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**EFFECTIVENESS OF THE INTER-AMERICAN
COMMISSION ON HUMAN RIGHTS—A CASE STUDY
OF NICARAGUA, 1978-1992**

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Effectiveness of the Inter-American Commission on Human Rights—A Case Study of Nicaragua, 1978-1992

They always say time changes things, but you actually have to change them yourself.

-Andy Warhol

I. INTRODUCTION –

After 1970, many Latin American countries experienced economic crisis and the development of dictatorial, repressive regimes. Given this political situation, the development of a human rights ethic among the diplomatic community was particularly challenging. Civil unrest and revolution in many countries gave the human rights movement¹ a sense of urgency, and simultaneously created resistance against outside involvement in the domestic policies of sovereign states.

However, in the late 1970s many of these regimes began to crumble. In 1979, two-thirds of Latin America was ruled by some form of authoritarianism. By 1993, military regimes in Latin America had been practically eliminated.² This process began when popular movements gained momentum and democratic processes, such as elections, began to occur more frequently. Concern for civil rights and democratization led to a widespread interest in the promotion of human rights throughout the region.

¹ The international human rights movement was born in 1948, when the Organization of American States adopted the American Declaration of the Rights and Duties of Man. Six months later, the United Nations adopted the Universal Declaration of Human Rights. In the following decades, other non-governmental organizations focused on human rights protection would emerge; the most notable of them was Amnesty International, which was founded in 1961.

² Brian Loveman. “‘Protected Democracies’ and Military Guardianship: Political Transitions in Latin America, 1978-1993”, *Journal of Interamerican Studies and World Affairs* 36, no. 2 (1994), 105.

The Inter-American Human Rights Commission, a subset of the Organization of American States, was an integral participant in the development of human rights policies throughout Latin America. Its involvement in Nicaragua during the 1979 Sandinista Revolution, and in the decade that followed, exemplifies not only the range of issues that the Commission dealt with, but also the circumstances in which its influence was the strongest. This paper will use the relations between Nicaragua and the Commission to illustrate the extent of its authority concerning domestic human rights issues, its impact when promoting regime change, as well as situations when the Commission finds itself powerless.

The Inter-American Commission on Human Rights' role as an investigative body reveals abuses that would otherwise have gone unheeded by the international community, particularly in times of political upheaval and revolution. As a monitoring mechanism for the Organization of American States, the Commission can play a major role in influencing the human rights policies of a country in transition, or in the process of establishing a new government. But as the Commission's involvement in Nicaraguan human rights issues at the end of the Somoza regime in 1978, during the 1979 Nicaraguan Revolution and during the decade of Sandinista rule demonstrates, the Commission does not wield the same influence in a country with a securely established government. Because it lacks the authority to enforce its recommendations, it can be easily ignored during periods when there is no threat of civil strife.

This study will examine the Commission's reports on the human rights situation in Nicaragua from 1978 to 1992, including two major reports that derived from on-site visits to the country. The following recurring issues will be the focus of my study: the use

of state of emergency laws, the right to life³, due process rights, freedom of expression and political pluralism. The recommendations of the Commission will be compared to the government's willingness to comply. As my research shows, the influence that the Commission wields on a state's human rights practices varies depending on the stability of the government.

History of the Inter-American Human Rights Commission

The first half of the twentieth century was a time of slow but certain consolidation of government power in the executive branch, often times at the hands of a ruthless dictator backed by the military. After World War II, many Latin American countries adhered to a transnational political ideology known as Pan-Americanism. This policy was created by Simon Bolívar to unite all Latin American nations into an integrated international trade system. Also, Pan-Americanism was a political program whose aim was to “defend democracy” and fight communism.⁴ In the 1960s and 1970s, authoritarian military regimes with fervently anti-communist agendas came to power in many Latin American countries. Authoritarian regimes were entrenched in Argentina, Venezuela, Nicaragua and Paraguay, among others.⁵ The leaders of these regimes were often supported by the United States; the military was focused on crushing “counterinsurgencies” through methods such as torture, execution and forced disappearance. Populations were deprived of their civil and human rights with no recourse in either the domestic or the international spheres.

³ The term “right to life” is a legal phrase which describes a human being’s right to life and liberty of person. In international law, violations of the right to life include arbitrary execution and disappearance. This usage is not the same as the term “right to life” as it is interpreted in the United States, namely opposition to abortion rights.

⁴ “The Military in Latin America”. *Proceso*, (San Salvador, El Salvador: Center for Information, Documentation and Research Support of the Central American University, 1995), 1-3.

⁵ M. Margaret Ball. “Issue for the Americas: Non-Intervention v. Human Rights and the Preservation of Democratic Institutions.” *International Organization* 15, no.1 (1961), 27.

The Organization of American States, created April 30th, 1948, was born out of the need for an international body to provide a forum for diplomatic debate and negotiation between states in the Western Hemisphere.⁶ As Pan-Americanism and authoritarian military regimes took hold, the Organization of American States adopted the American Declaration on the Rights and Duties of Man in 1948.⁷ This non-binding document outlined a regional standard for human rights and the duties of both governments and citizens.⁸ While this document demonstrated the enthusiasm and interest of the community in promoting human rights, it was also riddled with problematic obstacles, the most important of which hit at the core of Latin American diplomatic policy: the supremacy of sovereignty and non-intervention.⁹ The OAS Charter clearly prioritizes sovereignty, committing itself to non-intervention in the domestic policies of member states, which takes precedence over the issue of human rights¹⁰:

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.¹¹

Although it is a necessary element in international law, this policy of non-intervention continues to be the biggest obstacle in enforcing punitive measures against

⁶ *Ibid*, 23.

⁷ *Ibid*, 25.

⁸ *Ibid*, 25.

⁹ *Ibid*, 21-23.

¹⁰ The member states of the OAS include most of Latin America as well as the United States. Hence, this interest in state sovereignty and non-intervention does not stem from the United States' historical involvement in Latin American affairs. Rather, the creation of international organizations such as the UN and the OAS would not have been possible without an emphasis on sovereignty—the United States, as well as many other countries, would not have become members of these organizations without a guarantee that their sovereignty would be respected.

¹¹ *Charter of the Organization of American States*, Chapter IV, Article 19. Available from OAS website: http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/key_issues/eng; Internet, accessed 25 February, 2005.

human rights abusers. As historian Margaret Ball notes, “It is possible, of course, for the American republics to declare—as they have declared—that human rights should be protected and the cause of democracy promoted. As long as these remain no more than pronouncements, and as long as no effort is made to secure compliance [with international human rights declarations].”¹² In 1959, the Fifth Meeting of Foreign Ministers in Santiago, Chile took the first step in rectifying this problem by adopting a resolution to create “an Inter-American Commission on Human Rights.” In 1960, the Statute of the Commission was promulgated. At first glance, the Commission seemed to be a research and advisory body. Later, however, it became increasingly proactive in pressuring countries to promote human rights.¹³ Historian José A. Cabranes argues that the only reason member states supported the Commission was that they were under the impression that it would merely be a “study group”.¹⁴

The Commission was institutionalized in the 1970 Protocol of Buenos Aires. It was added to the OAS Charter and given the responsibility of overseeing human rights in the region, in accordance with the American Declaration on the Rights and Duties of Man. Legally, the OAS cannot force states to comply with the Declaration; but just like the Universal Declaration of Human Rights, passed by the United Nations in 1948, it serves as the standard for human rights practices in the region.

In 1969 the Council of the OAS opened the American Convention on Human Rights for signature, allowing member states to sign the document.¹⁵ This document’s

¹² Ball, “Issue for the Americas,” 29.

¹³ Thomas Buergenthal. “The Revised OAS Charter and the Protection of Human Rights,” *The American Journal of International Law* 69, no. 4 (1975), 830.

