, por lo tanto, la participación de los EEUU en este tema implicaba el desarrollo de una clara política intervencionista.²¹¹

Como consecuencia de este movimiento, se formuló la conocida “Enmienda Bricker” la cual restringía las facultades del gobierno para suscribir tratados que pudieran infringir los poderes de los diferentes Estados o pudieran ser aplicables a nivel de las cortes nacionales sin la debida legislación que las implementara. Si bien dicha Enmienda no fue aprobada –por solo un voto- las consecuencias de la misma fueron muy graves, ya que trajo consigo la decisión de la Administración Eisenhower –en palabras de su Secretario de Estado John F. Dulles- de no adherirse en lo sucesivo a ningún tratado sobre derechos humanos²¹².

Otra figura que merece mención especial es la de Donald Fraser –representante de Minnesota- quien dirigió el Sub-Comité sobre Organizaciones Internacionales y Movimientos (luego llamado Sub-Comité sobre Derechos Humanos y Organizaciones Internacionales de la House Committee on Foreign Affairs)²¹³. Dicho Comité adoptó hacia 1974 un Reporte titulado “Derechos Humanos en la comunidad mundial: Una llamada para el liderazgo de los EEUU”²¹⁴, el cual contenía 29 Recomendaciones considerando el tema de los derechos humanos como un factor importante en la elaboración de la política exterior de los EEUU. Asimismo, hablaba de la responsabilidad de los EEUU en la protección internacional de los derechos humanos. Dicho documento formulaba una crítica importante al Departamento de Estado, cuya política hasta ese momento había sido considerar el tema sólo como materia interna y no como un factor determinante en las relaciones bilaterales²¹⁵. Asimismo, el Congresista Fraser fue el responsable de la Sección 502 (B) sobre la que nos ocuparemos posteriormente. Tom Harkin, por otro lado, fue el responsable de formular la Enmienda 116, a la cual también nos referiremos más adelante.

2.2 La Administración de Justicia

²¹¹ Bricker explicó su propuesta de la siguiente manera: “My purpose in offering this resolution is to bury the so-called Covenant on Human Rights so deep than no one holding high public office will ever dare to attempt its resurrection”. Louis Henkin, Op. Cit., p. 348-349.

²¹² Diane F. Orentlicher, Op. Cit., p. 47. Ver también: Jan Egeland, Important Superpowers – Potent Small State: Potentials and Limitations of Human Rights Objectives in the Foreign Policies of the United States and Norway (England: Norwegian University Press, 1988, p. 151).

²¹³ David P. Forsythe, Op. Cit., 1988, p. 1-2.

²¹⁴ John P. Salzberg, “A View from the Hill: US Legislation and Human Rights” en David D. Newson, Op. Cit. Ver también: National Policy Panel of the United Nations Association of the United States, United States Foreign Policy and Human Rights: Principles, Priorities, Practice (Washington: 1979, p. 21).

²¹⁵ Stephen Cohen, “Conditioning US Security Assistance on Human Rights practices,” American Journal of International Law 76, no. 1 (1982): 246-263.

La Sección 1 del Artículo III de la Constitución establece que el Poder Judicial de los EEUU estará representado por una Corte Suprema y tantas cortes inferiores como el Congreso lo determine.

El Poder Judicial tiene jurisdicción para contemplar todos los casos que se enmarquen en el contexto de la Constitución, las leyes internas, los tratados suscritos o por suscribir por los EEUU. Asimismo, abarca las diferentes controversias que puedan surgir entre dos o más Estados de los EEUU, entre un Estado y ciudadanos de otro Estado, entre ciudadanos de diferentes Estados, etc.

Un aspecto muy interesante a considerar es la facultad que el Congreso periódicamente confiere a la Corte Suprema de prescribir reglas de procedimiento que deben ser seguidas por las lower courts de los EEUU²¹⁶. De allí la importancia de los fallos de la Corte, dado que marcan precedente.

En líneas generales, puede decirse que los EEUU están divididos geográficamente en 12 circuitos judiciales, incluyendo el Distrito de Columbia, cada uno de los cuales tiene una Corte de Apelaciones.

Asimismo, se debe tener en cuenta que cada uno de los Estados está asignado a uno de los circuitos, mientras que los Territorios están asignados al Primero, Tercero y Noveno Circuito. Existe también una Corte de Apelaciones para el Circuito Federal, la cual tiene jurisdicción nacional según la materia de que se trate (casos relativos a patentes, contratos u otras acciones civiles, así como apelaciones sobre las decisiones finales de la Corte de los EEUU de International Trade, de Federal Claims y de Veterans Appeals).

Las Cortes Distritales tienen jurisdicción Federal. Cada Estado tiene al menos una Corte Distrital y los Estados más grandes pueden tener cuatro, cuyos fallos pueden ser revisados por las correspondientes Cortes de Apelaciones. Por otro lado, se debe mencionar que el Congreso ha establecido las Cortes Distritales en los Territorios de Guam, las Islas Vírgenes y las Islas Marianas del Norte. El caso de Puerto Rico se maneja –en contraste- bajo el Artículo III de la Constitución, esto es, como otra Corte Distrital²¹⁷.

A nuestro juicio, la importancia de las Cortes en relación al tema de los derechos humanos, se encuentra en el papel que han cumplido al momento de aplicar a nivel interno los tratados sobre esta materia, ya que de esta manera han sentado importantes precedentes sobre el concepto de derechos humanos y la amplitud de las obligaciones que los EEUU tienen en el tema.

²¹⁶ Officer of the Federal Register. National Archives and Records Administration Manual, Op. Cit., p. 68.

²¹⁷ Ibid., p. 68-69.

Para Hannum, considerando la controversia que existe en relación a la declaración de non-self-executing que llevan los tratados de derechos humanos –como veremos posteriormente– lo más lógico resulta que las cortes sean las que finalmente decidan en este tema²¹⁸.

2.4 Las Organizaciones de Derechos Humanos

Shoultz²¹⁹ destaca el trabajo que las organizaciones sobre derechos humanos en general, y las ONG en particular, desarrollaron en la década de los 70, con el objetivo de disminuir el apoyo hacia los gobiernos dictatoriales del Tercer Mundo. Para este autor, una de las razones para el incremento de la labor de estos grupos se encuentra en el fin de la participación norteamericana en la guerra de Vietnam, así como la idea que la actividad a favor de los derechos humanos era una prolongación activa del movimiento a favor de los derechos civiles. Aproximadamente al inicio de esta década las ONGs que se ocupan del tema de los derechos humanos empiezan a jugar un rol predominante en la atención que el Congreso le dispensaba a la materia²²⁰.

Alexander Watson, por su parte, reconoce el rol de las ONG en el proceso político entre EEUU y Latinoamérica. Sostiene que es una garantía para las democracias latinoamericanas el desarrollo de una red articulada y bien organizada de grupos de ciudadanos en cada país, que puedan expresarse y dar una respuesta ante las actitudes de los gobiernos²²¹.

Si bien existen muchas entidades que participan en el proceso de formulación de la política exterior de EEUU, nosotros nos detendremos en aquéllas que han tenido estrecha relación con el Perú.

Así, debemos referirnos a WOLA (Washington Office on Latin America) que si bien no corresponde a la definición general de una ONG, es uno de los grupos que mayor importancia tiene al momento de hablar de las organizaciones dedicadas al tema de los derechos humanos.

WOLA inicia su labor hacia 1974, gracias al apoyo de aproximadamente 25 grupos religiosos. Poco a poco va delineando sus actividades,²²² actuando como un enlace entre los ciudadanos latinoamericanos y la burocracia de la política exterior en Washington; brindando

²¹⁸ Hurst Hannum y Dana D. Fischer, Op. Cit., p. 49. Sobre los casos en los cuales las cortes norteamericanas han invocado los diferentes documentos internacionales, recomendamos revisar : Richard Lillich, “The United States and International Human Rights Law”, Harvard Human Rights Journal 3 (1990): 77 –78.

²¹⁹ Lars Shoultz, Human Rights and United States Policy toward Latin America (Princeton: Princeton University Press, 1981, p. 74-75).

²²⁰ Diane F. Orentlicher, Op. Cit., p. 50.

²²¹ Alexander Watson, “Key Issues in Inter-American Relations,” Dispatch , Enero 17, 1994, 23.

²²² Lars Shoultz, Op. Cit., p. 77-78.

testimonio ante los Comités del Congreso; publicando su análisis de las actividades gubernamentales que afectaban a Latinoamérica y colaborando con otras organizaciones sobre derechos humanos que tenían poca experiencia en la Región.

Cabe decir que WOLA es una de las organizaciones con mayor prestigio en la materia y a ella han recurrido siempre quienes desean tener una idea exacta de lo que

acontece en la política exterior norteamericana en relación a Latinoamérica, ya que provee información confiable en cuanto a la represión de los derechos humanos en esta Región²²³.

Otra de las organizaciones a las que nos referiremos es Human Rights Watch, entidad mundialmente conocida por el papel preponderante que tiene en relación al tema de las violaciones de derechos humanos, habiendo emitido una serie de Informes y Pronunciamientos en relación a las actitudes de los diferentes gobiernos norteamericanos en el tema. Al igual que Amnistía Internacional, esta ONG ha desarrollado un labor en la vigilancia y denuncia de las violaciones de los derechos humanos a lo largo del mundo y sus Reportes e Informes han servido de referencia al momento de calificar la situación de los derechos humanos en el mundo. Debe destacarse la labor de lobby desarrollada por estas entidades a nivel del Gobierno de los EEUU, especialmente en lo que se refiere a la determinación de la ayuda humanitaria.

3. El Marco Normativo Aplicable

Como es sabido, el Derecho Norteamericano se enmarca en el Common Law o Derecho Común, esto es, aquel Derecho basado en los precedentes judiciales²²⁴, a diferencia del Sistema Civil o Romano-Germánico que es el vigente en la mayor parte de los países latinoamericanos. A esto debe sumarse que, en el caso concreto de los EEUU, el sistema de gobierno es de tipo Federal, es decir, con un gobierno y sistema legal en el cual el Gobierno central comparte el poder con los diferentes Estados, cada uno de los cuales tiene cierto grado de soberanía²²⁵.

Ahora bien, en el caso específico de los derechos humanos, debemos decir que el marco jurídico que rige el tema de los derechos humanos en los EEUU tiene dos fuentes: la internacional y la interna, aspectos sobre los que abundaremos a continuación.

3.1 El Ambito Internacional

En el ámbito internacional existen dos elementos básicos que deben considerarse para el análisis: los tratados sobre derechos humanos vigentes en los EEUU y la costumbre internacional.

²²³ Ibid., p. 78.

²²⁴ Henry Black, Black's Law Dictionary (Minnesota: St. Paul, 1991, p. 189).

²²⁵ Lawrence M. Friedman, American Law: An Introduction (New York: Stanford University, 1984, p. 123).

3.1.1 Los Tratados

En líneas generales, puede decirse que el procedimiento a seguir en los EEUU para la aprobación de un tratado involucra dos etapas: una a nivel interno a cargo del Senado²²⁶ y otra a nivel internacional, mediante el correspondiente intercambio o depósito del instrumento de ratificación²²⁷. Cabe mencionar que la denominación “tratado” sólo se aplica a aquellos acuerdos internacionales concluidos por el Gobierno Federal, los cuales han sido ratificados por el Presidente y han recibido la aprobación del Senado. Cualquier otro acuerdo recibe la denominación de “acuerdo ejecutivo”²²⁸.

Una vez que el Presidente firma el tratado, lo envía al Senado acompañado de un Reporte explicativo de las disposiciones del pacto y de las circunstancias que hacen deseable su ratificación. Luego de recibir el tratado, el Senado lo remite al Comité de Relaciones Exteriores, el cual decidirá si deriva o no el tratado al pleno del Senado. A veces, el Ejecutivo puede solicitar al Comité que retenga o suspenda las acciones en relación al tratado. Una vez en el pleno, se necesita la aprobación de al menos dos tercios de los senadores presentes, luego de lo cual el tratado retornará al Presidente para su ratificación. En esta etapa, el Presidente puede ratificar el tratado tal como le fue remitido por el Senado o puede regresarlo para que el Senado lo siga estudiando. Incluso, podría decidir no ratificar el documento²²⁹.

Por otro lado, debe decirse que la Constitución de los EEUU establece que el Presidente de los EEUU tiene el poder de suscribir tratados, con la aprobación de al menos dos tercios de los miembros del Senado (Art. II, Sección 2).

En lo que se refiere a los límites dentro de los cuales se puede celebrar un tratado, si bien la Constitución no lo dice expresamente, se entiende que dichos pactos no pueden contravenir ninguna disposición constitucional, especialmente las Enmiendas número trece, catorce y quince²³⁰. Asimismo, la Constitución le da a los tratados el rango de Law of the Land, esto es, la máxima jerarquía luego de la Carta Magna (Artículo VI). En líneas generales, entonces, puede decirse que el derecho constitucional norteamericano le asigna a los tratados el mismo rango normativo que a los Federal Statutes²³¹.

²²⁶ Sobre este tema, revisar: Michael J. Glennon, “The Senate Role in Treaty Ratification,” American Journal of International Law (1983, p. 257-280).

²²⁷ Hurst Hannum y Dana D. Fischer, Op. Cit., p. 28-29.

²²⁸ Ibid., p. 36.

²²⁹ Ibid., p. 40-44.

²³⁰ La Enmienda XIII está referida a la prohibición de la esclavitud; la Enmienda XIV se refiere a la ciudadanía norteamericana y la Enmienda XV se refiere al derecho al voto. Ibid., p. 36.

²³¹ Thomas Buergenthal, "Modern Constitution and Human Rights Treaties," Columbia Journal of Transnational Law 36 (1997): 211.

En este tema, es necesario resaltar que los EEUU jugaron un rol importante en el diseño de estos pactos internacionales en materia de derechos humanos, no obstante lo cual ha ratificado realmente pocos. Al respecto, Buergenthal²³² resalta el efecto negativo que se deriva de la actitud de las diferentes administraciones de no ratificar más que un número mínimo de documentos internacionales. Básicamente, este autor se refiere al hecho que los EEUU están cayendo en clara contradicción (nuevamente el tema del doble estándar) al no ratificar los documentos internacionales que definen los derechos humanos y, sin embargo, dictar legislación interna que le permita exigir que el resto de países respeten dichos derechos²³³. Todo ello lleva a pensar que los EEUU no han considerado seriamente los estándares sobre derechos humanos en la formulación de sus políticas de gobierno²³⁴.

Según Egeland²³⁵, el hecho que los EEUU hayan ratificado sólo un número mínimo de documentos internacionales se debe a lo que el denomina “un miedo irracional de cualquier limitación internacional que pueda atentar contra el sentido de libertad en los EEUU”.

a. Los tratados ratificados por EEUU

En esta parte, debemos hacer referencia a la Convención de las Naciones Unidas sobre los Derechos Políticos de la Mujer y a la Convención Interamericana sobre los Derechos Políticos de la Mujer (ratificados en 1976)²³⁶. Asimismo, tenemos la Convención para la Prevención y Sanción del Delito de Genocidio (ratificada por los EEUU en 1989), el Pacto Internacional de Derechos Civiles y Políticos (ratificado en 1992), la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, y el Convenio Internacional sobre todas las Formas de Discriminación Racial (ratificados ambos en 1994).²³⁷

²³² Thomas Buergenthal, “U.S. Human Rights Policy: A Modest Agenda for the Future”, *Virginia Journal of International Law* 28, no. 2 (1988) : 846-849.

²³³ Sin embargo, existen autores con posiciones extremas como la de Muravchik quien sostiene que los tratados de derechos humanos no deberían ser un punto de mayor atención dentro de la Política Exterior de los EEUU en materia de derechos humanos, los cuales califica como “elaborados monumentos a la hipocresía”. El punto de partida de este autor se encuentra en su crítica hacia las Naciones Unidas, organización que para Muravchik sólo representa “los intereses de los gobiernos y no de la gente”. Joshua Muravchik, Op. Cit., p. 228-229.

²³⁴ Paul L. Hoffman y Nadine Strossen, “Enforcing International Human Rights Law in the United States,” en *Human Rights: An Agenda for the Next Century*, ed. Louis Henkin y John Lawrence Hargrove (Washington DC: American Society of International Law, p. 480).

²³⁵ Jan Egeland, Op. Cit., p. 151.

²³⁶ De otro lado, debemos decir que hacia octubre de 1994 la Convención sobre la Eliminación de Todas las Formas de Discriminación contra la Mujer recibió en el seno del Comité de Relaciones Exteriores una votación favorable de 14 contra 13 para enviar el texto al pleno del Senado. Frank Newman y David Weissbrodt, *International Human Rights: Law, Policy, and Process* (Ohio: Anderson Publishing Co., 1996, p. 35- 43).

²³⁷ Louis Henkin, “US Ratifications of Human Rights Conventions: The Ghost of Senator Bricker,” *American Journal of International Law* 89, no. 2 (1995): 341. Ver también: Marian Nash, Op. Cit., p. 96-130. Asimismo, se recomienda la revisión de: U.S. Congress, *International Human Rights Treaties* (Washington DC: 1979).

Finalmente, se debe mencionar que la Convención Americana de Derechos Humanos, el más importante de los documentos interamericanos en cuanto a la protección y promoción de los derechos humanos, no ha sido ratificado por los EEUU, no obstante haber sido remitida al Senado por el Presidente Carter en 1977. Cabe decir que en la Conferencia Mundial de Derechos Humanos realizada en Viena en 1993, el entonces Secretario de Estado Christopher declaró que su gobierno respaldaba los objetivos generales del documento y que la Administración Clinton impulsaría su ratificación a la brevedad posible, lo cual no se ha dado hasta el momento²³⁸.

b. El sistema de “RUDs”: Reservations, Understandings y Declarations

Para Buergenthal²³⁹, el objetivo de una Reservation es modificar los términos del tratado entre el Estado que la elabora y los Estados que la aceptan, con lo cual se alteran las obligaciones internacionales de estos Estados entre sí. Los Understandings y Declarations , por su parte, deben entenderse como enunciados unilaterales emitidos por un Estado en lo que se refiere a su interpretación o posición con respecto a una disposición específica del tratado en cuestión. Para Hannum y Fisher, los Understandings no cambian la substancia de las disposiciones de los tratados, sino que tratan de explicar o clarificar el significado de los tratados, especialmente en lo que se refiere a su significado a nivel del derecho interno²⁴⁰.

Sin embargo, Buergenthal nos dice también que en el plano internacional un Understanding debe ser entendido como una Reservation si se puede deducir que el propósito de aquél es el de modificar las obligaciones asumidos por el Estado en cuestión. Ya que puede darse el caso de confusiones en cuanto al uso de cada una de las RUDs, el efecto de cada una depende más de su sustancia que de la denominación que se emplee²⁴¹.

