

**SPEECH DELIVERED BY JUDGE THOMAS BUERGENTHAL
ON TUESDAY, SEPTEMBER 4, 1979, AT THE FACULTY OF LAW
OF THE UNIVERSITY OF COSTA RICA, ON THE OCCASION OF THE VISIT
PAID BY THE JUDGES OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS
TO THE «RODRIGO FACIO» UNIVERSITY CAMPUS.**

It is a great honor for me to be given this opportunity to share with you some thoughts on the Inter-American Court of Human Rights and human rights education. For those of us committed to the struggle for human rights and human dignity, there is no more fitting place to speak about human rights education than in your country and in this Law School: symbols both of commitment to freedom and justice.

I

As you know, the Inter-American Court of Human Rights has jurisdiction to decide complaints alleging violations of human rights by any State Party to the Convention that has accepted the Court's jurisdiction. This is its so-called contentious jurisdiction. The Court also has advisory jurisdiction, that is, the power to render advisory opinions interpreting the Convention as well as other human rights treaties that have been ratified by the member states of the Organization of American States. The Court may render these advisory opinions at the request of any OAS organ or any member state of the OAS, whether or not that State has ratified the Convention. In emergency situations the Court has the power to adopt so-called «provisional measures» if this appears necessary to avoid irreparable damage to individuals. The Court can enter such a decree even before the Commission has fully examined the case. In dealing with cases involving specific charges of violations of human rights, the Court has the power to order a State Party to stop the violation; it also has the power to assess damages to compensate an individual for any injuries he sustained. The decision of the Court in such cases are final and binding on the parties. Finally, the Court has an obligation to submit an annual report on its activities to the OAS General Assembly. In this report the Court must (a) inform the General Assembly of any cases in which a State has failed to comply with a decision of the Court; and (b) make whatever recommendations it deems appropriate with regard to these cases.

The Court has no army; it has no police; it has no prisons; and even when it enters a judgment decreeing that an individual is entitled to a specific sum of money as compensation for violations of his human rights, that judgment is not *ipso facto* enforceable on the domestic plane of the country against which it was decreed. Besides, the Court does not have the power to punish the individual wrongdoers or to hold specific government officials in contempt.

And yet, it is possible to make the system work and to use it on international and domestic plane to protect human rights. But whether this is true, depends less on the Court and the other institutions of the Pact of San José, it depends, in my opinion, on human rights education. Here I have in mind two types of human rights education. The first involves such education in the context of legal education; the second involves human rights education in general.

II

Let me turn to legal education first. In many countries, the curriculum for the training of lawyers does include at least some courses and seminars on human rights, but most of them are domestic-law oriented or historical in perspective. That is to say, law students will generally learn what the domestic constitution and laws have to say about human rights and how to enforce them before domestic courts and administrative bodies; they might also learn about the great historical human rights documents -the Magna Carta, the French Declaration on the Rights and Duties of Men, etc.

But in most countries law students will learn only very little, if anything, about the law of international human rights. Today we have a vast code of international human rights law which includes the U.N. Charter, the Universal Declaration of Human Rights, the American Declaration on the Rights and Duties of Man, adopted in Bogota in 1948, the U.N. Covenants on Human Rights, the Genocide Convention, the U.N. Racial Convention, the Convention against Apartheid, the treaties on refugees and stateless persons, the human rights treaties of the International Labor Organization and the UNESCO, the European Convention of Human Rights, the Pact of San José, and many more.

I have not made a survey on the subject, but I would guess that there are few countries, if any, in which the qualifying examinations for the admission to the practice of law contain any questions about this vast international human rights code. If that is true, few law students will sense a need to study the subject in law school. And the longer lawyers remain ignorant of this subject, the more time it will take to make this law effective, both on the domestic and the international plane.

It is clear, of course, that in most countries international human rights law plays a minimal role as law. Law faculties consequently see little need of justification to teach it the same way they teach specific domestic law subjects. Yet it is equally clear that in many countries international human rights law would and could play a much more significant role as law, if lawyers knew more about it and were taught how to use it, not only in private practice, but as legislators, as judges, and as diplomats. Thus the failure to teach international human rights law because it is not very important on the domestic legal plane is an important factor in that law remaining unimportant. Moreover, the ignorance of lawyers on this subject also weakens efforts to strengthen the international human rights law and institutions because lawyers resort to them only very seldom or not at all.

I would submit, therefore, that the American Convention on Human Rights and the Court it establishes will play an insignificant role unless law faculties in the Americas begin to have special courses devoted to international human rights law in general and the Pact of San José in particular. These courses have to be taught imaginatively by individuals who have not only mastered the law, but who understand the legal and

political dynamics of that law and the institutions it creates. The effectiveness of law, be it domestic or international, depends in general very little on the enforcement powers of the police or of armies, or the enforcement powers of courts. It depends on a complex interaction of a variety of legal, political, social, economic and cultural factors, and he who does not understand that has no business teaching law, particularly human rights law.