¹⁴ Jose A. Cabranes. “The Protection of Human Rights by the Organization of American States,” *The American Journal of International Law* 62, no. 4 (1968), 894.

¹⁵ This is also known as the “Pact of San José”. *Ibid*, 834.

importance in human rights law cannot be overstated. Its purpose is to build a body of customary human rights law upon which to establish precedent, and to create an Inter-American Court of Human Rights. The Convention finally came into effect in 1978 along with the Inter-American Court of Human Rights Statute, which went into effect in 1979.¹⁶ To explain why it took so long for member states to sign on, one must look no further than the state of deep political turmoil in which Latin America found itself entrenched. Immediately, the Commission went to work in Nicaragua, where the Somocista regime was experiencing the early upsurges of civil war.

History of the Nicaraguan Conflict: The Somoza Regime and the Revolution

What is commonly known as the “Somoza regime” is the period between 1937 and 1979. During this period, three members of the Somoza family served as president of Nicaragua. Anastasio Somoza García served from 1937-1947, and again from 1950 to 1956, when he was assassinated. His eldest son, Luis Somoza Debayle, succeeded him and was president from 1956 to 1967. Finally, after Luis suffered a heart attack, his younger brother Anastasio Somoza Debayle took power until 1979, when he was forced to resign. The Somoza regime was an authoritarian military dictatorship, with power completely consolidated in the hands of the Somoza family and the army, also known as the National Guard.

Starting in 1961, with the founding of the Sandinista National Liberation Front, the movement for national liberation began to fight back against the oppressive and corrupt Somoza government. The FSLN led a guerilla war against the National Guard, and after several years garnered widespread support from many sectors of the population,

¹⁶ “Historia”. Corte Interamericana de Derechos Humanos. Available from http://www.corteidh.or.cr/inf_general/historia.html; Internet, accessed December 3, 2004.

including the peasantry, business owners and the press. After a devastating earthquake destroyed the city of Managua on December 23rd, 1972, the resulting economic and human catastrophe added to the population's frustration and desperation. On January 10th, 1978, the assassination of a popular press figure, Pedro Joaquín Chamorro, resulted in nation-wide protests against the government, many of which ended violently. Finally, the clashes between the National Guard, the Sandinista guerillas and the citizenry erupted into a violent civil war.

When news of these horrific events reached the international community, the Organization of American States assigned the Inter-American Commission on Human Rights to conduct an investigation of the human rights policies of the Somoza government. Because of its mounting concern that the situation was becoming increasingly volatile and that the citizenry's fundamental rights were being denied, the Commission scheduled an on-site visit.

II. THE COMMISSION'S 1978 "ON-SITE" VISIT TO NICARAGUA

The Commission's first visit to Nicaragua occurred during a particularly dramatic period in the country's history. Revolution had broken out in 1978 in response to years of repression at the hands of an authoritarian dictatorship.¹⁷ Protests took place throughout the country, and the Commission received serious complaints alleging egregious violations of human rights.

¹⁷ Although the broad uprising against the government began in 1978, armed struggle and protests against the government had been occurring since the early 70's.

The Nicaraguan Revolution deeply affected every sector of society, as made evident by the range of violations illustrated by the complaints filed with the Commission. Some of the most serious complaints concerned the disappearance of over 300 farmers at the hands of the National Guard between 1975 and 1977. Only seven were released, after having been imprisoned for 18 months. Members of the Guard appropriated the farms of the remaining farmers, who were presumed dead.¹⁸ In January of 1978, after the start of a general strike, university students and women's groups complained of the violent dispersion of peaceful protests using tear gas dropped from helicopters.¹⁹ Perhaps the most publicized and incendiary event occurred on January 10th, 1978. The assassination of the managing editor of *La Prensa* newspaper, Pedro Joaquín Chamorro, and the resulting demonstrations, underscored the regime's malicious suppression of freedom of expression.

In addition to violations of the right to life, due process and civil rights, the Commission wanted to investigate the abuse of state of emergency laws, that had resulted in flagrant abuses of civil and human rights. I will discuss this investigation first, and then move to right to life cases and those concerning freedom of expression, assembly, and political conscience.

State of Emergency Laws

At the time of the Commission's visit, the Nicaraguan government was operating under Article 197 of the Constitution, which provided for the suspension of fundamental rights in case of a national crisis, also known as a state of emergency. The Commission

¹⁸ Inter-American Commission on Human Rights. *Report on the Situation of Human Rights in the Republic of Nicaragua – 17 November 1978*. Available from <http://www.cidh.oas.org/countryrep/Nicaragua78eng/TOC.htm>; Internet, accessed 22 February 2005.

Introduction-A

¹⁹ *Ibid*, Introduction-A

found the government's use of this provision as too sweeping, for two reasons. First, this state of emergency was in effect during the greater part of President Somoza's administration, which began on December 1st, 1974.²⁰ From that date until November 10, 1978 (a period of three years, eleven months and ten days), the country had been in a state of emergency periodically for two years, ten months and eleven days, and had had full constitutional rights for only one year, one month and two days.²¹ It was the Commission's view that Article 197 was not designed to be in effect for prolonged periods of time and went into effect for no other reason than to maintain compliance with government policy without the possibility of recourse:

These provisions, which make up the emergency regime, prevailing in Nicaragua, create in the socio-economic reality of the country, a legal structure from the formal point of view, but from the practical point of view, this turns into a legal abnormality, since it lends itself to a systematic and generalized violation of human rights established by the American Declaration of the Rights and Duties of Man.²²

The Commission's second concern was that the Nicaraguan government had declared a state of emergency when it was officially and legally unjustifiable. The latest suspension of constitutional rights, instituted on October 12, 1978, was declared as a response to the armed attacks that had occurred against the National Guard since October 1977. According to the government, the growing campaign of government opposition amounted to subversive propaganda and threats to the security of the constitutional government. The government contended that resistance groups had affiliations with "Marxist mercenaries and terrorists of different nationalities" as well as "leaders of

²⁰ *Ibid*, I-A

²¹ *Ibid*, I-D

²² *Ibid*, I-D.

international communism.”²³ However, in the course of its investigation the Commission found that another decree had been promulgated earlier, which declared that the National Guard had “accomplished its patriotic duty of reestablishing domestic tranquility and guaranteeing the independence of the nation and the integrity of its territory that was threatened by terrorists inspired by international communism.”²⁴ This decree in effect showed that the government recognized that domestic peace had been established to a sufficient degree. The Commission noted that, “The prolongation of that abnormal legal situation doesn’t make sense if the situation that caused it has been officially declared as ended.”²⁵

The Right to Life

The bulk of complaints received by the Commission during this visit were related to violations of the right to life. The outbreak of violence during protests throughout the country and the use of urban guerilla warfare resulted in widespread civilian casualties and arbitrary executions. Correspondence with the Nicaraguan government prior to the visit led to a response from Dr. Julio C. Quintana, Minister of Foreign Affairs, who assured the Commission:

I am pleased to state to you that the Nicaraguan people enjoy full freedom and the exercise of rights guaranteed by our Constitution and other laws of the Republic, which incorporate and enforce human rights as part of our juridical tradition, in accordance with the Nicaraguan political reality based on a representative democracy. These guarantees and rights have not been suspended, in spite of violent events and subversive actions of extremist groups which threaten the peace of the Republic.²⁶

²³ *Ibid*, I-B.

²⁴ *Ibid*, I-B.

²⁵ *Ibid*, I-B.

²⁶ *Ibid*, Introduction, A.