Por su parte, Henkin sostiene que las RUDs se producen como una manera de salvaguardar la primacía de la Constitución de los EEUU, de manera que el Gobierno no asuma ninguna obligación internacional que sea inconsistente con la Carta Magna. Sin embargo, como dice el mismo autor, muchas veces estas RUDs aseguran que la adherencia de los EEUU a los pactos internacionales no impliquen un cambio en las leyes y políticas norteamericanas, no obstante éstas no vayan de acuerdo a los estándares internacionales. Todo ello puede hacer dudar sobre si realmente se están asumiendo o no las obligaciones internacionales en su totalidad y sobre si se está atentando contra los objetivos finales de los documentos internacionales que se ratifican.²⁴²

²³⁸ Frank Newman y David Weissbrodt, Op. Cit., p. 45.

²³⁹ Thomas Buergenthal, Op. Cit., 1995, p. 291-292.

²⁴⁰ Hurst Hannum y Dana D. Fischer, Op. Cit., p. 41.

²⁴¹ Ibid., p. 42.

²⁴² Louis Henkin, Op. Cit., 1995, p. 342-344.

En líneas generales, puede diferenciarse cuatro categorías de RUDs²⁴³ que son adheridas a todos los pactos de derechos humanos que los EEUU ha ratificado:

1. Aquellas Reservations que tienen por objetivo evitar cualquier tipo de conflicto con la Constitución.
2. Aquellas Reservations o Declarations que tienen por objeto evitar cualquier tipo de conflicto con el derecho interno de los EEUU o que requerirían que los EEUU adecuaran sus leyes internas a los estándares establecidos por el tratado en cuestión.
3. La llamada Federalism Clause, la cual se añade a todo tratado relativo a derechos humanos que los EEUU ratifiquen. El objetivo de la misma es asegurar que la ratificación que los EEUU realicen sobre el pacto en cuestión, no tenga el efecto de dar alcance Federal a aquellas materias reguladas por el tratado y que previamente hayan tenido un alcance Estatal y/o Local.
3. La declaración mediante la cual los EEUU consideran que los tratados de derechos humanos son non-self-executing, con lo cual se asegura que los tratados en cuestión no creen derechos directamente exigibles en las cortes norteamericanas. Asimismo, esta declaración garantiza que los cambios en la legislación norteamericana se den mediante otra ley y no por medio de un tratado. Como se ve, esto va en contra del Artículo VI de la Constitución de los EEUU²⁴⁴. Por otro lado, cabe decir que el Restatement of the Foreign Relations Law of the United States (Revised) no menciona la intención de las partes, pero dice que la intención de USA determina si el tratado es o no self-executing²⁴⁵.

Ahora bien, en el caso que un tratado necesite de legislación que lo implemente a nivel interno, es deber del Presidente el solicitar al Congreso que dichas normas se produzcan. Si el tratado es self-executing, también corresponde al Presidente la obligación de vigilar que el tratado sea correctamente implementado²⁴⁶.

5. Por otro lado, se debe hacer mención de la llamada Proviso que el Senado añade a la resolución que emite en relación a los tratados de derechos humanos, la cual señala que estos tratados no autorizan legislación u otras acciones prohibidas por la Constitución de los EEUU²⁴⁷. Si bien esta declaración no afectaría las obligaciones internacionales, sí impide que los

²⁴³ Thomas Buergenthal, Op. Cit., 1995, p. 292-298.

²⁴⁴ Louis Henkin, Op. Cit., 1995, p. 346. En este tema se recomienda revisar también: Thomas Buergenthal, “Self-Executing and Non-Self-Executing treaties in national and international law,” en Recueil des Cours, Academy of International Law (Boston: Martinus Nijhoff Publishers, 1992, p. 313-392).

²⁴⁵ Richard Lillich, Invoking International Human Rights Law in Domestic Courts (Washington DC: American Bar Association, 1985 , p. 2-4).

²⁴⁶Revisar al respecto el Art. II , Sección 3 de la Constitución de los EEUU y Louis Henkin, Op. Cit., 1996, p. 39.

ciudadanos norteamericanos puedan hacer exigibles ante el sistema judicial de los EEUU los derechos garantizados por estos pactos²⁴⁸.

Por todo ello, el sistema de RUD's ha recibido severas críticas de importantes juristas quien ven en su empleo una decisión más política que jurídica²⁴⁹.

En esta parte es muy importante dar cuenta del tema de los conflictos entre normas, esto es, qué sucedería si el tratado que se pretende ratificar va en contra de la Constitución de los EEUU. En estos casos, se justificaría ampliamente el uso de las RUD's. Ahora bien, si el conflicto se presenta entre el referido tratado y las normas internas, el asunto varía, ya que si en este caso nos encontráramos frente a un tratado self-executing, éste derogaría la norma interna²⁵⁰.

3.1.2 La Costumbre Internacional

Buerenthal sostiene que la costumbre internacional tiene el mismo rango que la Federal Common Law, lo cual implica que –no obstante no tener un rango mayor al de los Federal Statute- si deroga toda State Law en conflicto con ella²⁵¹.

Para Lillich²⁵², la costumbre internacional deroga toda State y Local Law que se le oponga y probablemente podría derogar también las Federal Statutes y los pactos internacionales que vayan en contra.

Si bien no está mencionado en la Constitución, la Suprema Corte ha dispuesto que la costumbre internacional es parte del derecho de los EEUU y que debe ser aplicado por las cortes de justicia cuando sea necesario.

Lillich resalta las diferencias que existen con el caso de la costumbre internacional, la cual se convierte ipso facto en Supreme Federal Law y, por lo tanto, puede regular las actividades, relaciones o intereses dentro de los EEUU²⁵³.

Resulta importante recoger qué elementos consuetudinarios relacionados con el tema de los derechos humanos han sido recogidos por el derecho norteamericano. En este sentido, debemos referirnos al Numeral 702 del Restatement (Third), el cual establece que un estado

²⁴⁷ Textualmente, dice: "Nothing in this Convention requires or authorizes legislation, or other action, by the United States of America prohibited by the Constitution of the United States as interpreted by the United States". Buerenthal, Op.Cit., 1995, p. 296.

²⁴⁸ Buerenthal, Op. Cit., 1997, p. 220.

²⁴⁹ Buerenthal, Op.Cit., 1995, p. 297.

²⁵⁰ Buerenthal, Op.Cit., 1995, p. 297; p. 310.

²⁵¹ Thomas Buerenthal, Op. Cit., 1995, p. 310; p. 317. Ver también: Richard Lillich, Op. Cit., 1985, p. 1.

²⁵² Richard Lillich, Op. Cit., 1990, p. 70.

²⁵³ Ibid., p. 69.

violará el derecho internacional si –dentro de su política- practica, propicia o perdona cualquiera de los siguientes actos²⁵⁴:

- a) Genocidio.
- b) Esclavitud o comercio de esclavos.
- c) Muerte o desaparición de individuos.
- d) Tortura u otros tratos o castigos crueles, inhumanos o degradantes.
- e) Detención prolongada y arbitraria.
- f) Discriminación racial de manera sistemática.
- g) Un modelo permanente de graves violaciones en contra de los derechos humanos reconocidos internacionalmente.

Y aquí vuelve a cobrar importancia el tema de la ratificación por parte de los EEUU de los tratados sobre derechos humanos ya que, como señala Buergenthal, aún en el caso que el tratado sea non-self-executing, las cortes podrán analizar si alguna de las provisiones de los tratados forman parte de la costumbre internacional y, en este sentido aplicarlas tal cual

3.2 El Ambito Interno

Un primer elemento en esta parte es el denominado Bill Of Rights, el cual se anexa a la Constitución de los EEUU. Cada una de las Enmiendas descritas en esta parte, reconoce a los ciudadanos norteamericanos el ejercicio de la libertad de religión, de expresión, de prensa, el derecho a reunión, de petición, a la intimidad, al debido proceso, a la propiedad, al voto, a no ser discriminado por razones de sexo, etc.

Ahora bien, en lo que se refiere a las relaciones de los EEUU con otros países en materia de derechos humanos, existen una serie de normas que se vinculan especialmente con el tema de la asistencia humanitaria y militar. La mayor parte de esta legislación fue elaborada durante la década del 70, con dos objetivos fundamentales: contribuir a la disminución y eliminación de las violaciones de derechos humanos existentes en ciertos países y marcar una separación entre los EEUU y los gobiernos represivos²⁵⁵.

Resulta pertinente mencionar la Sección 32 de la Foreign Assistance Act de 1973, promulgada el 13 de diciembre de ese año, la cual señalaba que el Gobierno de los EEUU debería negar toda ayuda económica y militar a cualquier gobierno que resultara

responsable de la detención de sus ciudadanos por razones políticas²⁵⁶. Dicho documento, sin embargo, fue presentado sólo como recomendación y finalmente vetado por el Presidente Ford²⁵⁷.

²⁵⁴ American Law Institute, Restatement (Third) of the Foreign Relations Law of the United States, (1987).

²⁵⁵ Coletta Youngers, Circumventing the Law: U.S. Human Rights Policy toward Latin America (Georgia: WOLA, 1984, 26 p.).

²⁵⁶ National Policy Panel of the United Nations Association of the United States, Op. Cit., p. 22.

²⁵⁷ Coletta Youngers, Op. Cit., 1984, p. 3.

Por otro lado, cabe mencionar la International Development and Food Assistance Act de 1975, que constituye la primera norma relativa a los derechos humanos que prohíbe la ayuda a los gobiernos violadores de los derechos humanos, aunque permite alguna excepción si la ayuda beneficiaba directamente a la gente necesitada de cada país. En 1976, la International Security Assistance and Arms Export Control Act instruye al Presidente para que formule y conduzca los programas de asistencia por razones de seguridad de tal manera que promueva el tema de los derechos humanos.²⁵⁸

Por otro lado, debe decirse que hacia finales de los 70, la Foreign Assistance Act de 1961 recibió dos importantes modificaciones: la Sección 502 (B) y la Sección 116 (E)²⁵⁹. La primera modificación fue introducida por Fraser y estaba orientada a la reducción o terminación de la asistencia militar hacia los gobiernos que encajen en “un modelo consistente de graves violaciones²⁶⁰ de los derechos humanos internacionalmente reconocidos”. Sin embargo, se establecía como excepción aquellos casos en los cuales existieran “circunstancias extraordinarias que necesiten la continuación de la ayuda militar y la venta de armas y -dado los hechos- resulte de interés para los EEUU el seguir con dicha ayuda”²⁶¹.

Ahora bien, para determinar si un gobierno encajaba o no en el modelo descrito por esta Sección, era necesario contemplar la existencia de cuatro elementos básicos²⁶²:

- a) Debía tratarse de violaciones de derechos humanos internacionalmente reconocidos.
- b) El impacto debía ser significativo.
- c) Los abusos debían ser numerosos y recurrentes y no debían haberse tomado medidas para corregirlos.
- d) El gobierno debía ser el responsable.

Asimismo, dicha Sección solicita a la Administración la elaboración de un Informe Anual en relación a la situación de los derechos humanos en aquellos países que reciban asistencia por parte de los EEUU²⁶³.

²⁵⁸ Hurst Hannum y Dana D. Fischer, Op. Cit., p. 16-17.

²⁵⁹ Frank Newman y David Weissbrodt, *International Human Rights: Law, Policy, and Process. Selected International Human Rights Instruments and Bibliography for Research on International Human Rights Law* (Ohio: Anderson Publishing Co., 1996, p. 191-196). Ver también: David P. Forsythe, Op. Cit., 1988, p. 52-69.

²⁶⁰ Como “graves violaciones” se incluían la tortura; la detención o castigo cruel, inhumano o degradante; la detención prolongada sin cargos o cualquiera otra negación flagrante de la vida o seguridad de una persona. Patricia Weiss Fagen, “US Foreign Policy and Human Rights: The Role of Congress,” en *Parliamentary control over Foreign Policy*, ed. Antonio Cassese (1980, p. 117).

²⁶¹ Stephen Cohen, Op. Cit., p. 250-251.

²⁶² Ibid., p. 266-268.

Las reacciones ante esta disposición no se hicieron esperar y es así como en 1975 el Sub-Secretario de Estado, Carlyle E. Maw, declaró su oposición a la denegación de ayuda militar en función a los récords de derechos humanos de los diferentes países. Asimismo, el Presidente Ford se opuso a que la Sección 502 (B) se volviera obligatoria²⁶⁴, no obstante lo cual, esto se llegó a concretar hacia 1978 como reacción directa del Congreso ante la actitud moderada del Presidente Carter²⁶⁵.

Por su parte, la importancia de la Sección 116 o Enmienda Harkin, referida a la asistencia económica²⁶⁶, radica en que mediante ella se disponía la suspensión de la ayuda económica por parte de los EEUU hacia los países que encajaran en el marco de violaciones establecido por la modificación anterior.²⁶⁷ Asimismo, la subsección (e) de dicha Sección pretendía promover el desarrollo de una serie de programas y actividades orientados a promover la adherencia a los derechos civiles y políticos por parte de los países que resultaran elegidos para esta asistencia.²⁶⁸

De otro lado, es importante referirse a la Sección 701, 703 y 705 de la International Financial Institutions Act de 1977²⁶⁹, mediante las cuales se establecen los estándares sobre derechos humanos que deben ser promovidos por los EEUU a través de su participación en las cuatro principales instituciones multilaterales de desarrollo: Banco Mundial, Banco Interamericano de Desarrollo, Banco Asiático de Desarrollo y el Fondo Africano de Desarrollo. El objetivo de esta modificación era canalizar la asistencia hacia los países que no violaban los derechos humanos y oponerse a la asistencia que pudiera darse mediante estas instituciones multilaterales a los países que encajaran en un modelo de violaciones de derechos humanos, a menos que dicha asistencia estuviera dirigida específicamente hacia los programas que servían a las necesidades básicas de los ciudadanos del país en cuestión²⁷⁰.

Asimismo, cabe mencionar el rol del Congreso en la elaboración de la Legislación Específica por países (Country Specific Legislation), cuyo objetivo es forzar al Ejecutivo para

²⁶³ Ibid., p. 247-248.

²⁶⁴ Ibid., p. 252-253. David P. Forsythe, Op. Cit., 1988, p. 52.

²⁶⁵ John Salzberg, Op. Cit., 1986, p. 65.

²⁶⁶ La importancia en este tema va mas allá de los aspectos meramente económicos, ya que esta asistencia es vista como un símbolo del apoyo y aprobación americanos. National Policy Panel of the United Nations Association of the United States, Op. Cit., p. 58. Ver también: Tom Farer, "On a Collision Course: The American Campaign for Human Rights and the Antiradical Bias in the Third World," en Human Rights and American Foreign Policy, ed. Donald P. Kommers and Gilbert D. Loescher (Indiana: University of Notre Dame Press, 1979, p. 263-277).

²⁶⁷ John Salzberg, Op. Cit., 1986, p. 18.

²⁶⁸ American Association of the International Commission of Jurists, Human Rights and US Foreign Policy. The First Decade 1973-1983 (New York: 1984, p.12).

²⁶⁹ Frank Newman y David Weissbrodt, Op. Cit., p. 196-198.

²⁷⁰ John Salzberg, Op. Cit., p. 18.

que suspenda la asistencia de los EEUU hacia los países que no cumplen con las leyes vigentes y/o se hallan inmersos en situaciones de violación de los derechos humanos. Para ello, en muchos casos se han establecido ciertas condiciones que los diferentes países deben cumplir para recibir la ayuda financiera²⁷¹. Por lo general, la duración de estas disposiciones es de un año, término que puede ser renovado o extendido, según la actitud que asuma el gobierno en cuestión.²⁷²

Finalmente, debemos referirnos a los fallos judiciales que han producido las cortes de los EEUU en relación al tema de los derechos humanos, especialmente en los lineamientos que han dado sobre la manera en que deben interpretarse los tratados de derechos humanos a nivel interno²⁷³.

En este sentido, cabe referirse a cierto aspecto que implica una limitación _en cuanto al accionar de las Cortes en esta materia y que tiene que ver con la declaración de non-self-executing, que se le añade a los tratados de derechos humanos y mediante la cual se asegura que los tratados en cuestión no produzcan derechos individuales directamente exigibles en las cortes norteamericanas, como ya vimos²⁷⁴.

En primer lugar, debemos mencionar aquéllos casos en los cuáles se ha invocado las provisiones de la Carta de las Naciones Unidas. Así, tenemos el caso Sei Fujii vs. California (38 Cal. 2d 718 P. 2d 617, Cal. 1950)²⁷⁵ en el cual una lower corte de California invalidó las provisiones discriminatorias de la California Alien Land Law, con base en los Arts. 55 y 56 de la Carta de la ONU sobre discriminación racial. Dicha norma prohibía a los ciudadanos extranjeros que no calificaran para la adquisición de la nacionalidad norteamericana el adquirir propiedad en dicho Estado. En este caso, la Suprema Corte de California dejó sin efecto dicha ley pero lo hizo por diferentes fundamentos, esto es, por ir contra la 14 enmienda, y dejó en claro que las provisiones de la carta de la ONU eran non –self- executing y, por lo tanto, carecían de la necesaria fuerza legal interna para invalidar la ley de California.

Contra lo establecido en este caso, se citan frecuentemente otros fallos como el principio enunciado en Asakura v. Seattle (265 US 332 1924), el cual sostiene que "los tratados se deben interpretar en un espíritu amplio y libre y que cuando dos interpretaciones son posibles, prima aquella que favorece los derechos, no la que los restringe"²⁷⁶. Para Lillich, en la actualidad no se

²⁷¹ Frank Newman y David Weissbrodt, Op. Cit., p. 395.

²⁷² Entre los países que han sido objeto de esta tipo de legislación, tenemos: Argentina, Chile, Haití, El Salvador, etc. Thomas Buergenthal, Op. Cit., p. 306. Ver también: David P. Forsythe, Op. Cit., 1988, p. 101-118.

²⁷³ Sobre esta parte, recomendamos revisar: Louis Henkin, "International Human Rights standards in national law: The jurisprudence of the United States," en Enforcing International Human Rights in Domestic Courts ed. Benedetto Conforti y Francesco Francioni (Martinus Nijhoff Publishers, 1997, p. 189-205).

²⁷⁴ Thomas Buergenthal, Op. Cit., 1995, p. 295-296.

²⁷⁵ Ibid., p. 312. Richard Lillich, Op. Cit., 1985, p. 2-4.

²⁷⁶ Ibid., 1985, p. 4-7.

puede sostener que las cláusulas de la Carta sean tan vagas e indefinidas como para establecer obligaciones que no puedan exigirse en las cortes de los EEUU, no sólo porque resulta aplicable la costumbre internacional, sino también porque la ONU ha adoptado una serie de instrumentos que le dan contenido a esos artículos.

En este orden de ideas, y en contra de lo sentado por Sei, tenemos también el caso *People of Siapan ex rel. Guerrero v. Departamento del Interior de los EEUU* (502 F. 2d 90 – 9th Cir. 1974)²⁷⁷, en el cual se sostiene que el acuerdo de los EEUU con la ONU creando el Trust Territory de las Islas del Pacífico eran self-executing. Se dijo que la calidad del tratado se debía determinar en cada caso en virtud de diferentes factores como los propósitos y objetivos de los creadores, la existencia de los procedimientos internos y las instituciones apropiadas para la implementación directa, la posibilidad de métodos alternativos de implementación y las consecuencias sociales inmediatas y a largo plazo del self y non- self- execution.