In my view, our Court -the Inter-American Court of Human Rights- can and will play an important role if the law faculties of our hemisphere begin to teach about the American Convention, about the work of the Inter-American Commission on Human Rights and about the Court. The lawyers of the hemisphere have to learn how to use the Pact of San José, and the more they use it, the more important a role the Court can and will play in protecting human rights. There has to develop an on-going dialog and interaction between the Court and the Commission, on the one hand, and national courts and other national law-making bodies, on the other. That dialog does not have to wait until more States have accepted the jurisdiction of the Court. The Court's advisory jurisdiction gives the Inter-American Commission on Human Rights as well as all OAS member states an opportunity to put the Court to work. It is a mistake, in this connection, to attach too much significance to the difference between judgments of the court and advisory opinions; the latter may in the long run prove more important. The ultimate source of the power of any court is not physical force, but the moral, legal, and political legitimacy of the tribunal and of its decisions. The Court can therefore play an important law-declaring legitimating role through the exercise of its advisory power, particularly in the early years of its existence.

III

Turning now to human rights education in general, it is clear that unless there exists in a country a moral and political commitment to human rights, neither good courts, good lawyers, nor good laws will be able to prevent deprivations of human rights. A country's moral and political commitment to human rights and human dignity is in large part a matter of education. I am not suggesting that education alone can create the fertile climate in which freedom and respect for human rights can develop; that would be naive. But at the same time, it cannot be denied that a nation's genuine commitment to human rights education is in and of itself an indispensable element of any national policy to guarantee human rights. To be effective, that education has to start early in any child's life and continue into adulthood, and it must have international dimensions. That is, the training in international human rights law by law schools must parallel a similar approach in general human rights education.

Why do we need this international dimension? The answer is to be found in a phenomenon of contemporary international life: never before in human history have mankind's shared aspirations for human rights and human dignity played a more important role in shaping national and international policies and programs. I am not suggesting that human rights are any less violated today than they were before. What I am suggesting is that we are witnessing a phenomenon in which the universality of mankind's yearning for human rights and human dignity has internationalized the concept of and struggle for human rights to an extent that, in historical terms, may well rival the impact that the French Revolution had on the centuries which followed it. Human rights education which fails to take account of this phenomenon and its consequences lacks the touch of reality without which all education is meaningless.

IV

But whether we are talking of legal education or of general human rights education, be it on the primary, secondary or university level, it is clear that human rights teaching presumes that there be trained teachers and professors, that there be appropriate teaching materials, and that there be human rights research capable of contributing to and enhancing human rights education on all academic levels.

While national universities and research institutions must bear the primary burden in promoting the training of human rights teachers and encouraging human rights research, it is clear that the international dimensions of the subject call for international cooperation. This is where the Inter-American Court of Human Rights can play a vital and creative role. As a matter of fact, the Court has already taken some preliminary steps in exploring the desirability and feasibility of establishing an Inter-American Institute of Human Rights here in San José, which would be affiliated with the Court, and serve as a truly international and interdisciplinary institution dedicated to the promotion of human rights education and research while working closely with Costa Rican and other universities and institutions of the hemisphere.

It is the conviction of some of the judges of the Court, which I share very strongly, that the existence of such an Institute is critical to the work of the Court at this stage of the development of the inter-American system. We live in a part of the world where it is not enough merely to create a Court and have it render judgments; in our hemisphere such a Court must also contribute to the creation of a climate in which these judgments will carry the necessary moral and political force capable of discouraging potential violators of human rights. A Court-sponsored Inter-American Institute of Human Rights would enable the Court to play a creative role in this important educational process.

Through such an Institute, the Court would be able to engage in and encourage an on-going dialog among lawyers, educators and scholars of different disciplines on ways and means to protect and expand human rights guarantees in all the countries of the OAS. I can think of no better place than San José for the seat of such an institution. This city has both the intellectual resources necessary to provide scholarly foundation for it and the historical commitment to human rights without which such an Institute could not function.

V

There is so much more to be said on the subjects that I have discussed. It is my profound hope, therefore, that my talk today will serve merely as the first of many conversations between the Court and this Law Faculty on human rights education in general and on the roles that our respective institutions can and should play in promoting the cause of human rights in our home countries, in our hemisphere, and in the world. I thank you for this opportunity and look forward to a long and intellectually stimulating association with all of you here at the Law Faculty and the University of Costa Rica.