In spite of government assurances, the delegation's investigation of right to life cases was extensive. The Commission was mainly concerned with the following violations, which are discussed below: death of unarmed civilians during combat, deaths involving Red Cross personnel, deaths occurring as part of "Operation Mop-Up," deaths after the cessation of hostilities, and the disappearance of farmers.²⁷

Noting that Nicaragua is a signatory of the Geneva Convention on the Protection of Civilians in Time of War, the Commission condemned harming unarmed citizens during armed conflicts.²⁸ Regarding the National Guard's indiscriminate bombing of cities using heavy artillery (particularly in León, Masaya, Jinotepe, Estelí and Chinandega), the Commission expressed extreme dissatisfaction. After quoting from several complaints, the Commission concluded:

The Commission is totally convinced that the Nicaraguan National Guard not only used its firepower indiscriminately causing a great number of casualties and tremendous suffering to the civilian population, but that it also ordered the people to remain inside their homes before bombing, without even allowing them to evacuate, thus violating a basic humanitarian norm.²⁹

Abuses committed against Red Cross personnel involved one incident that occurred on September 14th, 1978. An ambulance and jeep carrying medicine and food, answering a request for aid, were machine-gunned by a military convoy and shot at from a helicopter, despite being marked as Red Cross vehicles. Upon further investigation, the Commission discovered that the attack had been a mistake—the National Guardsmen had hit the wrong target. A taped conversation between Colonel Humberto Corrales and Major Anastasio Somoza, President Somoza's son, revealed an attempted cover-up.

²⁷ *Ibid*, II-A.

²⁸ *Ibid*, II-B.

²⁹ *Ibid*, II-B.

According to the transcript, Major Somoza ordered Corrales, “You say that the ambulance was stolen with two dead guards...and it was heard by the patrol that was coming...we already made friends with the Red Cross, but tell them that the guerillas insist on using Red Cross ambulances.”³⁰

The Commission deemed the attack “inexcusable.” Other attacks against volunteers occurred were noted with less detail. All these events not only demonstrate the danger that international aid organizations faced in Nicaragua during this time, but also the lack of respect for their humanitarian work on the part of the government.³¹ In general, the government did little to protect members of aid organizations from being targeted.

“Operation Mop-up” was a military operation designed “to annihilate the last pockets of resistance” throughout the country. It consisted of arbitrary execution and imprisonment of non-combatants implicated in the armed resistance.³² The Commission visited many of the areas where the worst crimes had allegedly been committed, and the information gathered led to the following conclusion:

...the Nicaraguan National Guard’s actions during the phase called ‘Operation Mop-up’ were marked by complete disregard for human life, that they shot numerous people, in some cases children, in their own homes or in front of the same and in the presence of parents and siblings.³³

The insidious events that took place during “Operation Mop-up” are particularly shocking because they constituted a systematic plan to target civilians based on their political affiliation. Similarly, after the end of the armed conflict, many people were

³⁰ *Ibid*, II-C.

³¹ *Ibid*, II-C.

³² *Ibid*, II-D.

³³ *Ibid*, II-D.

killed without proper justification. The testimonies collected by the Commission illustrate the devastating effects of such cruelty on families and communities, who pled with the Commission to help them find their relatives or to bring the perpetrators to justice.

As noted before, the Commission considered the disappearance of 321 farmers between 1975 and 1977 a “grave violation of the right to life.”³⁴ However, the Nicaraguan judicial system failed to investigate the charges properly, and little had been done at the time of the report’s publication, despite the Commission’s insistence.

The protection of the right to life is fundamental to democracy. The Commission’s findings demonstrate that the Somoza regime disregarded this right before, during, and after the armed conflict. However, as it was still in control of all military, administrative and judicial government structures, the Somoza government did little to investigate these crimes and punish guilty parties. Forcing the government to carry out investigations was beyond the scope of the Commission’s power, and therefore many crimes committed during this period went unpunished.

The Rights of Imprisoned Persons and Due Process

Not only was the murder of many innocent people a major concern, so was the cruel and groundless imprisonment of thousands of others. Articles 197 and 52 of the Nicaraguan Constitution prohibited acts of cruelty and torture against detained persons. The Commission visited most detention facilities and received complaints of physical and psychological torture, and took note of the highly unsanitary, crowded conditions and a

³⁴ “Personal integrity” refers to the right to personal privacy, private property, and *habeas corpus*. It also refers to humane treatment while in prison. *Ibid*, II-F.

lack of proper medical care for prisoners. The Commission paid special attention to these violations of the right to personal integrity³⁵ and other violations of due process.³⁶

Gathering information in prisons proved difficult. Prisoners were frightened about the possible repercussions of their testimonies. The Commission noted that given their visible scars and condition during the interviews, it was evident that many prisoners had been hung by their arms, received electric shocks, had their ribs broken, and nursed unattended injuries (including bullet wounds).³⁷ Delegates verified that many prisoners were as young as 14 years of age.³⁸

In addition, many prisoners were held *incommunicado* and with no legal representation. Ordinarily, prisoners were given summary sentences by chiefs of police, a policy established by the Police Regulations of 1880 (deemed anachronistic by the Commission).³⁹ Evidence was not required to impose a sentence, and oftentimes the accused was denied access to legal counsel.

Under the Somoza government, the role of police chief was filled out by a commandant of the National Guard, fusing the military and criminal justice systems. The state of emergency allowed for the creation of Military Courts, which usurped the role of Criminal Courts and the Supreme Court. This arrangement seriously undercut the possibility that political prisoners would have a fair trial.

The Constitution allowed for imprisonment for political reasons. According to Article 195, the President could order the imprisonment of individuals who might have

³⁵ *Ibid*, Chapter III, “The Right to Personal Integrity.”

³⁶ *Ibid*, Chapter IV, “Physical Freedom and the Administration of Justice.”

³⁷ *Ibid*, III-B.

³⁸ The Nicaraguan Constitution stated that minors should be relegated to special juvenile detention centers. *Ibid*, IV-D.

³⁹ *Ibid*, IV-B.

disturbed public order, but the maximum period of incarceration was ten days. Further detention required a meeting with a judge. The Commission recorded many cases in which prisoners were held longer than ten days, without being allowed the right to *habeas corpus* and without being taken to court.⁴⁰

In the estimation of the Commission, the deplorable state of the legal system and criminal proceedings comprised a violation of due process, compounded by the capricious application of laws:

...there exists a dichotomy between the Constitution and the interpretation of it by the National Guard and other governmental authorities. Its application depends upon the interpretation which the government deems most accommodating in each case presented, and the judicial authorities do not adopt the necessary corrective measures.⁴¹

The Commission requested that the commandants of the prisons investigate cases of torture, and received assurances that investigations would take place. At the date of publication of the On-site Report, however, the authorities had not charged anyone for torture or unacceptable abuse.⁴² It is evident that these officials were not intimidated by the Commission, and felt that it was unnecessary to follow their recommendations. At this point in time, the Commission posed no threat to their jobs, and they were simply brushed off. Despite the Commission's strong criticism of the judicial processes taking place in Nicaragua, and the government's cooperation with regards to giving them access to prisoners and facilities, the Commission was generally unsuccessful in obtaining the government's cooperation with regards to reform.

⁴⁰ *Ibid*, IV-B.

⁴¹ *Ibid*, IV-B.

⁴² *Ibid*, III-B.