Otro tema en el cual las cortes de los EEUU han tenido un papel relevante, es el del conflicto entre un tratado y una ley dada con posterioridad. En este punto, debemos citar *Diggs v. Schultz* (470 F. 2d. 461 DC Cir 1972)²⁷⁸, caso en el cual la Corte declara válido un estatuto que permite la importación de cromo de Rhodesia y por lo tanto pasa por encima de la Resolución 232 del Consejo de Seguridad de las Naciones Unidas.

Relacionado con este tema, tenemos el caso *Diggs v. Dent*: (1975)²⁷⁹, en el cual una Corte Federal de Distrito establece que mientras la Carta impone precisas obligaciones internacionales para los EEUU, los tratados no confieren a los ciudadanos derechos exigibles ante las Cortes, a menos que el tratado sea self- executing.

Merece la pena citar aquí el caso *Oyama v. California*²⁸⁰, en el cual dos jueces de la Corte, al dejar de lado una parte de la California Alien Land Law por ir contra la 14 Enmienda, remarcan que la inconsistencia de este estatuto con la Carta de la ONU es una razón adicional para condenar el Estatuto. Si bien ninguno de los 4 jueces sostuvo que las provisiones de la Carta invalidaban automáticamente las contradictorias State Law, todos estaban de acuerdo en decir que “el hecho que un artículo de la Carta de la ONU sea incongruente con una State Law es un argumento contra la validez de dicha ley”.

Otro tema que ha jugado un rol esencial en las cortes norteamericanas es el de la costumbre internacional. Así, en el caso *Filartiga v. Peña-Irala* (630 F. 2d 87, 2 Cir. 1980)²⁸¹, dos ciudadanos paraguayos inician una acción contra otro paraguayo por la tortura y muerte de su hijo y hermano, y basan su acción en el Alien Tort Claims Act de 1789. Dado que los EEUU no

²⁷⁷ Ibídem.

²⁷⁸ Hurst Hannum y Dana D. Fischer, Op. Cit., p. 44.

²⁷⁹ Richard Lillich, Op. Cit., 1985, p. 4-7.

²⁸⁰ Richard Lillich, Op. Cit., 1990, p. 76.

²⁸¹ Ibid., p. 71. Thomas Buergenthal, Op. Cit., 1985, p. 315.

habían ratificado un tratado prohibiendo la tortura que sirviera de fundamento para los demandantes, el asunto se centraba en si la tortura violaba la costumbre internacional. La Corte Distrital de los EEUU sostuvo que la tortura de un paraguayo en su país y a cargo de paraguayos, no violaba la costumbre internacional. La Corte de Apelaciones para el Segundo Circuito sostuvo que “un acto de tortura cometido por un oficial estatal contra alguien detenido viola las normas establecidas del derecho internacional de los derechos humanos y, por lo tanto, la ley de las naciones”. El Juez Kaufman llegó a la conclusión que la tortura por parte de oficiales estaba prohibida por el derecho de las naciones, no admitiendo distinción en el tratamiento a extranjeros y a ciudadanos.

Para Lillich, la importancia de Filartiga está en establecer que la tortura viola la costumbre internacional pero también en demostrar a los abogados cómo otras violaciones contra el Derecho Internacional de los Derechos Humanos podían ser remedidas en las cortes de los EEUU, aún cuando las víctimas fueran extranjeros.

Otro caso que se debe citar en este tema es Fernández v. Wilkinson (505 F. Supp. 787)²⁸². Aquí, se trata del caso de un refugiado cubano que llegó a Cuba en 1980 como parte de la flotilla de la libertad y posteriormente fue detenido. La Corte Distrital sostuvo que era un acto ilegal y que si bien la detención no viola la Constitución de los EEUU ni su derecho interno, sí va contra el Derecho Internacional, específicamente contra la costumbre internacional. La importancia de este caso se encuentra en que por primera vez una corte de los EEUU emplea la costumbre para dar una protección más amplia que la de la Constitución de los Federal Statutes.

Otro punto en el cual las cortes han tenido un rol decisivo es el referido a las condiciones de los tratados como self o non-self executing. En este punto, debemos citar el caso Foster vs. Nielson (27 US 253, 2 Pet. 253, 7 L. Ed. 415 1829)²⁸³, en el cual el Juez John Marshall se negó a dar efecto a una disposición de un tratado de 1819 entre España y los EEUU, en base al cual el demandante reclamaba su derecho a dividir la tierra en parcelas.

El referido Juez sostuvo que: “Un tratado es, en su naturaleza, un contrato entre dos naciones, no un acto legislativo. Este no afecta generalmente, en sí mismo, el objeto del tratado, especialmente en la medida que su operación es infra-territorial, pero es llevado a ejecución por el poder soberano de cada una de las partes. En los EEUU, se ha establecido un principio diferente. Nuestra Constitución declara que un tratado es Law of the Land. Por lo tanto, debe ser considerado por las cortes de justicia como el equivalente de un acto del legislativo, siempre que opere por sí mismo sin la ayuda de ninguna provisión legislativa. Pero cuando los términos de la estipulación implican un contrato, cuando cualquiera de las partes se compromete a desarrollar una ley particular, el tratado está dirigido al aparato político, no al judicial, y el legislativo debe ejecutar el contrato antes que éste pueda convertirse en una regla para la Corte”.

4. El Caso Peruano

²⁸² Richard Lillich, Op. Cit., 1985, p. 14-15. Richard Lillich, Op. Cit., 1990, p. 73.

²⁸³ Hurst Hannum y Dana D. Fischer, Op. Cit., p. 46-47. Traducción propia.

En esta parte, analizaremos cuál ha sido la actitud de los EEUU frente al Gobierno del Presidente Fujimori en el manejo del tema de los derechos humanos, para lo cual conjugaremos todos los elementos descritos hasta el momento, dando cuenta de cuál ha sido su aplicación práctica.

Al respecto, podemos decir que las relaciones entre el Perú y los EEUU sufrieron un giro vertiginoso con la llegada de Alberto Fujimori al gobierno peruano. Frente a la tensión existente a consecuencia de las medidas económicas dispuestas por el ex-Presidente Alan García²⁸⁴, el nuevo Gobierno ofrece una voluntad de mayor entendimiento que hace que la Administración Bush alabe en el nuevo Gobierno “su compromiso con la lucha antinarcóticos y antisubversiva, así como su voluntad de adherirse a los estándares internacionales de derechos humanos”²⁸⁵.

Básicamente, nosotros distinguimos algunos elementos fundamentales que nos dan una idea de la relación entre Perú y Estados Unidos durante la última década en el tema de los derechos humanos. Sobre ellos abundaremos a continuación.

4.1 El Fujishock

Entre los hechos que marcan la relación entre ambos países debemos hacer mención del llamado “Fujishock”, esto es, el conjunto de medidas económicas dispuestas por el Gobierno de Fujimori a los pocos días de asumir el gobierno, el cual estableció nuevas reglas de juego. La intención del gobierno era reinsertarse en la comunidad financiera internacional, a través de un programa económico sugerido por los expertos del FMI y del Banco Mundial²⁸⁶, que demostraría la intención del Perú de vencer la gravísima inflación interna y de cumplir sus obligaciones internacionales. Lógicamente, muchos de los actores económicos internacionales vieron con agrado ésta serie de medidas y los préstamos e incentivos fueron produciéndose. Como es lógico, en este tema el respaldo de los EEUU era fundamental, con lo cual las exigencias que el gobierno norteamericano planteaba en materia de derechos humanos cobraron mayor relevancia²⁸⁷ dado el

²⁸⁴ Como antecedente, recomendamos revisar: Committee On Foreign Affairs House of Representatives, Human Rights in Peru, (Washington, DC: 1985). Resulta interesante, por ejemplo, revisar el discurso inaugural de Gus Yatron, entonces Director del Sub-Comité en Derechos Humanos y Organizaciones Internacionales, quien expresa la necesidad que la Administración Reagan se comprometa en el apoyo al entonces recién electo Presidente García, cuyos logros en materia de lucha contra la corrupción policial se destacan en ese momento. Por su parte, Elliot Abrams, entonces Encargado de los Asuntos Interamericanos a nivel del Departamento de Estado, expresó su preocupación en las acusaciones de García contra el Gobierno de los EEUU, a quien culpaba por los problemas en el Perú.

²⁸⁵ Dispatch, Octubre 29, 1990, 221. Asimismo, cabe destacar que la Administración Bush resalta un discurso del Presidente Fujimori en el cual el mandatario sostiene que “no se puede pensar en salir de la crisis nacional y lograr nuestro desarrollo económico y social, sin la desaparición de la producción ilegal de las hojas de coca” (Traducción propia). En: Dispatch, Setiembre 23, 1991, 709.

²⁸⁶ Nicholas Cochrane, Perú-US Relations under the Fujimori Government (Washington, DC: CRS Report for Congress, 1991). Al respecto, ver también: Laura Z. Hartfield, “Revolutionary changes are occurring in Perú, and the Future for US Business Brightens”, Business America, Setiembre 3, 1992, 23-25.

²⁸⁷ WOLA, Op. Cit., 1984, p. 41.

vínculo que a nivel de la Administración de Gobierno existe entre ambos temas, como ya hemos visto.

4.2 El Autogolpe

Otro hecho crucial fue el Autogolpe decretado por el Presidente Fujimori el 5 de abril de 1992, luego del cual la Casa Blanca se pronunció condenando la medida y calificándola como “un lamentable retroceso en la causa de la democracia en el hemisferio”²⁸⁸.

Al respecto, resulta interesante referirse al discurso pronunciado por el Secretario de Estado Baker ante la OEA, apenas una semana después de las drásticas medidas anunciadas por el Presidente Fujimori²⁸⁹.

En dicha oportunidad, Baker insistió en resaltar la crisis que venía sufriendo el pueblo peruano al momento que Alberto Fujimori asumió el poder. Sin embargo, deja en claro que las medidas tomadas por el Gobierno del Perú eran injustificadas y que el Gobierno de los EEUU suspendería toda nueva ayuda hasta que la democracia fuera restaurada en el Perú. No obstante, Baker deja ver la intención del Gobierno de los EEUU de colaborar en este proceso y, por tal motivo, presenta la iniciativa de formar una Misión²⁹⁰ a nivel de la OEA que visite el país y participe en la restauración de la democracia.

En el mes de mayo de ese año, el Presidente Fujimori hizo una aparición sorpresiva en Bahamas, donde se encontraban reunidos los representantes de la OEA y prometió la celebración de elecciones para los próximos meses²⁹¹.

A nivel del Congreso, hubo reacciones airadas como la del Senador Edward Kennedy, quien propuso que el Presidente Bush certificara que el Presidente Fujimori había retrocedido en sus medidas antidemocráticas, antes de que se le restaurara la ayuda económica. En este sentido, la House of Foreign Affairs Committee aprobó una Resolución (H Con Res 306) mediante la

²⁸⁸ Carroll J. Doherty, “Lawmakers support decision to halt funding for Peru,” Congressional Quarterly Weekly Report, Abril 11, 1992, 961.

²⁸⁹ En el momento del Autogolpe, Bernard Aronson se encontraba en el Perú para discutir con el Presidente Fujimori nuevas iniciativas para el desarrollo económico y para el combate contra el narcotráfico. Con las medidas adoptadas por el Gobierno Peruano, las conversaciones no se realizaron. James A. Baker, “The need to restore the Democracy in Perú”, Dispatch, Mayo 18, 1992, 393.

²⁹⁰ Como es sabido, con los resultados de la visita de esta Misión al Perú, se emite la Resolución 2/92 sobre la Restauración de la Democracia en el Perú, la cual reconoce el compromiso del Gobierno Peruano de convocar a las elecciones del Congreso Constituyente, para las cuales se nombraría una misión de observadores. Dispatch, Junio 29, 1992, 526.

²⁹¹ Cynthia McClintonck, “Peru’s Fujimori: A Caudillo Derails Democracy,” Current History 92, No. 572 (1993): 116.

cual se urgía al Presidente Bush a continuar con la suspensión de la ayuda²⁹² y la aprobación de créditos internacionales, hasta que la democracia fuera restaurada en el Perú²⁹³.

En este sentido, el rol que el Congreso jugó vigilando el cumplimiento de los estándares internacionales en derechos humanos motivó algunas reacciones del gobierno peruano, tales como el anuncio del Presidente peruano sobre la creación del Registro de Detenidos hacia agosto de 1992 y la autorización a los representantes de la Cruz Roja para visitar las cárceles peruanas²⁹⁴.

4.3 La Lucha Antiterrorista

Calificados como rebeldes, insurgentes, revolucionarios y demás, las acciones de “Sendero Luminoso” (en adelante, SL) han sido consideradas como las más sanguinarias de la historia mundial. Originario de Ayacucho, SL hace su aparición a la vida pública hacia 1980, con la quema de ánforas electorales en la región de Chucchi. En aquel momento, nadie imaginaba que lo que fue calificado como “actos de abigeos” sería el inicio de una secuela de crímenes y destrucción que castigaría al Perú por más de una década.

Los diferentes regímenes que asumieron el Gobierno del Perú desarrollaron esfuerzos infructuosos en la lucha contra SL. Con un Poder Judicial atemorizado ante las amenazas de los terroristas y la falta de seguridad reinante, era prácticamente imposible pensar en el fin de las acciones de violencia²⁹⁵. En este sentido, la Administración Bush se pronunció calificando a SL como “el más brutal y despiadado grupo guerrillero de América Latina”²⁹⁶.

En este tema, la Administración norteamericana fue clara al decir que SL sólo podría ser vencido por los peruanos y que no existía una solución directa por parte del gobierno de los EEUU. Sin embargo, el Departamento de Estado da ciertos lineamientos sobre la manera en que debía enfrentarse la lucha contra SL²⁹⁷.

²⁹² WOLA, “After the Autogolpe: Human Rights and the U.S. Response,” (Washington, DC: 1994, p. 42).

²⁹³ Carroll J. Doherty, Op. Cit., p. 961.

²⁹⁴ Arewa Olufunmilayo B. y Susan O'Rourke, “Country-Specific Legislation and Human Rights: The Case of Peru,” Harvard Human Rights Journal, 5 (1992): 183- 192.

²⁹⁵ Asimismo, se debe mencionar que durante el Gobierno de Alan García apareció otro grupo que desarrollaba acciones de violencia, denominado “Comando Rodrigo Franco”. Si bien nunca se pudo probar claramente el vínculo de este movimiento con el Gobierno, siempre se especuló al respecto. Es interesante notar, además, que dicho Comando desaparece de la escena política del Perú al término del gobierno aprista. Asimismo, debe mencionarse las acciones del Movimiento Revolucionario Tupac Amaru (MRTA) el cual fue cobrando relevancia en la escena peruana hasta el punto de haber planeado una estrategia de asalto al Congreso Peruano –acción que fue detenida por la policía- y de llevar a cabo la toma de rehenes en la Residencia del Embajador Japonés en Lima, hacia fines de 1996.

²⁹⁶ Dispatch, Septiembre 23, 1992, 708; 710.

²⁹⁷ Aronson, Bernard W., “Peru’s Brutal Insurgency: Sendero Luminoso”, En: Dispatch, Marzo 23, 1992, p. 238.

En primer lugar, se instaba a la comunidad internacional a centrarse en las atrocidades cometidas por este grupo terrorista. Asimismo, se sostenía algo interesante en relación a las razones del surgimiento y desarrollo de SL. Así, se dijo que las bases para su desarrollo eran los dos tercios de peruanos que vivían en situación de pobreza y la crisis económica en general, que era aprovechada por SL, todo lo cual hacía necesaria la participación de la comunidad internacional para ayudar al Gobierno Peruano a superar dicha crisis. Este es el fundamento del Gobierno de Bush para hacer énfasis en el apoyo que el gobierno de los EEUU le brinda al Perú: US\$200.7 millones de dólares en asistencia directa (de los cuales, US\$157.2 millones eran sólo de ayuda económica); la preferencia en las relaciones comerciales con los EEUU; US\$ 5 millones de dólares extra en el programa de ayuda en casos de mortalidad infantil; etc.

Finalmente, se dieron las pautas sobre lo que debería ser la estrategia del gobierno peruano para combatir a SL²⁹⁸:

- a) Extender la presencia del Gobierno en las áreas rurales y en las nuevas áreas urbanas (“pueblos jóvenes”).
- b) Incrementar las medidas de seguridad.
- c) Reformar y reforzar el sistema de administración de justicia, de modo que el debido proceso se viera garantizado²⁹⁹.

Es interesante notar como el tema de la lucha contra el terrorismo resulta vinculado con la lucha antinarcóticos, no sólo por la relación probada que existía entre SL y el MRTA con los grupos que se dedican al narcotráfico en el país, sino también porque –tal como lo reconoce el propio Departamento de Estado– “la prioridad de los EEUU era la cocaína, mientras que la prioridad del Perú era SL”. Por ello, lo primordial era conciliar las prioridades de ambos países³⁰⁰.

4.4 La Lucha Antidrogas

Este tema se ha presentado como una constante en las relaciones entre el Perú y los EEUU, lo cual se entiende si se toma en cuenta que el 95% de las narcóticos consumidos ilícitamente en los EEUU provienen de otros países³⁰¹. Por ello, la cooperación internacional orientada a detener la producción y el tráfico de drogas es un elemento central en la política exterior de los EEUU.

²⁹⁸ Dispatch, Marzo 23, 1992, p. 238.

²⁹⁹ En esta parte, la participación de los EEUU se da en el Programa de Administración de Justicia financiado por la Agencia para el Desarrollo Internacional (USAID) y el Programa de Entrenamiento en Investigación Criminal del Departamento de Justicia (ICITAP). Dispatch, Marzo 23, 1992, p. 239.

³⁰⁰ Ibidem.

³⁰¹ Cabe decir, asimismo, que el órgano central que se encarga del tema de la lucha antinarcóticos es el Bureau for International Narcotics Matters del Departamento de Estado. Dispatch, Setiembre 10, 1990.

Hacia 1990, la estrategia interna de lucha contra las drogas incluía como puntos centrales el desmantelamiento de las organizaciones de narcotraficantes; la reducción del abastecimiento de narcóticos provenientes del exterior por medio del apoyo legal, militar y económico hacia Perú, Bolivia y Colombia³⁰²; la prioridad a los esfuerzos antidrogas en las relaciones bilaterales de los EEUU, etc.³⁰³.

Un punto interesante de partida para el análisis es la Cumbre de Cartagena, realizada el 15 de febrero de 1990 y en la cual se reunieron los Presidentes de EEUU, Bolivia, Colombia y Perú. En esta reunión, el Presidente Bush expresó su absoluto compromiso en la guerra contra las drogas, para lo cual no sólo ofrecía disminuir el consumo interno sino también asistir a otros países en el desarrollo de programas alternativos a los de la siembra de coca. Para ello, el monto correspondiente al presupuesto internacional para la lucha contra las drogas en Colombia, Bolivia y Perú se incrementó en siete veces de 1989 a 1991³⁰⁴. Como consecuencia de esta reunión los países de la Región Andina se comprometieron a luchar contra el tráfico de drogas y a desincentivar el cultivo ilícito de coca. Asimismo, se dieron una serie de acuerdos bilaterales para tal efecto; en el caso del Perú, ambos países firmaron acuerdos relacionados con el intercambio de información tributaria y financiera y el intercambio de notas en los casos de extradición³⁰⁵.