Freedom of Expression

The Commission's investigation was prompted in large part by the high-profile assassination of Pedro Joaquín Chamorro, an event that also raised concerns about censorship. In this report, the Commission notes the great difference between the freedom of the press guaranteed by Articles 71 and 72 of the Constitution and the restriction of the Nicaraguan press in practice. A critical law, Decree No. 523, seriously limited the content of published material. Generally, any material that could be interpreted by the government as subversive propaganda, as well as "false news" and Marxist or atheist material was prohibited. Also, any commentary which made derogatory or critical commentary about the government was not allowed.⁴³

Due to the vagueness of Decree No. 523, as well as the limitations it implied, the Commission found the law extremely alarming. Any information on the encounters between the National Guard and the resistance, reports on demonstrations or the state of affairs in rural regions, and calls for the punishment of corrupt officials was restricted or disallowed.⁴⁴

The Commission visited Nicaragua at a time of sweeping government censorship. In the estimation of the Commission and the Inter-American Press Association, the freedom of the press and the liberty of journalists to work unhampered in Nicaragua was uncertain at best. At worst, it constituted a threat to the personal safety of journalists.⁴⁵ It would not, however, be the actions of the Commission or the Inter-American Press

⁴³ Article 71 states, "No one can be molested nor persecuted for the expression of his opinions nor for any act which is not against the law." Article 72 states, "Every person may communicate his thoughts orally or in writing, and publish them without prior censorship; but he shall be responsible for the abuses committed in the exercise of this rights, in the cases and in the manner determined by law." *Ibid*, V-A.

⁴⁴ *Ibid*, V-B.

⁴⁵ *Ibid*, V-B.

Association that would give freedom of expression back to the Nicaraguan people. It was the eventual triumph of the revolution which would allow for the Commission's recommendations to be taken into account.

Findings and Recommendations of the Commission

The administration of justice and interpretation of laws in Nicaragua during the Somoza regime was capricious and largely unconcerned with human rights. The unreliable enforcement of laws provided dangerous opportunities for abuse. Loveman notes that this was intrinsic to a Latin American authoritarian dictatorship:

Each country has its own archive of legislation that permits political repression, censorship of the press, and the selective persecution of those deemed undesirable at the time: anarchists, socialists, communists, fascists...or just ambiguously defined subversives, terrorists, and bandits.⁴⁶

The Commission's visit to Nicaragua in 1978 and the report it published had several effects. As an investigative body, the Commission uncovered a record of widespread denial of human rights and made it available to the international community. It served as an evaluation of the effects of the Somoza regime and the subsequent revolution on the entire spectrum of Nicaraguan society. In retrospect, the Commission report provides some of the most valuable objective documentation from a non-affiliated source of these harrowing years. It also confirmed allegations of violence and injustice in the form of testimonial interviews and on-site inquiry.

As an official reporter for the Organization of American States, the Commission was responsible for ensuring that the Nicaraguan government complied with the

⁴⁶ Loveman, "Protected Democracies,"138.

American Declaration of the Rights and Duties of Man. It found the government of Nicaragua to be in serious violation of the following articles:

- a) Article I – the right to life, liberty and security of person.
- b) Article XXV – the rights to humane treatment while in custody and *habeas corpus*.
- c) Article XXVIII – the right of due process
- d) Article III – the right to freely profess a religion
- e) Article XXI – the right of assembly and demonstration.

The Commission did face one glaring setback. Because it was limited to investigating the human rights violations of the government, the Commission was neither able to investigate nor in a position to comment on crimes committed by members of the FSLN and other resistance groups. According to the report, “In view of the fact that such complaints, in light of the Statute and Regulations of the Commission, fall outside its competence, the Commission has not been able to give them the pertinent processing.”⁴⁷ It would not be until the FSLN came to power in the early 1980s that the Commission would be able to investigate its abuses. This demonstrates a serious limitation of the report. In its investigation of the political situation of this period, the Commission could not evaluate the reciprocal violence committed by members of the resistance forces.

Several issues are important to note. Because of the triumph of the Nicaraguan Revolution in 1979 and the subsequent collapse of the Somoza government, it is not possible to gauge whether this report would have prompted any policy changes on the part of the regime. But as a result of its interest in the human rights situation in Nicaragua, the Commission later became extremely involved in planning the structure of the new government, taking into account the injustices of the Somocista period.

⁴⁷ Inter-American Commission on Human Rights. *1978 Report*, Introduction - B

When the Commission arrived in Nicaragua, a revolution was already taking place. However, their report made many recommendations as to how the Somoza government could reform its policies in order to comply with international human rights standards. The Commission was not able to persuade the government to enact any significant changes. However, the on-site report is a collection of objective evidence of abuse, and provided recourse for victims whose complaints to the government were falling on deaf ears. In addition, the Commission's report was shared with the international community, which became aware of the many crimes committed during the Somoza period. It was because of its role as an investigative body that the Commission earned an important advisory role in the establishment of a new Nicaraguan government.

III. THE COMMISSION'S 1981 "ON-SITE" VISIT TO NICARAGUA

On this occasion, the Commission was invited by the Government of National Reconstruction of Nicaragua to evaluate the human rights situation in the country, which prompted an on-site visit in 1981.

This report begins with an update on the actions of the Organization of American States in the interim period between on-site visits, given the political developments in Nicaragua and the findings of the Commission in 1978. Most notably, on June 23rd, 1979, for the first time in the history of any international organization, the OAS deprived a government of a member state of its legitimacy. The resolution called for the "immediate and definitive replacement of the Somoza regime" and supported the establishment of a new executive body—a five-member junta which would become the Government of

National Reconstruction. The creation of this governing body was spearheaded by the Sandinista National Liberation Front, or FSLN, which was also responsible for the military victory against Somoza.⁴⁸

The FSLN actively sought the assistance of the OAS to create a “Plan to Achieve Peace,” which would outline the creation of a permanent democratic government in accordance with international human rights standards.⁴⁹ The stages of the plan included the resignation of Somoza, a peaceful cease-fire, and the dissolution of the Constitution and National Congress. On July 16th, General Anastasio Somoza tendered his resignation, recognizing the OAS’ declaration in his letter, which reads:

People of Nicaragua:

Having consulted the governments that truly have an interest in bringing peace to the country, I have decided to respect the decision of the Organization of American States and do hereby resign the Office of the Presidency to which I was elected by popular vote. My resignation is irrevocable.

I have fought against communism and believe that when the truth emerges history will vindicate me.

A. Somoza

President of the Republic⁵⁰

On July 19th, 1979, the Sandinista guerillas occupied Managua and declared a cease-fire after a night of heavy battle. The heads of the National Guard surrendered, and the next day the Junta of the Government of National Reconstruction came into existence.⁵¹ On September 25th of that year, upon the request of Chairman of the Inter-American Commission of Human Rights Andrés Aguilar, the Government of National

⁴⁸ Inter-American Commission on Human Rights. *Report on the Situation of Human Rights in the Republic of Nicaragua, 30 June 1981*. Available from <http://www.cidh.oas.org/countryrep/Nica81eng/TOC.htm>; Internet, accessed 22 February 2005. Introduction - B

⁴⁹ This plan was presented by the Junta in a letter to the Secretary-General of the OAS on July 12, 1979. *Ibid*, Introduction – B.

⁵⁰ *Ibid*, Introduction – C, Section 3.

⁵¹ *Ibid*, Introduction – C, Section 1.

Reconstruction ratified the American Convention on Human Rights.⁵² These events demonstrate the pivotal role that the Commission and the OAS played in the outcome of this civil war. Their efforts not only prompted the resignation of the dictator, but also allowed them to participate in creating a human rights-oriented infrastructure for the new government.

The Commission visited Nicaragua between October 6th and October 11th, 1980. Government officials were cooperative, and admitted certain problems that had to be rectified, which the Commission would also note. The government stated that any instances of torture and disappearance were the fault of the former regime, and that the problems faced by the new government stemmed mainly from a lack of resources.⁵³

Notwithstanding, the Commission's report uncovered serious problems in the new government's administration, especially regarding the right to life, the prison system, and the trials taking place against former regime members. As the investigation progressed, it would become evident that the Government of National Reconstruction would be cooperative in certain areas (such as the state of prisons), but was not compelled to comply with Commission recommendations in other areas, such as right to personal liberty and a fair trial for those who had been somehow aligned with the Somocistas.