En relación a la ayuda que el gobierno de los EEUU brindó al Perú en este tema, tenemos que hacia marzo de 1990 nuestro país recibió aproximadamente US\$19 millones de dólares en equipo y entrenamiento para la Policía Nacional, específicamente para el desarrollo de las operaciones antidrogas en el Valle del Alto Huallaga, siendo Santa Lucía la Base central de operaciones³⁰⁶.

En este tema, es importante referirse a la International Narcotics Control Act (INCA) de 1990³⁰⁷, documento que introduce el tema de los derechos humanos dentro de las condiciones para aprobar los desembolsos por este concepto y al Acuerdo firmado el 15 de mayo de 1991 entre Perú y EEUU, el cual tiene como objetivo fundamental el diseño de una nueva estrategia para combatir dicho problema³⁰⁸.

³⁰² En este sentido, cabe mencionar que en 1990 se destinaron US\$ 423 millones de dólares a Colombia, Perú y Bolivia, por concepto de ayuda económica, legal y militar. Dispatch, Setiembre 10, 1990, p. 83.

³⁰³ Ibidem.

³⁰⁴ Con la llegada de Bush al gobierno, el presupuesto interno para la lucha antidrogas se incrementó en un 67%, mientras que el internacional aumentó en un 73%. Dispatch, Setiembre 3, 1990, p. 15.

³⁰⁵ Dispatch, Setiembre 3, 1990, p. 83-84.

³⁰⁶ En este sentido, el gobierno de los EEUU destacó las acciones de la Policía Nacional Peruana que hacia 1991 había destruido 150 laboratorios clandestinos y había atacado las redes de narcotráfico que se desarrollaban en esta zona. Dispatch, Setiembre 23, 1991, p. 709.

³⁰⁷ International Narcotics Control Act of 1990, CIS 90-PL101-623, December 1990.

Cabe decir, entonces, que la INCA establecía que el gobierno receptor de la ayuda norteamericana debería “haber experimentado un progreso significativo en la protección de los derechos humanos internacionalmente reconocidos”, lo cual implicaba que el gobierno en cuestión pudiera garantizar la inexistencia de casos de tortura, detención, desapariciones u otras situaciones de denegaciones flagrantes del derecho a la vida, libertad y seguridad de la persona; el libre acceso de los representantes de las diferentes organizaciones internacionales (ONU, OEA, etc.) a los lugares de detención y que las instituciones civiles tuvieran control efectivo sobre las actividades militares y policiales antinarcóticos y antisubversiva.³⁰⁹

En este caso, frente a la necesidad de desarrollar una sólida estrategia en la lucha contra las drogas que implicara el desembolso de asistencia económica por parte de los EEUU hacia el Perú, aparece el tema de las violaciones de derechos humanos de las que se considera responsable al Gobierno Peruano y que motivó que el tema de la asistencia económica a nuestro país fuera discutido ampliamente a nivel del Ejecutivo y del Congreso de los EEUU³¹⁰.

Para algunos analistas, la Administración Bush había contribuido a crear una imagen del Presidente Fujimori como un líder de la democracia y de los derechos humanos, con el objetivo de justificar la ayuda que le brindaba el gobierno norteamericano en la lucha antidrogas, lo cual era incoherente si se tenía en cuenta el aumento de poder que recibían las fuerzas armadas durante su mandato, atentando contra el desarrollo del poder civil³¹¹.

Sin embargo, la Administración Bush determinó en julio de 1991 que el Perú había cumplido satisfactoriamente con los estándares señalados por la INCA, no obstante los informes negativos presentados por distintas organizaciones dedicadas al tema de los derechos humanos. Por ello, la Administración comunica al Congreso su intención de asignar US\$ 94.9 millones al Perú por concepto de asistencia militar, lo cual no fue aceptado por el órgano legislativo³¹².

Asimismo, se debe tener en cuenta que el gobierno peruano declinó su participación en el programa FMF³¹³ correspondiente a 1990, el cual proveía de US\$35.9 millones de dólares en

³⁰⁸ Nicholas Cochrane, Op. Cit., p. 1.

³⁰⁹ La traducción ha respetado el uso de términos como “counterinsurgency activities” incluidos en el original. Arewa Olufunmilayo B. y Susan O’Rourke, Op. Cit., p. 183-92.

³¹⁰ WOLA, Op. Cit., 1994, p. 37.

³¹¹ Peter Andreas, “Fujimori’s Coup,” The Nation, Abril 1992, 544.

³¹² Posteriormente, el Congreso acordará destinar US\$60 millones de dólares al Perú, debido a la severa crisis económica que entonces aquejaba al país. Sin embargo, estableció algunas limitaciones en este punto, como por ejemplo el corte de US\$10.05 millones de dólares en ayuda militar para combatir a los grupos armados, mientras que se asignaban US\$ 3.7 millones para programas de acción cívica - armada. Asimismo, se estableció que se asignaría efectivamente el saldo de US\$24.9 millones en ayuda militar, siempre y cuando el Gobierno Peruano cumpliera con las condiciones establecidas en relación a los derechos humanos y la lucha antinarcóticos. Rourke Arewa Olufunmilayo B. y Susan O’Rourke, Op. Cit., p. 183-192. Ver además: White House, “US Support for Peruvian Reform. Remarks upon President Fujimori’s departure”, en Dispatch, Septiembre 23, 1991, p. 704.

³¹³ FMF: Foreign Military Financing. Dispatch, Octubre 29, 1991, p. 220-221.

asistencia militar en el programa de antinarcóticos. En esta oportunidad, el Presidente Fujimori declaró que sus objetivos eran los de un programa que incluyera más de sus preocupaciones económicas y no centrarse sólo en el tema de la cooperación militar, con lo cual se marca un hito importante con el Presidente peruano como negociador y planteando sus condiciones en la materia. A nuestro juicio, la posición del Gobierno Peruano en este momento tenía su fundamento en los logros que el Perú venía teniendo en el tema. Esto fue reconocido, por ejemplo, hacia 1992 cuando el

entonces Secretario de Estado, Bernard Aronson, declaró que durante la etapa previa al advenimiento de Fujimori al poder, el programa antinarcóticos que desarrollaba el Perú había carecido de solidez en su conducción.

En este sentido, resaltó la labor del Presidente en contra del tráfico de drogas y en el desarrollo de alternativas económicas para la supervivencia de los campesinos que dependían del cultivo de coca, por lo cual instó a la comunidad internacional en esa oportunidad, para continuar apoyando al presidente peruano en su camino hacia la reforma económica . Asimismo, Aronson destacó que la prioridad de los EEUU era “combatir el narcotráfico y no la insurgencia, no obstante la evidente colusión entre los narcotraficantes y los grupos guerrilleros en Colombia y Perú”³¹⁴.

Otro hito importante en el análisis lo constituye la Cumbre de San Antonio, realizada en febrero de 1992 y en la cual el Presidente Bush plantea las áreas prioritarias en la lucha antidrogas: la reducción de la demanda por parte de los EEUU, la continuación de la reforma económica y la asistencia hacia los países productores -especialmente Perú y Bolivia- la reforma de los sistemas de administración de justicia, etc.³¹⁵. Como resultado de esta reunión, se da la Declaración de San Antonio del 27 de febrero de 1992.

En esta ocasión, los progresos en la lucha antidrogas que se atribuyen al Perú son: la reinserción del Perú en la comunidad financiera internacional, gracias a la participación de los EEUU y del Japón en el Grupo de Apoyo a nuestro país; el desarrollo de programas de asistencia técnica a los campesinos de la zona del Alto Huallaga; la promoción de un favorable marco económico de apoyo al sector privado; etc.³¹⁶

En esta oportunidad, el Presidente peruano rechazó los plazos impuestos por el gobierno de los EEUU para acabar con el flagelo de la droga, a menos que el Perú recibiera un incremento importante en ayuda económica. En dicha ocasión, Fujimori sostuvo que sólo se acabaría con el

³¹⁴ Traducción propia. Cabe resaltar que entre los hechos concretos que se destacan tenemos que hacia fines de 1990 y comienzos de 1991 la Fuerza Aérea Peruana interceptó y detuvo dos aeronaves en la Base de Sta. Lucía que transportaban 220 kg. de cocaína. Ver al respecto: Dispatch, Marzo 18, 1992, p. 192-194. Además, revisar Melvin Levitsky, “International Narcotics Control: Andean Strategy Update,” Dispatch, Julio 15, 1991, p. 515.

³¹⁵ George Bush, “Two Years after Cartagena: Assessing Accomplishments and Plans,” Dispatch, Marzo 2, 1992, p. 145.

³¹⁶ Dispatch, Marzo 2, 1992, p. 151.

cultivo de la coca en el Alto Huallaga con el desarrollo económico de la región y no con la intervención militar³¹⁷.

En este punto, muchos analistas resaltan que las opiniones eran ambivalentes en este momento: Por un lado, se quería continuar con el programa antidrogas pero, por otro lado, no se quería intervenir en la represión de SL, temiéndose la repetición de la guerra en Vietnam, teniendo en cuenta que la Administración Bush había reconocido la vinculación entre los grupos terroristas y el cultivo de drogas en el Valle del Huallaga³¹⁸.

Hacia marzo de 1992³¹⁹, el Departamento de Estado sostuvo que el Presidente Fujimori había desarrollado una serie de reformas durante 1991 destinadas a mejorar el récord del Perú en materia de derechos humanos. Entre dichas reformas, menciona el permiso que se le da a la CICR en setiembre de 1991 para visitar los centros militares de detención y la autorización que reciben los representantes del Ministerio Público para acceder a los puestos militares en las zonas de emergencia. Asimismo, se sostiene que la principal causa de violaciones de derechos humanos se encuentra en las actividades terroristas de SL y del MRTA y en la dificultad del gobierno de desarrollar una respuesta disciplinada.

Cabe decir que la ayuda económica en la materia formaba parte de la llamada Estrategia Andina, un programa de cooperación por 5 años destinado a combatir la producción y el tráfico de drogas entre los países andinos, para lo cual también se ponían en práctica programas económicos designados a desarrollar programas alternativos al cultivo de coca.

En este sentido, la Administración sostenía que negándose la asistencia al Perú no sólo se facilitaría el ingreso de cocaína a los EEUU, sino que también se “perdería la oportunidad de colaborar cercanamente con un valiente líder democrático que estaba trabajando por mejorar el respeto de los derechos humanos y por consolidar una democracia que se encontraba bajo el ataque de una brutal guerrilla”³²⁰.

Es interesante notar, de otro lado, como la asistencia en la lucha antidrogas por parte de los EEUU no fue suspendida al momento de producirse el Autogolpe de abril de 1992.

A nuestro juicio, entonces, el tema de la lucha antidrogas ha sido el principal en las relaciones de los EEUU con el Perú. Así, mientras en 1991 las violaciones de derechos humanos en nuestro país eran denunciadas continuamente por las ONGs dedicadas al tema, la Administración norteamericana solicitaba ayuda económica para el Perú, básicamente por la importancia que tenía nuestro país en la lucha antidrogas, dado que proveíamos el 60% de la

³¹⁷ Michael Radu, “Can Fujimori Save the Peru?,” Bulletin of the Atomic Scientists (1992): 19.

³¹⁸ Dispatch, Setiembre 23, 1991, p. 706.

³¹⁹ Dispatch, Marzo 2, 1992, p. 178.

³²⁰ Traducción propia. Bernard Aronson, “Proposed US Economic and Military Aid to Peru,” Dispatch, Setiembre 23, 1991, p. 708-711.

producción mundial de hojas de coca³²¹. De allí el interés norteamericano de asistencia al Perú, la cual no sólo debería consistir en el desembolso de fondos, sino también en la ayuda militar que permitiera combatir al terrorismo. Para ello, Aronson hace énfasis en la necesidad de la participación militar, la cual era la única fuente de la seguridad necesaria para combatir a narcotraficantes y terroristas³²². Adicionalmente, se exige como esencial una mejora en las condiciones de los derechos humanos en el país, considerando que ésta era la única manera en que las fuerzas militares y policiales peruanas ganaran la confianza de la población³²³.

Ahora bien la ayuda militar proveniente de los EEUU hacia el Perú para combatir el tráfico ilícito de drogas, recibió duras críticas por parte de ciertos analistas norteamericanos, durante los años más cruentos de las acciones terroristas, ya que vieron en esto un refuerzo del poder militar en desmedro del poder civil, considerando la responsabilidad que muchas ONGs le atribuyeron a las fuerzas armadas en las violaciones de derechos humanos en el país³²⁴. Asimismo, pensaban que EEUU presionaba al Perú para iniciar la guerra contra las drogas, dado que nuestro país necesitaba los créditos a nivel internacional y sólo podría acceder a ellos con el respaldo de una potencia como la norteamericana; por ello, teníamos que aceptar la negociación en materia de drogas³²⁵.

Finalmente, cabe resaltar que el programa de lucha antidrogas que desarrolla la Administración Fujimori ha continuado logrando éxitos, lo cual llevó recientemente al General Barry McCaffrey a felicitar los logros del Perú en la materia y a resaltar especialmente la figura del Presidente Fujimori, durante su visita a Lima en el pasado mes de abril³²⁶.

4.5 Los Reportes Anuales del Departamento de Estado

Como vimos en su momento, estos Reportes son elementos muy importantes en la apreciación que se tiene sobre el récord de derechos humanos de los diferentes países y su ámbito de difusión no sólo se extiende a los EEUU sino que tienen una amplitud mucho mayor. A continuación, presentamos una revisión de los principales puntos tratados por estos Reportes Anuales para el caso del Perú.

³²¹ Dispatch, Setiembre 23, 1991, p. 708.

³²² Dispatch, Setiembre 23 1991, p. 708.

³²³ Dispatch, Setiembre 23 1991, p. 708-710.

³²⁴ Margaret Wilde, “What are we doing in Peru?”, Christian Century 107 (1990): 724-725.

³²⁵ Robin Kirk, “What war on Drugs? Sowing Violence in Perú”, Progressive 55, no. 32 (1991): 32.

³²⁶ No obstante estos hechos, se debe mencionar el incidente ocurrido en esa época cuando el Gral. McCaffrey expresó su protesta por la emisión de un vídeo en los medios de comunicación peruanos que mostraba al controvertido asesor presidencial Vladimiro Montesinos durante la visita a Lima del funcionario norteamericano. Según McCaffrey, su visita estaba siendo utilizada por el asesor para limpiar su imagen ante la opinión pública peruana y aparecer avalado por el Gobierno de los EEUU.

El Reporte de 1990³²⁷ sostiene que la principal causa de las violaciones de los derechos humanos en el país eran las actividades ilegales de SL, mientras que en segundo lugar se presentaban las acciones del Gobierno, que no lograba desarrollar una respuesta coherente ante la arremetida terrorista. Asimismo, este Reporte resalta el anuncio del entonces recientemente electo Presidente Fujimori de instituir una serie de reformas orientadas a mejorar la grave situación de derechos humanos reinante en el Perú. En la primera sección de dicho documento, se da cuenta de las ejecuciones extrajudiciales, la mayor parte de las cuales se atribuyen a SL.

Por otro lado, al hablar de los casos de desapariciones se reconoce que la mayor parte de los casi 5,000 casos reportados desde 1983 corresponde a las acciones de las fuerzas de seguridad. Igual situación se da con los casos de tortura, aunque en este tema se presenta también las acciones de SL. Asimismo, se resalta las pésimas condiciones del sistema carcelario. Por otro lado, al hablar de los casos de arresto y detención arbitraria, se reporta las amenazas sufridas por los jueces encargados de juzgar los casos de terrorismo. Igualmente, se refiere que en aquellos casos en que los detenidos fueran militares se les remitía a la justicia militar, con lo cual eran favorecidos.

El Reporte de 1991³²⁸, por su parte, presenta una situación similar y da cuenta de las acciones de SL y del MRTA. Asimismo, resalta la inacción judicial para investigar los casos en que los responsables de los abusos por derechos humanos estaban a cargo de las fuerzas militares. En el caso de las desapariciones, el Reporte destaca cómo el mayor número de casos correspondían a las zonas de emergencia. En lo que se refiere a la tortura, el documento da cuenta de las denuncias efectuadas por los grupos sobre derechos humanos en el Perú, las cuales responsabilizaban a las fuerzas de seguridad. Sobre los casos de arresto y detención arbitraria, el documento destaca las medidas del gobierno de permitir el acceso de los representantes del Ministerio Público en las bases militares e incluso en las zonas de emergencia.

De especial interés resulta el Reporte correspondiente a 1992³²⁹, el cual destaca desde las primeras líneas el Autogolpe de abril de 1992 y el proceso que siguiera al mismo para el restablecimiento de la democracia. Asimismo, da cuenta del anuncio hecho en la reunión de OEA realizada en Bahamas en mayo de ese año, donde el Presidente promete la realización de elecciones para el establecimiento de un Congreso Constitucional, las cuales se llevan a cabo en noviembre del mismo año, bajo la vigilancia de los observadores designados por la OEA, quienes finalmente dieron su veredicto favorable sobre las mismas. De otro lado, este Reporte hace hincapié en la difícil relación existente entre el Gobierno y los grupos defensores de los derechos humanos en el Perú.

³²⁷ Department of State, Country Reports on Human Rights Practices for 1990, (Washington, DC: U.S. Congress, 1991, p. 736-754).

³²⁸ Department of State, Country Reports on Human Rights Practices for 1991, (Washington, DC: U.S. Congress, 1992, p. 708- 722.)

³²⁹ Department of State, Country Reports on Human Rights Practices for 1992, (Washington, DC: U.S. Congress, 1993, p. 471-483).

El Reporte correspondiente a 1993³³⁰ reconoce la disminución de las desapariciones de las personas acusadas de terrorismo, aunque reafirma que las violaciones de derechos humanos se mantienen. Por otro lado, destaca entre los hechos positivos la visita de la Comisión Interamericana de Derechos Humanos y el Reportero Especial de la ONU para las Ejecuciones Extrajudiciales. Asimismo, se refiere al programa económico del Presidente Fujimori, el cual “responde a la intención del Gobierno de llegar a la estabilización y a revertir el declive económico” y destaca la privatización de las empresas estatales.

Igualmente, resalta que la mayor parte de los abusos contra los derechos humanos corresponden a SL³³¹ y, en menor medida, a las fuerzas del orden. Finalmente, hace énfasis en las facilidades que el gobierno peruano dio para que los miembros de la Cruz Roja visiten los centros militares de detención. Asimismo, da cuenta de los informes de las ONG sobre derechos humanos en el Perú y de las denuncias que hacen de los abusos cometidos por las fuerzas del orden en materia de desapariciones y tortura.