Despite this, the preliminary recommendations of the report state:

...the Commission wishes to state, that when compiling the facts narrated in the present Report, it was unable to disregard the nature of the previous regime, and the repeated violations of human rights committed by its authorities, especially the military; the difficulties that the new authorities had to confront when they took charge of a country practically destroyed

⁵² *Ibid*, Introduction –D, Section 1.

⁵³ This refers to the overcrowded state of prisons, which housed over 7,000 ex-National Guardsmen. *Ibid*, Introduction – F.

by Civil War and, in that difficult context, the present Government's stated intention to respect human rights.⁵⁴

My analysis of the 1980 visit will focus on the following issues: the structure of the Fundamental Statute of the new government, the rights to life, personal liberty and due process, freedom of thought and expression and political rights.

Human Rights in the Fundamental Statute

The Commission's review of the Fundamental Statute, issued on July 20th, 1979, recognized the Junta's desire to uphold and legally enforce international human rights standards as outlined by both the United Nations and the Organization of American States. The Fundamental Statute also established a national human rights framework—the Statute on the Rights and Guarantees of Nicaraguans.⁵⁵ At this point, the Nicaraguan government was actively cooperating with the OAS. An important institution, the Council of State, was created to ensure representation of the entire Nicaraguan political spectrum, including all existing political parties, the Armed Forces⁵⁶, the Unión de Periodistas de Nicaragua⁵⁷ and the Asociación de Miskitos, Sumos y Ramas.

The structure of the new government mirrors the rights listed in the Universal Declaration of Human Rights and the American Declaration on the Rights and Duties of Man. Some elements, however, are unique to Nicaraguan political circumstances; most importantly the final provision of the statute, which limited the declaration of a state of

⁵⁴ *Ibid*, Introduction – G, Section 7.

⁵⁵ This decree established a preliminary legal and administrative structure for the new government while a new Constitution is promulgated. It dissolved old government institutions such as the Chamber of Senators, and outlined the goals of the Government of National Reconstruction. *Ibid*, I-A, Section 4.

⁵⁶ This is not the National Guard, but a new popular army made up of the FSLN combatants, ex-National Guardsmen who have committed their loyalty to the new government, and new recruits. *Ibid*, I-C, Section 12.

⁵⁷ In translation, these organizations are the Nicaraguan Journalists' Union, and the Association of the Miskito, Sumo and Rama tribes, which are native to the Atlantic coastal area.

siege. Instead of allowing the executive branch to suspend all constitutional guarantees, the right to life, freedom of thought, nationality, juridical capacity and physical and psychological integrity were protected even in a state of emergency.⁵⁸ This marks a drastic shift from the policies of the previous regime.

One of the most glaringly unique elements of the statute was that the rights listed above were not extended to Somocistas being prosecuted by the State. They were thus deprived of many vital elements of the juridical process and fair treatment during imprisonment. This was one of the primary concerns of the Commission.⁵⁹

It is clear that relations between the fledgling Nicaraguan government and the Organization of American States were friendly at this point. Also, the government was eager to demonstrate a genuine concern for human rights and a willingness to incorporate these rights in the new legal system. However, denying these rights to certain citizens. The Somocistas echoed the policies of the previous regime. It raised fears that a gap would develop between written laws and the legal system in practice. These fears proved to be well-founded, as was demonstrated by the findings of the Commission.

The Right to Life

The Fundamental Statute eliminated the death penalty in Nicaragua, making imprisonment the maximum penalty for any crime, including the crimes committed by the Somocistas who were being prosecuted. The Junta alerted the world of this decision at a press conference held on July 28th, 1979, and clearly considered this announcement an important demonstration of its largesse and respect for human rights.⁶⁰

⁵⁸ *Ibid*, I-D, Section 4

⁵⁹ *Ibid*, I-F, Section 9-e.

⁶⁰ *Ibid*, II-A, Section 2.

The death penalty has been buried forever in Nicaragua. It is important that the entire world be aware of this decision taken by the FSLN....No one can take justice into his own hands. Justice will be the responsibility of the government of National Reconstruction, through the juridical apparatus—because there will not even be military tribunals--, to judge the war criminals who have been the cause of so much injury, so much bloodshed and so much pain to this country.⁶¹

It is important to mention that this ethical decision on the part of the government marked a definitive shift away from the policies of the previous regime. Also, this meant that members of the Somoza regime found guilty of crimes would not be subjected to the death penalty.

The Commission, while recognizing this important change noted that during the month of July, 1979, there were violations of the right to life committed by the Sandinista National Liberation Front, mainly in the form of illegal executions. Among these cases, many included the execution and disappearance of civilians whose alleged affiliation with right-wing organizations was the justification for their arrest.⁶²

Upon conferring with the official in charge of complaints for the Ministry of the Interior, the Commission was assured that many prison commanders had been dismissed from the army. However, many cases were not investigated, despite assurances by the government that jurisdictional authorities would handle the matter. This demonstrates the declining influence of the Commission at this point. Once Nicaragua's constitutional framework was established, the Commission was relegated to the position of an outside observer with little influence over the government's policy decisions.

⁶¹ Speech delivered by Commander Tomás Borge. *Ibid*, II-A, Section 2.

⁶² This information comes from denunciations made by family members of the victims made to the Commission before their visit. Many were confirmed during visits to prisons where the victims had been held. *Ibid*, II-B.

Commander Tomás Borge, Minister of the Interior, admitted that summary executions had occurred in the first days of the new government. However, in a recorded conversation with the Commission, he justified these actions as the natural reaction of a population enraged by the brutality of a dictatorial regime, eager to avenge past injuries. He also argued that these events were an inevitable result of the chaos that ensued during the first days of the new government. However, he stressed that these incidents did not constitute the policy of the new Government, but they were the actions of a minority of soldiers, many of whom were punished.⁶³

The Commission, while acknowledging the unique and unfortunate situation described by Commander Borge, reiterated the importance of investigating and prosecuting alleged perpetrators of human rights violations.

Personal Liberty and Due Process

The main preoccupation of the Commission was the suspension of the rights of individuals suspected of crimes that took place during the revolution as well as under the previous regime. This suspension of rights, initially a temporary measure, was still in effect in 1981, at the time of the Commission's on-site visit. Foreign Minister Manuel D'Escot explained that although these measures were meant to be temporary, the extensive damage that the regime caused in Nicaraguan legal institutions (namely the fact that it gave juridical power to the military, taking it away from the judiciary branch) made it impossible to "maintain a state of juridical normalcy," especially because of the great number of suspects (over 7,500).⁶⁴ The Commission admitted that the lack of civil

⁶³ *Ibid*, II-C, Section 3.

⁶⁴ *Ibid*, III-B, Section 6.

servants was an obstacle in holding fair trials, but also reiterated that the decrees denying certain due process rights to detainees were in violation of human rights standards.

Special Tribunals were created on November 29th, 1979 to bring to trial Somocistas suspected of crimes committed under the previous regime or during the armed conflict. These Tribunals completed their work on February 19th, 1981. A total of 1,790 prisoners were released by means of pardon or dismissal, 229 were acquitted, and 4,331 were sentenced. In an act demonstrating a willingness to comply with international human rights standards, the Government of National Reconstruction issued a series of pardons for 503 male detainees and 72 women detainees.⁶⁵ However, the Commission found that many of the procedural aspects of the tribunals did not comply with international due process standards.

First, the accused were denied *habeas corpus* and a legal hearing before a judge, which was supposed to assess the legality of their detention. This created an “irregular legal situation” which allowed prisoners to be detained for prolonged periods of time without the benefit of a trial. This was a direct violation of the rights to liberty and a just trial. Prisoners were denied the presumption of innocence—the Tribunals shifted the burden of proof to the accused and assumed that membership in the former National Guard was sufficient evidence to presume guilt.⁶⁶

The Commission found that some people were arrested simply because they were members of the National Guard, without a specific description of the crimes they allegedly committed. If a person had freely enlisted in the National Guard, he or she was automatically indicted, and the indictment would be filled with generalized statements

⁶⁵ *Ibid*, III-E, Sections 1 and 2.

⁶⁶ *Ibid*, IV-F, Section 11.

about loyalty to an oppressive regime. In the opinion of the Special Tribunals, membership in the National Guard (regardless of occupation or rank) amounted to complicity in the commission of massacres, murder of civilians, and widespread brutality.⁶⁷ A typical case involved Lt. Col. Byron Pineda Galo, whose job as a bureaucrat in the supply office kept him far from any military functions or combat. However, his indictment states:

..his status as the individual in charge of the supplies of the Air Force gave him an opportunity to demonstrate his unwavering obedience and loyalty to Somoza and his cabal, by dropping 1,500-pound bombs on the civilian population and massive machine-gunning thereof...The rubble in our cities today and the thousands and thousands of innocent people who died, the brutally mutilated bodies, massacred during the heavy bombings, are living proof of the destruction he wrought.⁶⁸

Since he held a desk position, Galo was not the perpetrator of mass executions or the dropping of bombs on cities. The Commission pointed out that indictments had to be precise in describing the events which comprised commission of a crime, because such vagueness opened the door to judicial abuse.⁶⁹

In many cases, preparation for the trial was exceedingly short. The accused were given only 24 hours to prepare a defense. This virtually impossible feat was compounded by the court's use of uncorroborated evidence, whose admissibility was determined by the members of the Special Tribunals "by assessing it according to their conscience." Finally, only three days were allowed for the prisoners to file an appeal, and judgments were pronounced in three days. Attorneys were often ill-prepared, and faced heavy prejudice for defending ex-National Guardsmen. In the Commission's opinion, these

⁶⁷ *Ibid*, IV-D, Section 7.

⁶⁸ Lt. Col. Pineda Galo was sentenced to house arrest. Special Tribunals case No. 7584. *Ibid*, IV-D, Section 8.

⁶⁹ *Ibid*, IV-D, Section 9.

faulty mechanisms could lead to the opposite result than the one sought by the Tribunals—determining the truthfulness of allegations and the punishment of guilty parties by means of a fair trial.⁷⁰

Finally, the Special Tribunals were designed to hear crimes described in the Penal Code, which was usually the responsibility of the Supreme Court and the regular courts. The government ignored the recommendations of the Supreme Court. The Supreme Court stated, “...we think it neither useful nor advisable, because it creates another agency, that, given its similarity to the Office of the Attorney General and its members.”⁷¹ The intention of the Supreme Court was to avoid redundancy and confusion in the legal system, and to maintain the integrity of the current legal structure. This duality allowed for the military to oversee the administration of justice, which, according to Loveman, also makes “Latin American democracy permanently insecure.”⁷²

The Commission declared that these trials’ proceedings were “incompatible with Nicaragua’s commitments under the American Convention of Human Rights.”⁷³ The nature of the crimes committed did not exclude the accused from the guarantees of due process, because the accused were left with little or no means of defense. The Commission recommended that Special Tribunal decisions be reviewed by a higher judicial body. This review never came to pass, once again showing the waning influence of the Commission over this increasingly solid government.

The Commission was thus able to help design a legal system that protected the rights of ordinary Nicaraguans, but it was not able to persuade the government to alter the

⁷⁰ *Ibid*, IV-D, Sections 9, 13, 14 and 18; IV-D, Section 14.

⁷¹ *Ibid*, IV-E, Sections 1 and 2.

⁷² Loveman, “Protected Democracies,” 144.

⁷³ Inter-American Commission on Human Rights, *1981 Report*, IV-F, Section 15.

proceedings of the Special Tribunals. Although the anger of the population was understandable, making exceptions with regards to due process in order to try a specific group is a slippery slope—it demonstrates a disregard for the sanctity of the law, and a willingness to change public policy to satisfy a short-term political agenda. This was a feature of the previous regime, and the Commission was not successful in weeding it out of the new system.

Freedom of Thought and Expression

During the Commission’s 1981 on-site visit, several newspapers were closed down temporarily, including *La Prensa*, *El Nuevo Diario* and *El Pueblo*.⁷⁴ Although the Fundamental Statute guaranteed freedom of thought, oral and written, as well as political organization, the Commission uncovered two decrees which limited the media, for reasons of “national security.” The decrees include statements prohibiting journalists from serving “unpopular interests,” or publishing “propaganda against peace”.⁷⁵ According to the Inter-American Press Association, these laws were a severe handicap to the practice of independent journalism, and the Association and the Commission requested that the government revoke these measures. The government refused to cooperate.⁷⁶

The Commission noted that according to international law, the freedom of the press is inviolable unless the security of the State is “truly compromised.” Limitations must be temporary and unambiguous. Any other decrees by government authorities are considered a “risk to the freedom of expression set forth in Article 13 of the American

⁷⁴ Note that all of these papers are independent, or, at least, are not aligned with the official government position. The government-aligned newspaper was *Barricada*. *Ibid*, VI-B, Section 1.

⁷⁵ “Provisional Law on the Communications Media” and Decrees 511 and 512. *Ibid*, VI-A, Section 2. Found in their entirety in *Ibid*, IV-B, Sections 3 and 4.

⁷⁶ *Ibid*, VI-B, Sections 1 and 3.

Convention on Human Rights. In addition, because the Nicaraguan Penal Code's Article 260 sanctioned any hindrance of the flow of information, as well as the right of expression, Decrees 511 and 512 constituted a legislative contradiction."⁷⁷

The 1978 assassination of Chamorro, a prominent figure in the press corps, provoked widespread anti-government protest. Evidently, the Nicaraguan press had a strong influence on public opinion and could spur the population into action. A fear of the power of the press may have been the reason for such stringent regulation of the flow of information, including the closing down of major newspapers. However, the new government's reasons for censoring the press were very similar to those of the Somoza regime. Despite the commitment to freedom of expression outlined in the Penal Code, the government was unwilling to follow through with full press freedom despite the requests of the Commission.

Political Rights and Ideological Pluralism

The Government of National Reconstruction, as outlined in the Preamble of the Fundamental Statute, was designed to restore tranquility in Nicaragua, reconfigure governmental structure, and to institute a democratic system, with the presumption of ideological pluralism.⁷⁸ However, after two years of existence, the Junta experienced a major split because of political differences between the members. Specifically, several members were dissatisfied with changes made in the Council of State, which represented a wide range of political parties. The problem was a reconfiguration of the Council that eliminated certain parties and admitted a plethora of groups affiliated with the FSLN. This predominance of Sandinista groups seemed to foreshadow a complete takeover of

⁷⁷ *Ibid*, VI-B, Section 7.