Por otro lado, reporta la captura de Abimael Guzmán, líder de SL, cuyos abogados califican como “prisionero político”. Sin embargo, el propio documento refiere que el mismo Guzmán se declara como “presidente” de SL y responsable de la “guerra” contra el Estado Peruano.

Otro punto que es incluido en este Reporte es el caso de los “jueces sin rostro” y, en general, de la legislación antiterrorista. El documento sostiene que los procedimientos en los tribunales militares no cumplen con los estándares internacionales sobre el debido proceso. Además, se destaca que en setiembre de ese año el Gobierno Peruano recibió la visita de la denominada Comisión Internacional de Juristas, la cual estudiaría el Sistema Judicial Peruano con miras a determinar si éste se adecuaba al debido proceso, especialmente en los casos de terrorismo. Como conclusión general, dicha Comisión señaló que el Perú estaba incumpliendo con los pactos internacionales sobre derechos humanos.

Asimismo, se destacan las modificaciones hechas por el Congreso Peruano hacia noviembre de ese año -especialmente en la legislación antiterrorista- mediante las cuales se restauraba el Habeas Corpus y se dejaba sin efecto las disposiciones que permitían el juzgamiento en ausencia y prohibían a los abogados la defensa al mismo tiempo de más de una persona acusada de terrorismo.

El Reporte de 1994³³² refiere la disminución de los abusos contra los derechos humanos, especialmente en lo que tiene que ver con las ejecuciones extrajudiciales y las desapariciones,

³³⁰ Department of State, Country Reports on Human Rights Practices for 1993, (Washington, DC: U.S. Congress, 1994, p. 529-542).

³³¹ Destaca, por ejemplo, la muerte de la María Elena Moyano, líder popular que había instado a la población a la oposición pacífica contra SL, motivo por el cual fue asesinada por SL y sus restos dinamitados en frente de sus hijos en Febrero de 1992.

³³² Para los Reportes Anuales a partir de 1994, recomendamos revisar:
[gopher://gopher.state.gov:70/00ftp...20America%20and%20Caribbean%3APeru](http://gopher.state.gov:70/00ftp...20America%20and%20Caribbean%3APeru)

pero reconoce que las violaciones se mantienen y que la fuente principal de los mismos es SL. Destaca que la administración de justicia peruana continúa siendo lenta y corrupta, si bien admite que numerosas reformas estaban en camino. Siguiendo con lo dicho en los informes anteriores, da cuenta de la difícil relación entre el Gobierno y las ONGs dedicadas al tema de los derechos humanos.

Por su parte, el Reporte de 1995 va en esta misma línea de reconocer la disminución de los abusos en materia de derechos humanos, pero da cuenta de la denominada Ley de Amnistía, por medio de la cual resultaron en libertad algunos miembros de las fuerzas de seguridad que cometieron abusos en el combate contra el terrorismo entre 1980 y 1995. Asimismo, se resalta que se continúa con el uso de la Ley de Arrepentimiento en la captura de los sospechosos por actos terroristas. Se da cuenta de los informes de las ONG de derechos humanos que consideran que al menos 700 personas estaban presas injustamente condenadas por el delito de terrorismo y traición a la patria. Asimismo, se destaca el hecho que el Congreso autorizara la extensión por un año adicional de los llamados “jueces sin rostro”.

De otro lado, el Reporte de 1996 destaca el nombramiento del Defensor del Pueblo y la creación de una Comisión Ad-Hoc, destinada a revisar y recomendar el indulto para aquellos ciudadanos injustamente detenidos por el delito de terrorismo o traición a la patria. Por otro lado, se da cuenta de las críticas que recibe el Tribunal Constitucional en relación a su independencia al momento de adoptar sus resoluciones.

Se dice también que el Congreso extendió la vigencia de los jueces sin rostro y del juzgamiento a cargo de tribunales militares de quienes fueran acusados por delitos de terrorismo agravado, procedimientos que no cumplen con los estándares internacionales del debido proceso, lo cual fue criticado por el Comité de Derechos Humanos de la ONU en julio de ese año.

Asimismo, se da cuenta del caso de Lori Berenson, ciudadana norteamericana condenada a cadena perpetua debido a su participación activa en el MRTA, agrupación responsable de la toma de la Residencia del Embajador Japonés hacia fines de 1996, hecho que detuvo el trabajo de la Comisión Ad-Hoc antes referida. De otro lado, en este Reporte se da cuenta de la llamada Ley de Reelección Electoral, que fuera aprobada en agosto de 1996 y que “permitía al Presidente postular por un tercer período presidencial”.

Finalmente, el Reporte de 1997 se inicia con el tema de la reelección presidencial y señala que la mayoría del Congreso “permitió la aprobación de una ley interpretativa que permitiría al Presidente Fujimori candidatear por un tercer período. El intento de la administración de mantenerse en el poder ha creado una crisis constitucional”. Se resalta la destitución de tres miembros del Tribunal Constitucional que votaron en contra de la referida ley, lo cual dejó a dicho organismo fuera de funcionamiento y se da cuenta de la

abolición por parte del Gobierno del sistema de “jueces sin rostro”, como respuesta a la disminución de la escalada terrorista. Se apunta, además, la creciente credibilidad que la Defensoría del Pueblo tiene a nivel de la población peruana.

Cabe destacar que aproximadamente desde 1993, los Reportes van incluyendo en su Presentación los avances y comentarios referidos a las medidas económicas adoptadas por el Gobierno, especialmente lo que tenía que ver con los ingresos percibidos en el Perú por concepto de venta de coca.

4.6 Las Organizaciones de Derechos Humanos

Anteriormente nos referimos a la importancia de la labor realizada por las organizaciones de particulares que se dedican al tema de los derechos humanos, sea a nivel internacional como a nivel interno. En el ámbito nacional, destaca de manera especial la labor de la Coordinadora de Derechos Humanos, entidad que agrupa a las principales ONGs que se dedican a la defensa y promoción de estos derechos en el Perú. Anualmente, la Coordinadora publica un Informe en el cual da cuenta de la situación del tema en el país. Asimismo, destacan sus Pronunciamientos y Comunicados emitidos ante los principales acontecimientos que puedan afectar la vigencia de los derechos humanos en el Perú.

Estos Informes han servido de base para la labor de otras ONGs de ámbito internacional, como por ejemplo Human Rights Watch (antes Americas Watch), entidad que desarrolla una labor importante a nivel mundial y, obviamente, también en el medio norteamericano.

En este sentido, podemos mencionar la publicación de Americas Watch, Peru under Fire: Human Rights since the Return to Democracy³³³ en la cual, luego de dar cuenta de la situación crítica de los derechos humanos en el Perú, esta organización se detiene en el rol que le corresponde a los EEUU en esta materia y censura, por ejemplo, la ayuda otorgada al Perú para el combate contra las drogas de más de \$65 millones de dólares, la cual fue aprobada a pesar del Reporte Anual de 1989 que demostraba que nuestro país no había cumplido los requerimientos del 502 (B). En este sentido, esta organización sostuvo que la Administración Bush no había hecho de las violaciones de derechos humanos un factor decisivo en la política exterior de EEUU hacia el Perú, habida cuenta de la prioridad que se le dio al programa antidrogas.

Por otro lado, debemos referirnos al caso de WOLA y los numerosos informes y publicaciones³³⁴ que ha producido en relación al caso del Perú. Asimismo, merece especial atención la participación de esta entidad a nivel del Congreso de los EEUU, como por ejemplo en 1993³³⁵. En dicha ocasión, WOLA criticó al Presidente Bush, señalando que las exigencias que esta Administración hiciera al Perú en materia de derechos humanos fueron inconsistentes. WOLA también resaltó la iniciativa del Gobierno de Clinton de consolidar las condiciones en derechos humanos requeridas para que el Gobierno de los EEUU brinde su apoyo al Perú.

³³³ Americas Watch, Peru under fire. Human Rights since the return to Democracy (New York: Yale University Press, 1992).

³³⁴ Coletta Youngers, Peru under Scrutiny: Human Rights and U.S. Drug Policy (Washington, DC: WOLA, 1992). WOLA, Op. Cit., 1994.

³³⁵ Committee On Foreign Affairs, House Of Representatives, Peru: U.S. Priorities and Policy (Washington, DC: 1993).

En este sentido, vio con agrado el vínculo hecho entre los derechos humanos y la democracia como condición para que EEUU integrara el grupo de donantes hacia el Perú. Al respecto, afirmó que ninguna de las condiciones establecidas por el Congreso de los EEUU en 1991 habían sido cumplidas por el Gobierno del Presidente Fujimori. Para ello, resaltó tres puntos:

- a) Cuestionó la independencia del Congreso elegido en 1992.
- b) Afirmó que el Poder Judicial continuaba bajo el control del Ejecutivo y que se había eliminado las condiciones del Debido Proceso.
- c) Sostuvo que desde el Autogolpe se había dado un incremento en la persecución de opositores al régimen.

Asimismo, da algunas Recomendaciones sobre la materia:

1. Toda ayuda no humanitaria al Perú debería ser condicionada a la restauración de un Congreso y un Poder Judicial independientes y una disminución de las violaciones de los derechos humanos a cargo de los agentes estatales.
2. El Congreso de los EEUU debería urgir al Presidente Clinton para que continuara expresando sus preocupaciones sobre la situación de los derechos humanos y la democracia en el Perú.
3. No se debería disponer de ayuda militar para el Perú en el Año Fiscal de 1994.

4.7 El Conflicto Perú-Ecuador

Un tema adicional que debe considerarse en el análisis tiene que ver con el proceso de paz emprendido por el Perú y el Ecuador y en el cual EEUU ha tenido un rol primordial como país garante, calidad que le fue conferida a raíz del Protocolo de Paz, Amistad y Límites firmado en 1942 entre las partes en conflicto³³⁶. Al respecto se debe tener presente la participación de Melvyn Levitsky en la Declaración de Paz de Itamaraty y de Alexander F. Watson en la Declaración de Montevideo, ambas de 1995.

Recientemente, la Secretaría de Estado Albright³³⁷ ha resaltado los progresos logrados en la negociación entre ambos países, lo cual garantiza la vida en paz y seguridad del continente³³⁸.

³³⁶ Alexander Watson, "Efforts to Resolve Dispute between Perú and Ecuador," Dispatch, Febrero 13, 1995, p. 95-96

³³⁷ Madeleine Albright, "Ensuring Foreign Policy tools that sustain American Leadership," Dispatch, Abril, 1998, p. 18.

³³⁸ Al momento de la realización de esta investigación los Gobiernos de Perú y Ecuador aún no habían llegado a ningún acuerdo definitivo para la fijación de la frontera.

5. A Manera de Conclusión

Luego de la investigación desarrollada, podemos señalar, en primer lugar, que no es posible sostener que el manejo del tema de los derechos humanos a nivel de la política exterior de los EEUU corresponda a un esquema coherente y armónico, sino que las decisiones que el gobierno norteamericano tome en sus relaciones con el resto de los países depende básicamente de la materia en cuestión, de las diferentes entidades gubernamentales que participen en la decisión, así como de las agencias especializadas correspondientes. En el caso concreto del Latinoamérica, habría que considerar además si la situación en cuestión es de normalidad o de crisis, aspecto que influye de manera fundamental en la determinación de las prioridades de los EEUU hacia esta parte del continente.³³⁹ Como dice Orentlicher, el hecho que un país haya sido objeto de medidas políticas por parte de los EEUU se ha debido más al nivel de atención pública que haya generado que al récord de violaciones de los derechos humanos en sí mismo³⁴⁰.

Por otro lado, uno de los aspectos recurrentes a lo largo de la investigación es cómo el tema de los derechos humanos ha sido empleado en muchas circunstancias como un medio para el logro de otros objetivos finales. Asimismo, en muchas circunstancias cuando se ha tenido que elegir entre los derechos humanos y otros intereses de los EEUU –la denominada National Security- estos últimos han recibido la preferencia. Esto se ha visto claramente en los casos que el Ejecutivo justificaba la ayuda humanitaria hacia ciertos regímenes responsables de violaciones de derechos humanos en contra de sus nacionales, con la excusa de que existían otros intereses nacionales en juego, tales como la lucha contra el comunismo durante la Guerra Fría o la lucha antidrogas³⁴¹.

Esto, que puede afirmarse de manera general, se aplica de manera concreta al caso del Perú. Así, de ocupar uno de los lugares primordiales en la agenda política norteamericana durante la época más cruenta del terrorismo y, paralelamente, con la ruptura del orden democrático hacia 1992, el Perú ha pasado a ocupar un perfil discreto en la atención de la política exterior de los EEUU.

Básicamente, el Gobierno Peruano ha venido desarrollando una serie de acciones exitosas en algunos temas que resultan primordiales para los intereses del Gobierno de los EEUU: la lucha contra el narcotráfico y el combate contra el terrorismo. A ello debe sumarse la disminución de las violaciones de los derechos humanos a cargo de los agentes del Gobierno,

³³⁹Luis Maira, “La Formación de la Política Exterior de Estados Unidos hacia América Latina: Algunas Consideraciones Metodológicas,” en Relaciones del Perú con Estados Unidos, CEPEI (Lima: 1987, p. 34-42).

³⁴⁰ Diane F. Orentlicher, Op. Cit., p. 77.

³⁴¹ Uno de los casos más saltantes fue el de El Salvador, país que continuo recibiendo ayuda de parte de las Administraciones Reagan y Bush, no obstante las denuncias de violaciones expuestas por las diferentes ONGs dedicadas a la protección de los derechos humanos. David Dent, Op. Cit., p. 448. Sobre este tema, ver también: Tom Farer, Op. Cit., p. 264-265.

especialmente si se las compara con el conjunto de desapariciones y ejecuciones extrajudiciales que se presentaban anteriormente.

Puede decirse, entonces, que en el balance final el caso peruano casi ha desaparecido de la preocupación de los sectores políticos de los EEUU en relación a América Latina, para dar paso a otras prioridades como, por ejemplo, la situación de Colombia y de México.

Ahora bien, la coyuntura actual en el caso del Perú presenta un punto interesante que puede hacer que nuevamente nuestro país vuelva al centro de la atención de los agentes norteamericanos. Nos estamos refiriendo al respeto de las instituciones democráticas en el Perú, que se han visto amenazadas por los últimos acontecimientos relacionados con el caso de la reelección presidencial.

Esta situación ha recibido la atención del Reporte Anual del Departamento de Estado correspondiente a 1997 y de las diferentes ONGs, por lo cual es de esperar que el Gobierno del Presidente Clinton se manifieste próximamente, según como se desenvuelvan los acontecimientos.

Si, como hemos visto, el Gobierno de los EEUU actúa en función a las situaciones de crisis que se presentan en los diferentes países del orbe, nuestro pronóstico es que el Perú seguirá en un nivel discreto de atención por parte de la Administración Clinton, a menos que el proceso electoral que se avecina genere algún tipo de reacción descontrolada a nivel de la oposición al Gobierno del Presidente Fujimori y, en general, en la población peruana.

Rebelión en los confines de la sierra: Estado y campesinado en la guerra interna en el Perú³⁴²

Isaías Rojas Pérez

"Before looking at the peasants it is necessary to look at the whole society."

Barrington Moore Jr.³⁴³

"En el territorio que hoy llamamos el Perú, a pesar de los recortes o cambios a través de los siglos, ha habido un hecho muy importante: la existencia de una fuerza centralizadora, que ha sido el Estado".

Jorge Basadre³⁴⁴

El 17 de mayo de 1980, el Partido Comunista del Perú (Sendero Luminoso) inició su lucha armada con el objeto de destruir al Estado peruano. Su primera y simbólica acción armada tuvo lugar en la localidad de Chuschi, Ayacucho, y consistió en la quema de las ánforas que iban a utilizarse al día siguiente, en las elecciones generales con las que iba a concluir la transición democrática luego de doce años de gobierno militar. Conducido por Abimael Guzmán, llamado también "presidente Gonzalo", este grupo político se concibió asimismo como la vanguardia excluyente³⁴⁵ de un proceso que, a través de la "violencia revolucionaria", iba a conducir al país a una inminente utopía comunista: "la sociedad de la eterna armonía". Seguidores del maoísmo ortodoxo, su estrategia político militar era la "guerra popular del campo a la ciudad", que suponía la construcción de bases de apoyo en el campo y la movilización del campesinado para cercar y ahogar las ciudades, en particular al centro del poder: Lima. Así, la guerra de Sendero Luminoso había sido concebida por su estrategia como una clásica revolución de base campesina.

Para finales de los '80 e inicios de los '90, sin embargo, miles de campesinos de las estratégicas áreas de la sierra central y la sierra centro-sur del país, en su gran mayoría pobres,

³⁴² Este es un típico work in progress. Se inició en febrero de 1998 con el auspicio y apoyo del Woodrow Wilson International Center for Scholars/Latin American Program, institución a la que expreso mis profundos agradecimientos. Esta versión inicial se ha beneficiado de los comentarios de Kimberly Theidon, Jaime Márquez, Antonio Espinoza y Rocío Solís, a quienes también expreso mis cordiales agradecimientos. Por supuesto, las fallas y limitaciones en el texto son de mi entera responsabilidad.

³⁴³ Barrington Moore, Jr. *Social Origins of Dictatorship and Democracy. Lord and Peasant in the Making of the Modern World* (Boston: Beacon Press, 1994).

³⁴⁴ Pablo Macera, *Conversaciones con Jorge Basadre* (Lima: Mosca Azul editores, 1973), 5.

³⁴⁵ Sendero Luminoso aparece luego de una serie de divisiones del comunismo peruano iniciada en los '60 a raíz de la polémica sino-soviética. En su campaña militar atacó al resto de la izquierda a la que consideró "el revisionismo", para ellos un enemigo todavía más peligroso que el "imperialismo". Para su historia ver Carlos Iván Degregori, *El surgimiento de Sendero Luminoso, Ayacucho 1969-1979* (Lima: IEP, 1990). Para la historia de los dos primeros años de la guerra senderista ver Gustavo Gorriti, *Sendero, historia de la guerra milenaria en el Perú*, (Lima: APOYO, 1990).

hombres y mujeres de todas las edades, se organizaron en “rondas campesinas de autodefensa civil”³⁴⁶ y decidieron no sólo resistir, sino combatir a Sendero Luminoso y expulsarlo de sus tierras. A finales de 1991 habían logrado en gran parte su objetivo, causándole al grupo armado una crucial derrota de contenido estratégico. Se produjo así una gran paradoja: poco más de una década después de iniciada su lucha armada y luego de haber experimentado niveles de aceptación y apoyo de parte del campesinado, Sendero Luminoso enfrentaba a quienes se suponía eran beneficiarios de su acción “revolucionaria”. Ello ocurría en medio de una de las peores crisis económica, política y social que sacudió al país en su historia reciente y que, en teoría, debía abonar las “condiciones objetivas” para el avance de la revolución. Al final, los campesinos resultaron siendo los más firmes y decisivos aliados del Estado y las Fuerzas Armadas, que hasta entonces habían estado lidiando infructuosamente contra la organización guerrillera. Ese fue, quizás, el resultado más inesperado de la guerra interna en el Perú.