⁷⁸ *Ibid*, VII-A

the government by the Sandinista party. Sandinista leaders retorted that those in opposition were “in agreement with counter-revolutionary conspiracy plans.”⁷⁹

In addition, Commander Daniel Ortega, member of the Junta and a high-ranking party official for the FSLN, stated in 1980 that elections were imminent. However, his brother and fellow commander Humberto Ortega announced in August of that year that elections would not take place until 1985. In his speech, he stated:

...One year after the Revolution, we can responsibly say that the country’s backwardness and its economic, social, and moral destruction are so profound and widespread that the nation cannot be expected to be reconstructed before 1985; the national Directorate of the Sandinista Front has therefore decided that the GOVERNMENT JUNTA must continue to lead the work of government until 1985.⁸⁰

The Commanders’ decision to postpone elections raised fears that the Sandinista party was consolidating its hold on power and undermining the democratic process. These fears were compounded on August 28th, 1980, when the Council of State adopted a law prohibiting any party from engaging in political campaigning prior to 1984.⁸¹ Minority parties responded via *La Prensa*, in a paid advertisement which read, “The FSLN is in fact a political party, but it avoids defining itself as such, causing confusion between the Government, the party and the FSLN.”⁸²

The Commission warned that the processes of “streamlining” governmental institutions to limit them to FSLN representatives, and the packing of the Council of State with FSLN groups, was a practice contrary to political tolerance. The postponement of

⁷⁹ *Ibid*, VII-B, Sections 2-5.

⁸⁰ In a speech closing the National Literacy Campaign. *Ibid*, VII-C, Section 2.

⁸¹ *Ibid*, VII-C, Section 4.

⁸² “Analysis of the implementation of the program of the Government of National Reconstruction.” *La Prensa*, November 12, 1980. *Ibid*, VII-C, Section 7.

elections until 1985 threatened the existence of “an authentically democratic system.”⁸³ Although elections could not, of course, take place immediately after a Revolution, prohibiting campaigning for four years and setting such a far-off date for an election was not an appropriate method for creating a representative democracy.⁸⁴

The Commission’s Conclusions and Recommendations

Despite the Junta’s commitment to human rights in the legal and administrative infrastructure of the Government of National Reconstruction, in practice many problems were evident—problems which put the creation of a democracy at risk. With respect to the Special Tribunals, the Commission called for a thorough investigation of the proceedings by the Supreme Court. The Commission also asked the Junta and the State Council promote freedom of political organization and the protection of political rights, regardless of affiliation.

The judicial system had to be restructured, and at the time of transition the only institution intact and organized enough to take over public administration was the military. However, a lack of regulation of the Sandinista Popular Army resulted in abuse. Loveman notes with regards to military control in transition governments, “More than ever before, the armed forces have become the un-elected but constitutionally designated political arbiters of the new democracies.”⁸⁵

⁸³ *Ibid*, VII-C, Section 8.

⁸⁴ *Ibid*, VII-C, Section 8.

⁸⁵ Loveman, “Protected Democracies,” 133.

IV. SUBSEQUENT REPORTS BY THE COMMISSION ON NICARAGUA

On the 20th of September, 1982, the OAS published its annual report, which included a chapter on the human rights situation in Nicaragua.⁸⁶ The Commission noted that the new regime had not carried out the promised investigations on summary executions. In addition, despite complaints received by the Commission with regards to violations of due process, there had been no review of the decisions of the Special Tribunals. Finally, with regards to political pluralism, the FSLN took no measures to create a climate of equality and solidarity between parties.

As power was consolidated into the hands of the FSLN, the recommendations of the Commission were increasingly disregarded. The Commission's role was reduced after the creation of an interim government structure.

It was not until 1988 that the Commission's influence over Nicaraguan affairs began to increase once again, as the result of a visit during that year described the Commission's annual report.⁸⁷ This visit occurred after a prolonged state of emergency, which was lifted in January, 1988 after a conference of the five Central American presidents. However, many factions within Nicaragua opposed ending the state of emergency, due to the continuing armed conflict between the Sandinista government and a group of insurgents known popularly as the "contras". There were allegations that the lifting of the state of emergency endangered the population. The Commission argued that

⁸⁶ Inter-American Commission on Human Rights. "Situacion de los Derechos Humanos en Varios Paises," *Informe Annual de la Comision Interamericana de Derechos Humanos 1981-1982*. Available from <http://www.oas.org/main/main.asp?sLang=S&sLink=../documents/spa/oasissues.asp>; Internet, accessed 16 February 2005. Chapter V.

⁸⁷ Inter-American Commission on Human Rights. "Nicaragua," *Annual Report of the Inter-American Commission on Human Rights 1987-1988*. Available from <http://www.oas.org/main/main.asp?sLang=S&sLink=../documents/spa/oasissues.asp>; Internet, accessed 18 February 2005.

this change did amount to a positive development, because many basic rights were restored to the people, and the government's functioning would return to normalcy:

The Commission considers the lifting of the state of emergency to be a positive step. In addition to restoring the validity of rights the exercise of which had been suspended, this move helps to consolidate the peace process, and thereby, bring about conditions more conducive to furthering the effective observance of human rights in Nicaragua. The specific effect that the lifting of the state of emergency has had is to restore the full validity of the remedy of *habeas corpus*, an area to which the Commission has made reference in its previous annual reports.⁸⁸

The Commission was also assigned the role of witness and monitor of the agreements reached by the government and the Nicaraguan Resistance, or "contras," during this period, known as the Sapoa Accords. This agreement called for a cease fire, an amnesty, freedom of expression and "the incorporation of the Resistance into the democratization process underway."⁸⁹ As the government once again began to change hands, and the role of the Commission became more important.

At the end of the 1980's, the Sandinista control over government administration and public support was dwindling, due in part to the contra insurgency, but also because of a negative backlash against Sandinista public policy. In addition, it is important to note that post-authoritarian democracies in Latin America faced extreme economic hardship. Loveman notes, "The fledgling democracies...had to face the most severe economic challenges since the Great Depression...plus the institutional legacies established by departing military regimes."⁹⁰ In 1989, the Commission published another commentary on the human rights situation in Nicaragua, and given the delicate political situation, it is

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ Loveman, "Protected Democracies," 115.

not surprising to find that the government once again became much more open and cooperative with the Inter-American Commission.⁹¹

Right to life cases regarding extrajudicial executions carried out by the Sandinista Popular Army were brought to the attention of the Commission. At the Commission's request, the government mounted several investigations and many suspects were sentenced to prison terms of up to thirty years. The Commission expressed its satisfaction and encouraged the continued investigation of such incidents.

Because of the Commission's preoccupation with the denial of *habeas corpus* during the state of emergency, the government amended the constitution to protect this right. The Commission recommended that this right should be observed for all citizens and not denied to suspected criminals, as occurred during the tribunals against Somocistas.

President Daniel Ortega passed a series of reforms to promote pluralism in the electoral system. Pardons were issued for people imprisoned by the Special Justice Tribunals, with the exception of 39 people, whom the Commission demanded should be released. The government continued investigations of military personnel accused of violating the right to life.

A presidential election was scheduled for 1990, and the Commission stated that it would judge the election's legitimacy according to the level of political and judicial freedom in the country, including the rights of freedom of expression. The National

⁹¹ Inter-American Commission on Human Rights. "Nicaragua," *Annual Report of the Inter-American Commission on Human Rights – 1988-1989*. Available from <http://www.oas.org/main/main.asp?sLang=S&sLink=../documents/spa/oasissues.asp>; Internet, accessed 18 February 2005.

Assembly complied with a Commission request to curb the powers of the Ministry of the Interior, especially its regulation of the media.

The presidential candidates for the election were announced, and the main contenders were the FSLN, with Daniel Ortega Saavedra as their candidate, and the Unión Nicaragüense Opositora (UNO), which chose Violeta Barrios de Chamorro as their candidate. On February 21st, 1990, Chamorro defeated the incumbent president, signaling yet another change in the political direction of the country. This transition led to the initiation of new human rights programs, including the creation of an Office of the Special Prosecutor for Human Rights, subsidiary to the Attorney-General.⁹²

In 1992, the Commission once again visited Nicaragua, and noted a series of institutional problems which resembled to the practices of the previous Sandinista government. Once again, the government had regressed, curtailing many rights. The judicial system of the Sandinista government was gutted—70% of the judges from the previous government were replaced. A new problem a land appropriation program that took place in early 1990, in which the Sandinistas redistributed privately-owned property, popularly known as the “Piñata.”⁹³ Unfortunately, many people were deprived of their property, and the process of compensation or reacquisition was unevenly handled and led to a bitter dispute among branches of the government.