¿Cómo ha sido explicado este fenómeno y qué nuevas luces se puede arrojar en torno a él? Y, sobre todo, ¿qué indicaciones da para evaluar las relaciones Estado-campesinado en la posguerra interna y sus implicancias para la democracia y la ciudadanía en el campo?³⁴⁷

En el presente texto faremos una revisión sucinta de la literatura existente para ubicar los consensos que se han construido en la explicación del fenómeno de la guerra interna en el Perú, así como para explorar aquellos temas no suficientemente destacados en el análisis. Uno de ellos se refiere a la racionalidad e interés básico del campesinado en el escenario de la guerra, que explican las variaciones en su comportamiento producidos durante el ciclo de violencia política. Veremos como estas racionalidades e intereses han interactuado con los de los actores de la guerra, y en particular el Estado, para producir los resultados inesperados de la misma. En ese sentido, el texto va a seguir explorando causalidades y estrategias, antes que entrar a la formulación y formación de identidades³⁴⁸.

Argumentaremos que el apoyo inicial y posterior ruptura con Sendero Luminoso sugieren la existencia de un campesinado que ha sido capaz de hacer sus propias opciones en el escenario de la guerra y que ha sido sensible a los cambios en las correlaciones de poder que no controla directamente en su ámbito local y extralocal, haciendo que las alianzas sean móviles (*shifting coalitions*). Que tales opciones y sensibilidades han estado orientadas por una evaluación racional costo-beneficio que ha buscado maximizar sus intereses y beneficios en cada situación dada. Que tales intereses, más que estar determinados por la posibilidad de la apropiación

³⁴⁶ El general EP Edgar Cano Solís señaló en 1994 que había 65,000 comités de autodefensa civil en el ámbito nacional, con un total de 450 mil integrantes (INIDEN 1994).

³⁴⁷ En el presente texto vamos a centrar nuestra atención fundamentalmente en el norte de Ayacucho, donde tuvo lugar el proceso más significativo de insurgencia del campesinado contra Sendero Luminoso. La región central, área comprendida entre Junín y Pasco, fue otro escenario donde hubo, del mismo modo, alzamientos contra los maoístas. Para el caso de la sierra central ver Nelson Manrique, “La década de la violencia”, *Márgenes* 3: 149-62; Orin Starn, “Sendero, soldados y ronderos en el Mantaro”, *Quehacer* 74: 60-69. Para la selva central ver Oscar Espinosa, *Rondas Campesinas y Nativas en la Amazonía Peruana* (Lima: CAAAP, 1995).

³⁴⁸ Orin Starn, *Con los llanqués todo barro. Reflexiones sobre protestas campesinas y nuevos movimientos sociales* (IEP: Lima, 1991).

privada los beneficios, han estado más bien determinados por la búsqueda de beneficios y bienes públicos. Que, en consecuencia, tales intereses han estado asociados a la necesidad de integración y a la necesidad de preservar la relación con el “Estado benefactor”. Es esta lógica la que está a la base de las relaciones autoritarias y neoclientelistas que rigen las relaciones Estado–campesinado en la posguerra interna.

Narrativas sobre la violencia política en el Perú

En general, los estudios sobre la violencia política en el Perú³⁴⁹ han enfatizado la pobreza, la frustración, los agravios, la percepción de injusticia, en suma, el descontento, como uno de los factores fundamentales que explica el surgimiento de Sendero Luminoso y el eventual apoyo que tuvo entre el campesinado. Algunos de ellos estuvieron influenciados por la clásica teoría del “Peasants Moral Economy”³⁵⁰, que sostiene que la predisposición revolucionaria del campesinado aparece cuando sus comunidades experimentan el impacto de la expansión de las relaciones capitalistas en el campo. El crecimiento del mercado, que promueve el self-interest, tiende a romper los viejos sistemas de reciprocidad basados en la relación patrón-cliente, que protegen a los campesinos de los riesgos del mercado, afectando su derecho a la subsistencia. El resultado es una disminución en la seguridad económica de los campesinos y un debilitamiento de los fundamentos morales de la organización social de las comunidades rurales. Los campesinos, entonces, en donde pueden y cuando pueden, responden a este proceso histórico que amenaza su "moral economy", rebelándose contra los terratenientes neo-capitalistas y sus aliados en el gobierno.

Fue McClintock³⁵¹ la primera autora que, en uno de los primeros trabajos sobre Sendero Luminoso, interpretó la experiencia peruana con las categorías del “moral economy”, afirmando que la misma daba sustento a las tesis de Scott. A su juicio, la crisis de subsistencia durante los inicios de los '80 habría sido el componente *sine qua non* para el alzamiento armado en el Perú, cuya base principal se encontraba entre los pequeños propietarios rurales poco insertos en la economía de mercado. Sostuvo que Sendero Luminoso había incorporado elementos de la tradición insurreccional incaica para ganar apoyo entre el campesinado, sugiriendo que éste

³⁴⁹ Una excelente revisión de los estudios sobre la violencia en los Andes peruanos se encuentra en Carlos Iván Degregori, “Campesinado andino y violencia, Balance de una década de estudios” en Carlos Iván Degregori et. al eds. Perú: el problema agrario en debate/SEPIA IV (Lima: SEPIA, 1992).

³⁵⁰ El más prominente exponente de esta escuela es James C. Scott, *The Moral Economy of the Peasant: Rebellion and Subsistence in Southeast Asia* (New Haven: Yale University Press, 1976). Similares puntos de vista se encuentran en Eric R. Wolf, *Peasant Wars of the Twentieth Century* (New York: Harper and Row, 1969) y Barrington Moore, Jr (fn 2). Una discusión amplia sobre este tema puede encontrarse en Theda Skocpol, "What makes Peasants Revolutionary?" En *Social Revolutions in the Modern World* (Cambridge: Cambridge University Press, 1994) 213-39. Otras referencias están en Timothy Wickham-Crowley, *Guerrillas & Revolutions in Latin America. A Comparative Study of Insurgents and Regimes since 1956* (Princeton: Princeton University Press, 1992).

³⁵¹ Cynthia McClintock, “Why Peasants Rebel: The Case of Peru’s Sendero Luminoso”, *World Politics* 37 (October 1984), 48-84.

último buscaba defender sus tradiciones y costumbres de la agresión del capitalismo³⁵².

Varios otros autores más siguieron esta ruta en esos primeros años, señalando más o menos que Sendero Luminoso era una reacción indígena contra la agresión del mundo moderno. Además de McClintock, Degregori menciona, entre otros, a David Scott Palmer y Alberto Flores Galindo, para quien Sendero Luminoso era la versión pesadillesca de la "utopía andina". El común denominador estos trabajos era que estaban teñidos de tesis culturalistas que quisieron explicar la violencia a partir de visiones dualistas de la sociedad y la historia peruanas y de la oposición tradición-modernidad³⁵³.

Poco después, Berg³⁵⁴ retomó el horizonte teórico del "moral economy" poniendo énfasis esta vez en la economía y la política campesinas. Con base en su trabajo de campo en Andahuaylas, señaló también la existencia de un contexto de deterioro de la economía campesina (crisis de subsistencia) y de una ruptura de los lazos de reciprocidad por la expansión de la comercialización inducida por la reforma agraria velasquista. En su análisis reintrodujo el componente étnico y cultural, pero no para ver sociedades que quieren defender su cultura y tradiciones, sino para explicar el resentimiento que en el campesino de Andahuaylas existía contra los que siendo campesinos como ellos habían roto la reciprocidad y se comportaban como "mistis". Ello, junto con el resentimiento contra las empresas asociativas organizadas por el Estado durante la reforma agraria, explicaría el apoyo a Sendero Luminoso. Isbell³⁵⁵ también encontró en Chuschi la misma oposición del campesinado contra el Estado y los poderes locales, una crisis de subsistencia y la ruptura de lazos de reciprocidad por parte de una nueva capa de comerciantes beneficiarios de las reformas velasquistas, que acumulan riqueza y cambian de identidad, convirtiéndose en "mistis".

Favre y Degregori introducen la perspectiva macro, analizando el contexto histórico y socio cultural, y aportan nuevos elementos, aún cuando su argumentación se sigue sosteniendo en el descontento como motivación fundamental para la violencia. Ambos niegan abiertamente el carácter indio o milenarista de Sendero Luminoso y de ningún modo encuentran indios que estén defendiendo su cultura y tradiciones; al revés, sugieren que la frustración en la búsqueda de la integración es la que propicia el escenario favorable para los alzados en armas. Favre dice que su

³⁵² Benavides y Werlich, citados en Carlos Iván Degregori (fn 4), 174, sostienen también que los cuadros de Sendero Luminoso, incluido Guzmán, utilizaban ritos y costumbres andinas para ganar el apoyo del campesinado. Bastantes años más tarde, Wickham-Crowley (fn. 9) 249, repite exactamente el mismo argumento. Para una discusión amplia sobre el supuesto carácter cultural andino de Sendero Luminoso ver Deborah Poole, *Unruly Order. Violence, Power, and Cultural Identity in the High Provinces of Southern Peru.* (Colorado: Westview Press, 1994) y Carlos Iván Degregori, *Qué difícil es ser dios,* (Lima: El zorro de abajo ediciones, 1989).

³⁵³ Otro ejemplo de la influencia de tales visiones está, según Degregori, en el trabajo de la Comisión Vargas Llosa que investigó la masacre de Uchuraccay. Degregori (fn. 8).

³⁵⁴ Ronald H. Berg, "Sendero Luminoso and the Peasantry of Andahuaylas" *Journal of Inter-American Studies and World Affairs*, 28, (1986-1987) 164-96. También ver del mismo autor "Peasants responses to Shining Path in Andahuaylas" en David Scott Palmer ed. *The Shining Path of Peru.* (London: Hurst, 1994).

³⁵⁵ Billie Jean Isbell, "Shining Path and Peasant Responses in Rural Ayacucho" en David Scott Palmer, *The Shining Path of Peru* (London: Hurst, 1994).

principal base social potencial en el campo estaría en la población rural "descampesinizada y desindianizada", mientras que las poblaciones más indias y más campesinas serían las menos propensas a su influencia.³⁵⁶ Degregori, por su parte, sostiene que Sendero Luminoso es el producto del encuentro entre una élite intelectual provinciana y una base social juvenil también provinciana y mestiza sometida a un doloroso proceso de "descampesinización", que la ha puesto a medio camino entre lo tradicional y lo moderno. Sendero Luminoso ofrecería una nueva identidad a esta base juvenil desarraigada que por su extracción social no es urbana, pero que por su educación ha dejado de ser campesina como sus padres. Así, junto a la pobreza y el atraso, el papel de la educación sería fundamental.³⁵⁷

Degregori sostiene que la expansión de los maoístas se ve favorecida por los aspectos autoritarios de la tradición andina y por la poca tradición de organización gremial de la zona. Por su parte, Manrique enfatiza el autoritarismo político, los desgarramientos étnicos, el racismo como los factores que están en la base de la violencia política. Sendero Luminoso satisface una necesidad de orden que se incrementa en un contexto de crisis general y desgaste de las organizaciones sociales y hace aflorar viejos reflejos del fatalismo y pasividad, largamente interiorizados desde la colonia³⁵⁸.

Hasta aquí, las narrativas sobre la violencia política habían ido coincidiendo en aclarar varios temas centrales: el primero, negar o relativizar el carácter indio o milenarista de Sendero Luminoso. Segundo, ubicar la eclosión de la violencia en un escenario de crisis en general y deterioro de la economía agraria en particular. Tercero, señalar a Sendero Luminoso como una propuesta política autoritaria que pretendía "la construcción violenta de un orden totalitario entre los escombros del viejo orden oligárquico"³⁵⁹. Cuarto, indicar que el avance de tal propuesta había sido facilitado por los componentes autoritarios de la cultura de la cultura andina. Toda la argumentación tenía como supuesto fundamental el descontento como motivo fundamental para la violencia.

¿Y cómo se ha explicado el rompimiento del campesinado con Sendero Luminoso? El estudio más sistemático sobre las rondas y el rechazo a Sendero Luminoso trae consigo dos ideas fundamentales. Primero, la sugerencia de Del Pino para considerar al campesinado, más que como un actor pasivo, como un sujeto político dentro de la guerra, con su propia racionalidad y estrategia³⁶⁰. Isbell también resaltó esta dimensión. Segundo, el señalamiento de Coronel y Loayza para considerar que las respuestas campesinas a la guerra no eran uniformes y que

³⁵⁶ Henri Favre, "Sendero Luminoso. Horizontes oscuros", en Quehacer N° 31, Lima: Octubre, 1994.

³⁵⁷ Carlos Iván Degregori, *Sendero Luminoso: I. Los hondos y mortales desencuentros. II. Lucha armada y utopía autoritaria*. (Lima: IEP, 1985).

³⁵⁸ Manrique (fn. 6).

³⁵⁹ Degregori (fn. 8).

³⁶⁰ Ponciano del Pino "Los campesinos en la guerra, o de como la gente empieza a ponerse macho" en Carlos Iván Degregori et al. Perú: el problema agrario en debate. SEPIA IV (Lima, 1992) 496.

variaban de acuerdo a configuraciones locales³⁶¹.

Pero aquí también, las narrativas que explican la ruptura del campesinado con Sendero Luminoso enfatizan por lo general argumentos con contenido cultural e ideológico, a excepción de Favre, para quien el cierre de las ferias y el acceso al mercado es el factor desencadenante del rechazo de los sectores más indios y campesinos al grupo armado³⁶². Así, para Berg el impacto de una ideología como la de los maoístas extraña a los campesinos y contrapuesta con muchas de sus creencias fundamentales es lo determinante. Esto produce un desencuentro entre los objetivos de cada uno de ellos³⁶³. Isbell también enfatiza el papel de la ideología. El hiperclasicismo senderista les impide ver el denso tejido de reciprocidades que atraviesan la sociedad andina y quieren aplicar categorías fijas a una realidad que las desborda, pretendiendo homogeneizarla. Quieren reproducir las características semifeudales de dominación política, que la gente termina por rechazar³⁶⁴. Por su parte, Degregori sugiere que la ruptura se produce por el choque cultural entre una élite provinciana, externa al campesinado, que reproduce la típica relación gamonalista de poder y que recurre a la violencia y la muerte indiscriminadamente, y una masa campesina que, aún cuando puede aceptar relaciones autoritarias, no acepta la muerte. Su tesis se expresó en la fórmula "castiga, pero no mates"³⁶⁵.

Las narrativas sobre las rondas campesinas han permitido establecer el consenso sobre la afirmación fundamental de un campesinado que no se mueve pasivamente según los vientos de la guerra, sino de sujetos políticos que son capaces de hacer sus propias opciones en ese escenario. Sin embargo, el énfasis puesto en el descontento como la motivación fundamental para la violencia, así como el énfasis en los factores culturales e ideológicos para explicar la adhesión y posterior rechazo al grupo armado, han nublado la presencia de otros elementos explicativos como son las motivaciones básicas y el tipo de intereses que hacen que los campesinos se involucren en la acción colectiva y sobre los cuales construyen sus identidades y discursos sobre la guerra.

En efecto, para una de las corrientes de la literatura sobre revueltas campesinas la idea de que el descontento produce por sí mismo una eclosión, alzamiento o rebelión ha sido puesta en cuestión. Fue Olson³⁶⁶ el primero que desafió la tesis de que el descontento conduce a la rebelión, popularizando el problema del *free-rider*. El argumento de Olson es que el actor racional guiado por su interés individual podría muy bien no sumarse a la acción colectiva cuando ve que otros pueden tomarlo por él e igual va a disfrutar de los beneficios que se obtenga

³⁶¹ José Coronel y Carlos Loayza "Violencia política: formas de respuesta comunera en Ayacucho" en Carlos Iván Degregori et al. de. Perú: el problema agrario en debate. SEPIA IV (Lima, 1992).

³⁶² Favre (fn 15).

³⁶³ Berg (fn. 12) 121.

³⁶⁴ Isbell (fn. 14) 92.

³⁶⁵ Carlos Iván Degregori, "Ayacucho 1980-1983: Jóvenes y campesinos ante la violencia política", en Henrique Urbano ed. Poder y violencia en los Andes, (Cusco: Centro Bartolomé de las Casas, 1991).

366 Mancur Olson, Jr. The Logic of Collective Action (Cambridge: Harvard University Press, 1965).

con la acción, evitando los costos personales que el eventual fracaso de la misma podría acarrearle. ¿Qué hace entonces que la gente actué colectivamente?

Varias respuestas han sido dadas al problema del *free-rider*, abriendo otras tantas subtradiciones. Para efectos del presente texto mencionemos dos que nos parecen relevantes. Una, propuesta por el propio Olson, que privilegia la presencia de incentivos selectivos materiales (material selective incentives), según la cual el actor racional entra a la acción colectiva cuando tiene la posibilidad de obtener beneficios materiales que pueda usufructuar individualmente. Lichbach³⁶⁷ retoma la tesis y rastrea una serie de casos históricos que muestra la presencia de los incentivos selectivos materiales en rebeliones campesinas. Sostiene, sobre la base de estos casos, que la posibilidad de apropiación colectiva de los beneficios públicos es irrelevante para motivar la participación. Otros modelos, como el llamado Expected Utility³⁶⁸, en cambio, no limitan las motivaciones para la acción colectiva sólo a la existencia de la posibilidad de la apropiación privada de los beneficios; consideran que junto con ella, la expectativa del éxito de la rebelión y la posibilidad de apropiarse también de bienes colectivos son las fuerzas motivacionales cruciales para la participación. El modelo propone además la existencia de incentivos asociados a los beneficios normativos (la satisfacción personal que se obtiene al actuar de acuerdo con la prescripción del grupo) y los beneficios de la aprobación de la red social que se obtienen cuando el individuo se suma a la acción colectiva.

Nosotros argumentaremos que si bien es posible rastrear en la experiencia peruana la presencia de incentivos selectivos materiales, éstos de por sí no bastan para entender las motivaciones fundamentales y sobre todo el comportamiento político del campesinado en el escenario de la guerra. Es la presencia de los beneficios públicos y la demanda que hay sobre ellos los que interactúan con los intereses de los campesinos para producir resultados inesperados, entre ellos la formación del movimiento social que se enfrenta a Sendero Luminoso y restablece su interlocución con el Estado. Más aún, la demanda de beneficios públicos expresa el carácter históricamente construido del interés del campesinado que ve al Estado como un proveedor central.

Antes de desarrollar el argumento, recordemos con Levi que hablar de sujetos racionales supone asumir que para obtener sus objetivos deseados éstos hacen sus opciones al interior de situaciones que no controlan; que sus decisiones descansan en el enjuiciamiento de la probable acción de otros, y que los resultados personales que obtengan dependen de lo que otros hagan en una búsqueda de equilibrio. La aproximación es metodológicamente individualista, pero su enfoque no está en la opción individual sino en el agregado de opciones individuales³⁶⁹. Por ello va a ser importante ver cómo va cambiando el escenario. Eso es lo que haremos a continuación.

³⁶⁷ Mark Irving Lichbach, “What Makes Rational Peasant Revolutionary”, *World Politics*, Vol. 46, N° 3 (abril, 1994) 383-418.

³⁶⁸ Edward N. Muller, Henry A. Dietz, Steven E. Finkel, “Discontent and the expected utility of rebellion: The Case of Perú”, *American Political Science Review*, Vol. 85 N° 4, December 1991.

³⁶⁹ Margaret Levi, “A Model, a Method, and a Map: Rational Choice in Comparative and Historical Analysis” en Mark Irving Lichbach y Alan S. Zuckerman *Comparative Politics, Rationality, Culture, and Structure*, (Cambridge: Cambridge University Press, 1997) 23.

Sociedad rural y fuentes de conflicto en el pos-velasquismo

¿Cuál era el escenario previo a la guerra interna?. La situación en el campo estaba marcada por un proceso de transición social, económica y cultural que se había acelerado a partir de las reformas de Velasco implementadas desde su golpe de Estado en octubre de 1968. Hagamos un muy breve y necesariamente esquemático recuento.

Antes de la reforma velasquista, la sociedad andina estaba definida por un proceso de desestructuración del régimen de las haciendas, causado por el cambio en los patrones de desarrollo del capitalismo. La industrialización, la expansión del Estado, el mercado y los medios de comunicación, y las grandes olas migratorias del campo a la ciudad iniciadas a partir de los cuarenta, habían minado los cimientos del edificio de la dominación gamonalista, cuyo apogeo se había iniciado en el último tercio del siglo pasado con la expansión de la gran propiedad terrateniente³⁷⁰. Las mejores tierras estaban controladas y explotadas bajo un régimen de servidumbre. La población indígena estaba obligada a intercambiar trabajo y parte de su producción a cambio de parcelas para la subsistencia. Incluso, las comunidades libres, tenían que entrar a dicha relación³⁷¹.

Los problemas de la dominación gamonalista habían comenzado en realidad con los primeros intentos de racionalización del Estado durante el oncenio de Leguía³⁷². La relativa autonomización del Estado respecto de ese sector abre las puertas a una larga etapa de luchas campesinas para recuperar sus tierras usurpadas por los terratenientes. En ello juega un papel clave la ley de reconocimiento de las comunidades indígenas de 1920 que Leguía emite para asegurarse el apoyo de las corrientes intelectuales indigenistas³⁷³.

El gamonalismo se refugia en los poderes locales, desde donde compite por los favores del poder central y desde donde bloquea invariablemente el acceso a la reivindicación indígena. En ello cuenta, por lo general, con el apoyo del Estado que lo respalda en la medida en que le sirve como intermediario para el control de la masa indígena. A la vez, sin embargo, el recurso al Estado va a formar parte de la estrategia campesina: los tribunales de justicia, las gestiones ante el poder central, son algunas acciones “legales”, que se combinan con acciones de invasión y toma de tierras³⁷⁴. Se establece entonces una ambigua relación de tensión entre el Estado y el

³⁷⁰ Carlos Iván Degregori “Identidad étnica, movimientos sociales y participación política en el Perú” en Adrianzén, Alberto et al. Democracia, etnidad y violencia política en los países andinos. (Lima: IEP e IFEA, 1993) 119.

³⁷¹ Berg (fn.12) 104.

³⁷² Julio Cotler, Clases, estado y nación en el Perú (Lima: IEP, 1978). Cotler atribuye este cambio a la lucha por el control del Estado. La burguesía procura ampliar, profundizar y centralizar el aparato estatal a fin de lograr la hegemonía política y constituirse en el único interlocutor del capital extranjero.

³⁷³ Ibid. 189.

³⁷⁴ En un breve texto sobre conflicto por tierras entre comunidades en Ayacucho, Bonilla muestra esta lógica de procesar los conflictos “en el terreno y en la corte”. Heraclio Bonilla, La Defensa del espacio comunal como fuente de conflicto. San Juan vs. Pampas (Ayacucho), 1940-1970, (Lima, IEP, 1989).

campesinado; por una parte, el primero aparece como soporte de los intereses del gamonalismo; pero, por otra, aparece también como un espacio más para la defensa de los intereses del segundo.

Entre finales de los ‘50 e inicios de los ‘60 se presenta la más grande oleada de tomas de tierras. Organizados en gremios, campesinos feudatarios y comuneros recuperan miles de hectáreas de manos de los hacendados. Pero incluso en estos momentos buscan legitimarse ante el Estado. En Ayacucho, por ejemplo, donde los reductos del viejo poder gamonal vivían asediados por el campesinado y se refugiaban en el apoyo del Estado, las organizaciones populares buscaban, a pesar de ello, ser interlocutores alternativos a los poderes locales. Degregori señala que así como antes buscaron un “pacto colonial” con la Corona Española o el Estado republicano, podía decirse que para contrarrestar esos poderes locales esta vez buscaban un “pacto moderno”, en cuyo vértice se esboza una demanda de ciudadanía. “Si bien rechazaban la cara represiva y “colonial” del Estado, no parecen rechazar con igual intensidad al “Estado benefactor.”³⁷⁵

Con Velasco, la idea de “Estado benefactor” alcanza su máxima expresión. Las reformas no sólo significan el colapso del Estado oligárquico y la extinción social y política de la oligarquía y el gamonalismo, sino también el hecho de que por primera vez en la historia política moderna del Perú, el Estado aparece clara y explícitamente del lado del campesinado. Entre otras cosas, por ejemplo, el aparato legal y judicial es instruido para favorecer al campesinado en sus demandas de acceso a la tierra³⁷⁶. Paralelamente, se desarrolló políticas de subsidios y promoción destinadas a levantar economías de escala en la agricultura serrana. Así, a la imagen de un Estado que aparecía en el horizonte como un espacio que eventualmente podría ser instrumentado para la defensa de los propios intereses, se agrega otra en la que, forzando la figura, el Estado aparece ocupando el lugar del gamonal ausente, no en tanto terrateniente, sino en tanto proveedor de recursos para la subsistencia.

Las reformas de Velasco, si bien hábiles para liquidar el viejo orden, son, sin embargo, incapaces de poner las bases para un nuevo orden. La reforma agraria no resuelve completamente el problema de la tierra, puesto que no permite el acceso directo a ella, dejando su control en manos de los gerentes de las empresas asociativas promovidas por el gobierno militar. Un polo de confrontación se abre entre las comunidades y las empresas asociativas; otro entre los propios campesinos que se disputan los restos de las viejas haciendas. Nuevos conflictos aparecen y viejos se destapan y recorren varios niveles: intracomunales, intercomunales, comunidades y cooperativas, etc. Estos buscan ser resueltos ante el Estado, pero también por la vía de los hechos³⁷⁷.

A la vez, el vacío de poder creado por la caída del gamonalismo busca ser llenado por una nueva capa de intermediarios. Un grupo de pequeños comerciantes, ex-campesinos o campesinos

³⁷⁵ Degregori (fn.4) 87.

³⁷⁶ Lynda Selingman, Between Reform & Revolution. (Stanford: Stanford University Press, 1995) 63.

³⁷⁷ Ibid. También ver Berg (fn. 12).

de media clase y campesinos ricos, empiezan a monopolizar la relación con el mercado. Muchos de ellos provienen de las propias comunidades, habiendo salido del set de obligaciones sociales que su pertenencia a la comunidad les imponía³⁷⁸. En términos políticos, estos grupos emergentes pretenden también monopolizar la relación con el Estado; junto con ellos, los supérstites del viejo poder gamonal, aprovechando su mejor nivel educativo y profesional, buscan acomodarse en posiciones de poder local que el crecimiento de la administración pública les permite³⁷⁹. Pero también, la reforma permite el surgimiento de liderazgos campesinos proclives a establecer niveles de interlocución directos con el Estado. Así, el escenario aparece marcado por intensas luchas políticas entre campesinos, nuevos sectores intermediarios, y supérstites del viejo poder gamonal replegados en instancias públicas y profesionales. Todo esto al interior de un contexto de deterioro de la economía campesina, particularmente la ayacuchana, con el inicio de un ciclo neoliberal en la segunda fase del gobierno militar a partir de 1977 (ver gráfico N° 1).

En la literatura de *contentious politics* se podría hablar de *political opportunities*. “Changes that left the broader political system more vulnerable or receptive to the demands of particular groups”³⁸⁰. Degregori define esta situación como “vacío de poder”³⁸¹. Es en este escenario que aparece Sendero Luminoso con su proyecto autoritario.

Guerra interna y líneas de conflicto

Dos años después de su ataque a Chuschi, Sendero Luminoso se había propagado por todas las provincias del norte y centro de Ayacucho, encontrando importantes niveles de aceptación entre la población campesina y la urbana. Era una fuerza que había avanzado, aparentemente, sin encontrar ninguna resistencia³⁸².

Esta aceptación inicial pasa por su actuación en el nivel de resolver conflictos en el ámbito local, explotando a su favor las demandas campesinas: castigan a los agentes del Estado corruptos, atacan a la policía, que siempre había sido fuente de abuso y arbitrariedad, castigan a aquellos gamonalillos que se habían convertido en explotadores de las comunidades, obligan a que los profesores cumplan con sus responsabilidades, castigan a los ladrones y abigeos. En otras palabras, imponen un orden autoritario y moralizante y una administración de justicia draconiana, pero expeditiva.

Cuando llegaron por primera vez a nuestra comunidad reunieron a toda la gente. Luego

³⁷⁸ Berg (fn 12), Isbell (fn,14).

³⁷⁹ José Coronel, “Violencia política y respuestas campesinas en Huanta”en Carlos Iván Degregori et al. Las rondas campesinas y la derrota de Sendero Luminoso (Lima: IEP, 1996) 35. Ver también Selingman (fn. 35).

³⁸⁰ Doug McAdam, Sidney Tarrow, and Charles Tilly, “Toward an Integrated Perspective on Social Movements and Revolution” en Mark Irving Lichbach et al. (fn 27).

³⁸¹ Degregori (fn. 8).

³⁸² Degregori (fn.16) y Gorriti (fn. 4).

buscaron y encontraron a todos los ladrones. Todos se quejaron a los “compañeros”. Luego, los “compañeros” castigaron con látigo a todos los ladrones, no importaba si eran hombres o mujeres. Los castigaron muy duramente delante de nosotros que estabamos reunidos. Los ladrones devolvieron lo que habían robado. Después se asustaron y ya nadie robaba³⁸³.

En los estudios sobre la violencia política hay ahora consenso para explicar esta aceptación inicial y lo que ella implicaba. Primero, la disposición del campesinado a recurrir a un agente externo para negociar la solución de sus conflictos cuando estos no pueden ser resueltos por ellos mismos³⁸⁴. Segundo, la racionalidad de un campesinado que se mueve en función de sus propios intereses y que es capaz de realizar finos cálculos políticos³⁸⁵. Tercero, la demanda social de orden y justicia en el campo, que el Estado, apoyado en los poderes locales y los nuevos intermediarios, no había satisfecho. Sendero era capaz de satisfacer tales demandas, en forma draconiana, autoritaria y violenta, pero efectiva. Se trataba de una demanda de beneficios públicos. El orden beneficiaba a todos. La gente “dejaba de robar”. En economías de subsistencia, el robo tiene un fuerte impacto porque afecta la “base”³⁸⁶; es decir, el conjunto de recursos con los que cuenta la precaria economía familiar. ¿Significaba esta aceptación un rechazo principista al Estado y un apoyo incondicional a Sendero basada en la ideología?

Hacia finales de 1981, Sendero Luminoso decide establecer su control en las zonas que había “liberado”. Ello significaba la reestructuración política, social y económica de las comunidades y la consecuente alteración de los precarios equilibrios de poder establecidos dentro de ellas y del denso tejido de reciprocidades, estrategias de control de recursos y de producción, así como redes de parentesco, que las atraviesan. Sendero Luminoso impone sus propias autoridades, ordena la producción para el autoconsumo, y pretende cerrar el acceso al mercado. Es en este momento que empieza a encontrar resistencias entre el campesinado, que los maoístas pretenden resolver expeditivamente con la muerte. Con el uso cada vez más abierto de la violencia, Sendero introduce una forma terriblemente eficaz de incentivo/desincentivo: la muerte y el terror. Organizan “juicios populares” donde ejecutan a gente indefensa con el objeto de paralizar cualquier reacción contra ellos.

A la vez, el núcleo dirigente de Sendero Luminoso, cuya preparación política e ideológica les había servido para conducir “exitosamente” hasta entonces su guerra, se repliega hacia otras partes del país para evitar la represión y expandir su actividad, y entrega el mando de las zonas controladas por ellos a cuadros intermedios y militantes de sectores rurales, que habían sido captados después de iniciada su lucha armada.

Los que vinieron al principio eran buenos. Los que vinieron después eran malos... Los primeros eran legítimos. Eran muy buenos, pero desaparecieron y ya no vinieron más. Los que

³⁸³ Justina, Testimonio de campesina de Chapi, La Mar, Ayacucho, tomado por PROANDE. (1991?).

³⁸⁴ Degregori (fn. 1985) habla de Sendero Luminoso presentándose como un nuevo patrón.

³⁸⁵ Isbell (fn. 14) 89.

³⁸⁶ Stephen Guderman, citado en Enrique Mayer y Manuel Glave “La papa: rentabilidad, costos e inversión” Alberto Chirif et al eds. Perú: el problema agrario en debate. Sepia III. (Lima: 1990) 106.

vinieron después repetían la explicación de los primeros y fueron ellos con quienes nos quedamos hasta el final. Al principio estos no mataban, pero después empezaron a matar a la gente por cualquier cosa, hasta por mínimas fallas³⁸⁷.

“Los que vinieron después” eran “los jóvenes rurales” estudiantes primarios o secundarios de los poblados serranos que se embarcaron con Sendero “a través de la acción”³⁸⁸. La posibilidad de controlar el poder en el escenario local es un poderoso incentivo selectivo material para involucrarse en el proyecto senderista. Estos “jóvenes rurales” utilizan su nueva posición de poder para resolver viejos problemas y disputas personales y familiares; es decir, para arreglar sus propios intereses y ventilar sus propias animosidades. Muchos conflictos intracomunales e incluso intergeneracionales son resueltos expeditivamente en nombre de la revolución. Pero quizás el incentivo selectivo más efectivo era la posibilidad de la movilidad y el ascenso social a través del “nuevo Estado”³⁸⁹. Paralelamente, Sendero Luminoso ordena producir para el partido e impone actividades relacionadas a su guerra³⁹⁰. Oré³⁹¹ relata los penosos trabajos a los que los campesinos de Ayahuanco eran sometidos para preparar emboscadas contra los militares y policías.

El apoyo inicial se convierte en oposición en muchas partes. Algunas comunidades de la zona altoandina de Huanta lideradas por comuneros medios organizan el rechazo a Sendero Luminoso³⁹². En otras, el rechazo es liderado por los comerciantes y gamonalillos³⁹³. Es decir, los problemas del grupo armado empiezan cuando su “revolución” sólo sirve para que sus miembros se apropien privadamente de los beneficios a costa de afectar los beneficios públicos. Sin embargo, como si ocurrirá años después y luego que los maoístas habrán alcanzado mayores niveles de asentamiento, esta primera reacción de sectores del campesinado no se torna masiva. ¿Por qué?

A nuestro juicio, porque el Estado se mostraba lejano. No sólo no había satisfecho las demandas de orden y justicia, sino que tampoco estaba cumpliendo su papel como “proveedor” de bienes públicos. Se podría decir que había abandonado la relación patrón-cliente. Peor aún, estaba actuando como enemigo. Recordemos que el régimen de Belaunde había continuado y profundizado las políticas neoliberales iniciadas en la segunda fase del gobierno militar. Esto significó la eliminación de las medidas protecciónistas y de subsidios para el sector agrario. El impacto que la liberalización del mercado de los insumos agrícolas acarreó una severa crisis a la

³⁸⁷ Justina (fn. 42).

³⁸⁸ José Coronel, “Violencia política y respuestas campesinas en Huanta” en Carlos Iván Degregori et al. Las rondas campesinas y la derrota de Sendero Luminoso (Lima: IEP, 1996) 35. Ver también Selingman (fn. 35).

³⁸⁹ Ibid.

³⁹⁰ Isbell (fn. 14).

³⁹¹ Edilberto Oré, Ayahuanco: bajo la sombra de Sendero (mimeo, 1997).

³⁹² Coronel (fn 38).

³⁹³ Del Pino (fn. 19).

economía campesina. A partir del 82, el agro ayacuchano registra caídas significativas, de los que no se va a recuperar durante el belaundismo (ver gráfico N° 1). Los campesinos habían sido dejados a merced de las fuerzas del mercado.

Pero también, habían sido entregados a la represión indiscriminada de las Fuerzas Armadas, encargadas de la contrainsurgencia a finales de 1982, luego de la derrota de la Policía. Bajo el mando de los generales Noel y Huamán Centeno en 1983 y 1984 respectivamente, los militares aplicaron las llamadas “tácticas de tierra arrasada” que no discriminaban entre inocentes y culpables. En Ayacucho, 2029 presuntos subversivos fueron muertos durante el régimen de Belaunde, mientras que en la Fiscalía de la Nación se registraron 2686 denuncias de desaparición forzada de personas sólo en ese periodo. Pero, mientras la política de desincentivación de las Fuerzas Armadas es arbitraria, la de Sendero Luminoso es selectiva: “por lo general SL sabía a quien mataba... las FF.AA eran ciegas o, mejor dicho, daltónicas.”³⁹⁴

Muchos campesinos huyen de sus tierras y entre los que se quedan se presentan tres posiciones: unos continúan apoyando a Sendero Luminoso, otros buscan mantenerse en una posición neutral, y otros entran decididamente a cooperar con las Fuerzas Armadas³⁹⁵. Estos últimos se organizan en las llamadas “montoneras”, que, con la tácita autorización de los militares, asolan el campo ayacuchano³⁹⁶. Estas organizaciones se lanzan en una escalada contra aquellos que consideran ser bases de los maoístas. En esto no son diferentes a los “jóvenes rurales” de Sendero Luminoso, es decir, actúan también con la lógica de aprovechar la guerra para sus propios intereses. “asaltan, matan e incendian en todos los poblados que según ellos apoyan a los sediciosos... no dejando piedra sobre piedra por donde pasan, saqueando ganados, víveres, enseres etc. y destruyendo todo”³⁹⁷. Entre 1983 y 1985 matan alrededor de 200 campesinos (ver gráfico N° 3). Incluso, se les llega a tener más miedo que a los propios senderistas o los militares. “Los vamos a matar carajo”, nos amenazaban. Y nosotros tratábamos de protegernos poniéndonos cerca de los militares. ...En esa detención es que me violaron y por eso me puse mal y tuve después a este bebé... Esa gente era muy rabiosa, no respetaba a nadie... los militares no nos hacían nada, eran los ronderos los que eran muy malos. Ahí mismo mataban a la gente³⁹⁸.

Por su parte, Sendero Luminoso desata también una fuerte ofensiva contra las “montoneras” y contra todos aquellos que de uno u otro modo se oponían a su presencia. Sólo en 1984, el grupo armado da muerte a 901 campesinos en varias incursiones que tienen como objetivo aplastar la resistencia contra ellos. Una de las peores masacres es la de Lucanamarca, donde los senderistas asesinan a más de 80 campesinos.

³⁹⁴ Carlos Iván Degregori, “Cosechando tempestades. Las rondas campesinas y la derrota de Sendero Luminoso” en Carlos Iván Degregori et al Las rondas campesinas y la derrota de Sendero Luminoso, (Lima: IEP, 1996) 207.

³⁹⁵ José Coronel, “Violencia política y respuestas campesinas en Huanta” en Carlos Iván Degregori et al. Las rondas campesinas y la derrota de Sendero Luminoso (Lima: IEP, 1996) 35. Ver también Selingman (fn. 35).

³⁹⁶ Degregori (fn. 1989).

³⁹⁷ Oré (fn. 50).

³⁹⁸ Justina (fn. 42).

En esta etapa, la guerra se mueve únicamente en función de incentivos materiales. Es decir, los actores participan de acuerdo a sus propios intereses tratando de hacerlos avanzar hasta donde sea posible y aprovechando el escenario de la guerra para resolver sus particulares conflictos. “Animosity of all sorts can be played out under the cloak of generalized violence”³⁹⁹ La presencia de incentivos selectivos materiales es registrada por Degregori: “Afloran entonces las peores facetas de la ideología campesina: acusar a un vecino de soplón ante los senderistas, o de senderista ante las FF.AA puede llevar a su eliminación física y abrir la posibilidad de apoderarse de sus escasos o muchos bienes”⁴⁰⁰. Por ello, es difícil hablar de las mantoneras como movimiento social en ese particular momento, pues no estructuran una demanda colectiva.

Las Fuerzas Armadas se dieron cuenta de que por ese camino de “tierra arrasada” no iban a ninguna parte. El general Huamán Centeno, el mismo que había permitido el “cataclismo regional”, llamó la atención del gobierno belaundista sobre la necesidad de atender el problema de la pobreza y el subdesarrollo del campo en la guerra contra Sendero Luminoso. El resultado fue su destitución del mando.

A mediados de 1985, el gobierno de Alan García cambia las políticas neoliberales y reinicia el ciclo populista, restaurando las medidas proteccionistas y los subsidios para el sector agrario. Para las zonas más pobres de la sierra desarrolla su estrategia “el Trapecio Andino” que, entre otras cosas, supone el otorgamiento de créditos sin intereses (crédito cero) para el agro. El agro ayacuchano experimenta niveles de recuperación importantes en los dos años siguientes (ver gráfico N° 1). Además, organiza los “Rimanacuy”, reuniones masivas que García tiene con los líderes de las organizaciones campesinas “de presidente a presidente” para discutir sus necesidades. Al mismo tiempo, pone mano dura respecto a las violaciones a los derechos humanos, destituyendo a altos oficiales militares por la matanza de Accomarca, ocurrida a inicios de su gestión.⁴⁰¹ La combinación de estas políticas y los intentos de controlar la violencia indiscriminada de los militares, por lo menos a inicios del nuevo gobierno, y, sobre todo, la intención de restablecer la interlocución política con el campesinado, sirven para cambiar la imagen del Estado. Este se hace más cercano y la idea del Estado “proveedor” es restaurada. Esto va a ser sumamente importante en el futuro próximo inmediato.

Dos años después de esos esfuerzos iniciales, el régimen populista de García va a generar una de las peores crisis de la reciente historia política del país, atrapado por la corrupción y la inefficiencia. En el campo concurre un conjunto de factores que cambian radicalmente la situación precedente. Primero, la crisis económica y la hiperinflación se desatan, afectando seriamente la economía agraria. Segundo, en la sierra centro-sur se presenta una prolongada sequía que consume las reservas campesinas. Al mismo tiempo, ante el desencadenamiento de la crisis, Sendero Luminoso lanza una ofensiva para llegar al “equilibrio estratégico”. En los hechos, ello significa mayores niveles de violencia y presión sobre el campesinado, al que

³⁹⁹ Isbell (fn. 1994) 89.

⁴⁰⁰ Degregori (fn 16) 47.

⁴⁰¹ Instituto de Defensa Legal, Perú 1990, La oportunidad perdida (Lima: IDL,1990).

reclama apoyo material y hombres para engrosar sus filas. Los que se resisten son simplemente asesinados. Por su parte, las fuerzas Armadas desarrollan nuevas estrategias que buscan acercarse a la población civil y ganarse su confianza. Para ello combinan una represión selectiva muy dura con actividades paternalistas: construcción de carreteras, apoyo en alimentos, medicinas, etc. Se refuerza la relación patrón-cliente⁴⁰².

En la literatura de “contentious politics” estos cambios podrían explicarse como una nueva “estructura de oportunidades políticas” que permiten el surgimiento de un movimiento social⁴⁰³. En este escenario, marcado por una nueva “crisis de subsistencia”, sectores del campesinado estructuran una demanda colectiva basada en una evaluación racional de sus intereses en el corto y en el largo plazo. Ellos ven que mientras el Estado es capaz de proveer beneficios públicos, las demandas de Sendero Luminoso no sólo se siguen moviendo en la lógica de los incentivos selectivos materiales apropiados privadamente sino que significan altos costos públicos y privados. Pero también ven que Sendero Luminoso no sólo está amenazando de nuevo sus intereses en el corto plazo, sino también en el largo plazo: la posibilidad de la subsistencia y el bienestar condicionados a mantener la relación con el Estado proveedor. Como resultado, deciden hacer frente a Sendero, aún cuando ello signifique grandes sacrificios en el corto plazo, porque evalúan que en el largo plazo los beneficios de aliarse con el Estado proveedor serán mayores. No en vano, el mayor poder coercitivo sigue también de ese lado.

La guerra para esos sectores campesinos se convierte, entonces, en una guerra por la restauración de la posibilidad del bienestar en el largo plazo, asociado a la posibilidad de acceder a los beneficios públicos. Ello supone restaurar la relación con el Estado proveedor. Y en esa recomposición de la relación con el Estado es que el nuevo liderazgo que surgirá en ese proceso irá ganando legitimidad en el proceso.

En esta etapa, este nuevo liderazgo está compuesto por jóvenes pobres, licenciados del Ejército, con alguna experiencia citadina, que aprovechan de su nueva posición como jefes de las rondas para recuperar o reformular su acceso a mayores recursos “cosas que nunca hubieran logrado por otros medios”⁴⁰⁴. En ese sentido, la estructuración de la demanda en función del largo plazo no elimina la presencia de los incentivos selectivos materiales: nuevamente, aunque con menos intensidad que antes, el escenario de la guerra es aprovechado para avanzar intereses personales o de grupo. En esa lógica, algunas organizaciones de autodefensa, lanzadas a someter a las comunidades supuestamente proclives a Sendero Luminoso, son arrastradas a la dinámica de la “guerra sucia” y cometan graves violaciones a los derechos humanos⁴⁰⁵. Sólo en 1990 mueren 108 campesinos en incursiones de las rondas contra supuestas comunidades prosenderistas (ver gráfico N° 3). Algunas comunidades sufren represalias por haber realizado actos de pillaje en comunidades que según ellos eran proclives a los maoístas⁴⁰⁶. Sólo en 1990 se

⁴⁰² Degregori (fn. 1996) 25.

⁴⁰³ Mc Adam et al. (fn.39) 153.

⁴⁰⁴ Coronel y Loayza, (fn. 1991).

⁴⁰⁵ Instituto de Defensa Legal (fn. 1990) 146.

⁴⁰⁶ Del Pino (fn. 1991).

producieron, cuando menos, 25 incursiones de Sendero Luminoso contra rondas de autodefensa civil que dejaron como saldo 227 ronderos asesinados⁴⁰⁷ (ver gráfico N° 2). La gran cantidad de hombres que mueve Sendero puede explicarse por el resentimiento que las acciones de las comunidades organizadas en Defensa Civil generan en aquellas otras que no quisieron organizarse en tales organismos.

Al final, las rondas logran imponer su hegemonía y legitimarse⁴⁰⁸. Logran impulsar alianzas intercomunales e interregionales, que permiten que los campesinos de zonas de mayores recursos apoyen y subvencionen a las de menores recursos. Al mismo tiempo, son capaces de reunir recursos por sus propios medios para el combate contra los maoísta⁴⁰⁹. Para ello resulta también importante su campaña para “recuperar” a los que se habían ido con Sendero Luminoso, por miedo o por conveniencia. En este escenario, los ronderos utilizan uno de los incentivos más exitosos para desestructurar la organización senderista: restituir la posibilidad de integrarse de nuevo a la red social a aquellos que la habían dejado a cambio de información para derrotar al grupo armado. Los “recuperados” son entregados a sus comunidades para que se reintegren a la vida social y muchos de ellos van a ser luego los más tenaces adversarios de los maoístas.

En general, en el escenario de la guerra, la presencia de incentivos selectivos materiales no posibilita el surgimiento de un movimiento social; por el contrario, la presencia de bienes públicos si posibilita el surgimiento de dicho movimiento y para la estructuración de una demanda de ciudadanía en medio del combate a Sendero Luminoso.

Fujimorismo: cooptación y... ¿nuevo orden?

A finales de 1991, cuando el sector de los campesinos organizados en rondas había desalojado prácticamente Sendero Luminoso, el gobierno de Fujimori empezó a repartir armas de bajo calibre. Al mismo tiempo, entre finales de 1991 y principios de 1993, emitió un conjunto de decretos orientados a establecer su control sobre las organizaciones campesinas y regular su funcionamiento⁴¹⁰. En ese lapso se produjeron el autogolpe del 5 de abril de 1992 y la captura de Abimael Guzmán en setiembre de 1992.

⁴⁰⁷ Instituto de Defensa Legal (fn. 1990) 155.

⁴⁰⁸ Está fuera de los alcances de este texto entrar a discutir las atribuciones y construcción de identidades que desarrollan los campesinos. Para una excelente aproximación ver Ponciano del Pino “Tiempos de guerra y de dioses” en Degregori et al. Las Rondas Campesinas y la derrota de Sendero Luminoso (IEP: Lima, 1996).

⁴⁰⁹ Oré (fn. 50).

⁴¹⁰ El DL N° 741 (12/11/91) reconoce la existencia de los Comités de Autodefensa Civil como “organizaciones de carácter transitorio” y las somete al control militar. El DL N° 740 (12/11/91) reglamenta el uso y posesión de armas por parte de las Rondas Campesinas. El DS N° 077/DE-92 (11/11/92) reglamenta la organización y funciones de los Comités de Defensa Civil. Uno de sus acápitones prohíbe a sus miembros “realizar actividades políticas partidarias o religiosas que se orienten a dividir o debilitar a los comités”. El DS N° 002-93-DE/CCFFAA (enero 1993) dispone que las Rondas Campesinas adecuen su organización y funciones a los Comités de Autodefensa.

Sendero Luminoso entró desde entonces en una larga agonía. En octubre de 1993, Guzmán lanzó un llamado para un “Acuerdo de Paz”. Su organización, ya estratégicamente derrotada, se debilitó aún más con la profunda división entre quienes decidieron seguir el llamado de su líder y aquellos que bajo la dirección del líder disidente, “Feliciano”, decidieron persistir contra toda esperanza en mantenerse en la lucha armada.

El régimen democrático instalado en 1980 y el sistema de partidos que le daban soporte fueron liquidados por el autogolpe, instalándose en su lugar un régimen abiertamente autoritario. Los militares volvieron otra vez al centro del escenario político, influyendo decisivamente en el curso del proceso político.

Asumiendo el interés común de la nueva coalición de intereses (militares, tecnócratas, agencias financieras internacionales y los grupos empresariales domésticos) el régimen, apoyado en sus métodos políticos autoritarios, consolidó su posición para impulsar un conjunto de cambios institucionales orientados al más ambicioso proyecto de reestructuración del Estado desde la época de Velasco, siguiendo los lineamientos económicos neoliberales⁴¹¹. El proyecto suponía también un cambio en las relaciones Estado-sociedad con la eliminación de las políticas populistas. Sin embargo, el poder político empezó a ser administrado en los hechos en un estilo “neopatrimonial”,⁴¹²; es decir, un líder político fuerte que concentra el poder y actúa como si los recursos públicos fueran de su propiedad y los distribuye a través de políticas “neo-populistas” para mantener lealtades y preservar el apoyo político “sin intermediarios”⁴¹³.

Los ciclos revolucionarios o de los movimientos sociales terminan con “la represión, la cooptación y la fragmentación”⁴¹⁴. En el nuevo escenario político abierto por el autogolpe del 5 de abril, el conjunto de decretos emitidos por el gobierno de Fujimori estaba orientados no sólo a establecer el control militar sobre las organizaciones campesinas ronderas para restablecer la autoridad del Estado, sino también a cooptarlas políticamente. El esquema de control impuesto en el campo era crucial para los planes de la reestructuración del Estado.

Ciertamente, esa cooptación no es meramente coercitiva. Las rondas campesinas de autodefensa ven su relación con el gobierno y las fuerzas armadas como una alianza. Mantienen las armas, se autoperciben vencedores de la guerra y han salido “fortalecidos”. Esto, les ha dado capacidad para negociar sus demandas: distritalización y urbanización. Tales serían “demandas de ciudadanía”⁴¹⁶. Por su parte, el gobierno de Fujimori ha desarrollado desde 1994 su

⁴¹¹ Philip Mauceri State Under Siege. Development and Policy Making in Peru. (Westview Press 1996).

⁴¹² Julio Cotler “Political Parties and The Problems of Democratic Consolidation in Perú”. In Mainwaring, Scott and Timothy Scully, eds. Building Democratic Institutions: Party System in Latin America. (California: Stanford University Press, 1995) 353.

⁴¹³ Sinesio López Ciudadanos reales e imaginarios. Concepciones, desarrollo y mapas de ciudadanía en el Perú (Lima: Instituto de Diálogo y Propuestas, 1997).

⁴¹⁴ McAdam et al (fn. 1997) 164.

⁴¹⁵ Del Pino (fn. 1997).

⁴¹⁶ Degregori (fn. 1996).

campaña de reto Ciertamente, esa cooptación no es meramente coercitiva. Las rondas campesinas de autodefensa ven su relación con el gobierno y las fuerzas armadas como una alianza. Mantienen las armas, se autoperceben vencedores de la guerra y han salido “fortalecidos”⁴¹⁷

Esto, les ha dado capacidad para negociar sus demandas: distritalización y urbanización. Tales serían “demandas de ciudadanía”⁴¹⁸ Por su parte, el gobierno de Fujimori ha desarrollado desde 1994 su campaña de retorno que ha supuesto básicamente la entrega de recursos para el desarrollo y la reconstrucción de las comunidades. Varias decenas de poblados semiurbanizados han aparecido rno que ha supuesto básicamente la entrega de recursos para el desarrollo y la reconstrucción de las comunidades. Varias decenas de poblados semiurbanizados han aparecido en las regiones que anteriormente tenían un patrón disperso de ocupación territorial. El presidente Fujimori lleva personalmente ayuda directa en ropa, medicinas, computadoras y logra el reconocimiento de las comunidades.

A diferencia de lo que ocurría en el escenario previo a la guerra interna, hoy sí parece haber una alianza que llena el vacío de poder, la alianza Fuerzas Armadas, rondas de autodefensa, funcionarios del Estado, que ocupan el escenario regional. Esta alianza se negocia en términos clientelistas tanto por el estilo neopopulista del presidente, cuanto por las demandas de beneficios públicos del campesinado.

Sin embargo, la restauración de la autoridad del Estado no ha resuelto aquellos conflictos generados por la presencia de los material selective incentives. La guerra no ha hecho más que alimentar resentimientos y venganzas que se mantienen latentes⁴¹⁹. La subsistencia de estas fuentes de conflicto explica cómo una organización derrotada como Sendero Luminoso aún tenga capacidad para moverse en un medio controlado al milímetro por la defensa civil. Ello no es posible sin el apoyo de una, aún cuando precaria, red de apoyo. Ello también explica porque los campesinos no aceptan el retiro de las fuerzas armadas o el desarme. La presencia militar o el control sobre las armas les permite disuadir a potenciales challengers.

A la vez, la demanda de bienes públicos se ha extendido hacia demandas cada vez más claras de otras dimensiones de ciudadanía. El costo de asumir sobre sus hombros todo el peso de la organización y movilización armada de las rondas ha pasado a ser bastante oneroso y, en la percepción de algunos sectores campesinos, está dejando de ser necesario habida cuenta del descenso de la violencia de Sendero Luminoso. Dos reclamos han sido planteados con insistencia para revertir esta situación: que el Estado, tal como lo establece el DS N° 077, se haga cargo de los costos de la movilización, garantizando la ayuda e indemnización a aquellos ronderos que caigan heridos o muertos en las operaciones antisubversivas. El segundo, que la participación de los jóvenes en las rondas de autodefensa sea considerado como parte del

⁴¹⁷ Del Pino (fn. 1997).

⁴¹⁸ Degregori (fn. 1996).

⁴¹⁹ En comunicación oral, Kimberly Theidon sugirió que en las comunidades altoandinas de Huanta se estarían presentando procesos de reconciliación suigeneris. Considero que tales están alentados por la necesidad del equilibrio social.

Servicio Militar Obligatorio. En estos reclamos puede leerse una demanda moderna elemental: que el Estado se haga cargo de la seguridad.

Conclusion

El caso peruano sugiere que la crisis de subsistencia no necesariamente conduce a una actuación antiestado del campesinado. Hemos intentado mostrar que el apoyo inicial y posterior ruptura con Sendero Luminoso sugieren la existencia de un campesinado sensible a los cambios en las correlaciones de poder que no controla directamente en su ámbito local y extralocal, al interior de los cuáles se orienta por una evaluación racional costo-beneficio que busca maximizar sus beneficios en cada situación dada. Que por lo mismo que no ha establecido compromisos ideológicos, las alianzas que ha establecido han sido alianzas móviles (*shifting coalitions*) que han estado guiadas por la necesidad de acceder a beneficios públicos más que sólo a los beneficios privados. En este escenario, la restitución de la relaciones patrón-cliente propias del “Estado-benefactor” impulsado por las Fuerzas Armadas ha tenido un resultado determinante en el curso de la guerra.

En ese sentido, las rondas campesinas de autodefensa han permitido la restauración de la autoridad del Estado en el campo. En sí mismo tal hecho no ha significado la (re) instauración de un orden democrático, aunque sí ha formado parte del esquema global de orden necesario para el desarrollo de la reestructuración neoliberal del Estado. Paradójicamente, el Estado neoliberal descansa sobre el orden restaurado por el alzamiento campesino que estuvo racionalmente motivado por la idea del Estado proveedor. La restauración del orden y la autoridad, sin embargo, no ha eliminado las fuentes de conflicto originadas en el aprovechamiento del escenario de la guerra para el avance de intereses particulares. La subsistencia de estas fuentes de conflicto introduce elementos de inestabilidad política y social que impiden aún la consolidación de la aspiración de largo aliento del campesinado: una paz más permanente.