The Commission once again found the country in an unsettled state, despite the slow democratization process and the steps taken to establish a constitutional system that respected human rights during the transition period. It concluded:

⁹² Inter-American Commission on Human Rights. “Nicaragua.” *Annual Report of the Inter-American Commission on Human Rights – 1992-1993*. Available from <http://www.oas.org/main/main.asp?sLang=S&sLink=../documents/spa/oasissues.asp>; Internet, accessed 18 February 2005. Chapter V, Section II.

⁹³ *Ibid*, V.

...the Inter-American Commission on Human Rights finds that in the period covered by this Annual Report [1990-1992], some progress has been made in the promotion and protection of human rights. However, it is the Commission's view that in that same period, violence in the country has become worse. There has also been a disturbing deterioration in the political situation and unhealthy feuding between the branches of government, all to the detriment of the human rights situation. Contributing to this is the failure to identify and punish those responsible for serious crimes committed since this Administration took office and the magnification of an institutional crisis of alarming proportions.⁹⁴

V. CONCLUSION

Despite the presence of a viable framework for the discussion and implementation of human rights principles among OAS member states, democracies in many Latin American countries continue to reflect authoritarian legacies within their new electoral systems. Old authoritarian policies have been transplanted into the governmental system, crippling the adjudication and punishment of human rights abuses. One of the most noticeable findings in the Commission reports regarding Nicaragua is that some issues consistently re-emerge, even after the establishment of “democracy.” Loveman refers to these “protected democracies” as a façade for the perpetuation of authoritarian power:

One of the most enduring victories of the authoritarian regimes that installed themselves in the post 1964-era has been their ability to legitimize these anti-democratic practices by embedding them in constitutions and so-called organic laws, thus ensuring their survival and constituting a drag on civil power.⁹⁵

Authoritarian regimes utilized two tools to institutionalize military power and undemocratic policies, each of which blocks the protection of human rights. The first is governance through a “regime of exception”, or political scenarios in which civil rights

⁹⁴ *Ibid*, VII.

⁹⁵ Loveman, “Protected Democracies,” 156.

are curtailed. Regimes of exception include the proclamation of a state-of-siege, a state of emergency, the suspension of *habeas corpus* or rule by presidential decree.⁹⁶ The second set of tools are laws designed to give the military increased autonomy and power, which allow the military branch to control other branches of government for the sake of “national security”. This permits the army to intervene and repress any opposition group in the name of the government. Only the military can control the military, thus effectively avoiding prosecution for human rights abuse when members of the armed forces threaten to return to a militaristic regime if they are brought to trial.⁹⁷

As Brian Loveman notes, “...even though democracy may have been on the rise [in Latin America at the end of the 20th century], it had hardly been consolidated.”⁹⁸ In a democracy that upholds the repressive policies of previous regimes, there is no place to turn for those who have suffered abuse and repression.⁹⁹

It would seem that the answer to this problem would be the sort of monitoring and investigation prepared by the Commission, with the backing of the Organization of American States. However, the OAS often finds itself largely powerless, especially when faced with a securely entrenched regime. Such regimes can successfully argue that intervention, even multilateral intervention, constitutes a violation of sovereignty.

The question then becomes, “when exactly *is* the Inter-American Commission of Human Rights effective and useful?” On the surface, it seems as though the Commission’s experience in Nicaragua was negative—it failed to change Somoza’s human rights policies, it noted the same offenses being committed by the subsequent

⁹⁶ *Ibid*, 165.

⁹⁷ *Ibid*, 138.

⁹⁸ *Ibid*, 106.

⁹⁹ *Ibid*, 151-154.

regime, and it noticed the same issues arising in the early 1990s. However, careful study of the annual reports reveals a new approach to developing a human rights ethic in Nicaragua, and serves as a model for the development of human rights in other Latin American countries. The Commission investigated government policy decisions, addressed grievances by victims of abuse, made recommendations on improvement and published their findings to inform the international community. The method carried out by the Commission was nuanced, but demonstrated over two decades that gradual progress was possible without infringing on state sovereignty.

Despite the fact that the Commission had little effect on the Somoza government's domestic policy, it is evident that the international community was extremely alarmed by the findings of the 1978 Report. Member states were compelled to denounce the legitimacy of a government which had been in power since 1937. The Commission succeeded in undermining international support for the Somoza regime. In his final letter to the Nicaraguan people, Somoza cites the OAS' decision as a main factor in his resignation. This was a direct result of the Commission's efforts.

In addition, the new Government of National Reconstruction allowed to Commission to help draft the "Plan to Achieve Peace." The power of the Commission did not necessarily lie in its ability to affect the policy of the Somoza government, but in its interest in establishing a human rights framework after the 1979 Revolution. Much of the legislation that was passed during this period, as the Commission noted, demonstrates an eagerness to respect human rights. This may have been an attempt by the new government to legitimize itself before the international community; but whatever the reason may have been, the legal system improved drastically in accordance with

international human rights principles. This constituted an important step in the implementation of human rights practices.

In practice, the Revolution in 1979 did not result in immediate respect for human rights. Many of the events that occurred in the three years following the triumph of the Revolution constituted flagrant abuses of basic rights. For example, the Special Tribunals may have unfairly sentenced hundreds of prisoners who were denied due process. The FSLN consolidated power and hindered the establishment of a pluralistic political system. Media outlets were censored. Of course, the Commission had to consider that Nicaragua had just come out of a particularly bloody civil war, after a very long dictatorial regime, and therefore had to adjust to many unfamiliar democratic processes. Despite this understandable fact, the Organization of American States feared that Nicaragua was once again becoming authoritarian. This turned out to be a well-founded fear, because the FSLN did become, in essence, a new, very different authoritarian regime. However, the Sandinista government did not engage in the kind of human rights abuses and disregard for human life that the Somoza regime practiced. The process was slow, but progress was evident, especially in Nicaragua's judicial and criminal justice systems.

Finally, the election of Violeta Barrios de Chamorro in 1990 demonstrated a definitive move towards more democratic electoral principles. Many of the Commission's recommendations were taken into account after the election and the new administration expanded the human rights infrastructure of the government. The Commission noted that there was still much room for improvement, but expressed satisfaction at the progress that had been made. Although the country continues to grapple with human rights issues to this day, in a mere two decades the political climate

has changed drastically. In 1978, Nicaragua was immersed in war, fighting against severe repression. Twelve years later, a democratic election led to a bloodless transition of power and a climate of ideological pluralism that continues to develop and thrive.

It was never necessary for the Inter-American Commission of Human Rights to infringe on Nicaragua's sovereignty. Its continued interest in the region, relentless investigations and recommendations, and its reputation and influence within the international diplomatic community gave the Commission sufficient leverage to help transform Nicaragua into a democracy that is increasingly committed to promoting human rights.

Despite the problematic issue of nonintervention, the importance of respect for state sovereignty, and the constitutional obstacles inherent in protected democracies, the Inter-American System has contributed to the peaceful democratization processes in some nations during periods of transition. In addition, the system has created a forum where human rights can be discussed and enforced. It is undeniable that this movement continues to be fraught with problems of compliance and enforcement through diplomatic pressure. Nevertheless, the invaluable contributions of the human rights bodies of the Organization of American States have resulted in significant improvements in the policy decisions of new democracies, and fomented an increased respect for human rights in Nicaragua.

Works Consulted

- Ball, Margaret. "Issue for the Americas: Non-Intervention v. Human Rights and the Preservation of Democratic Institutions", *International Organization* 15, no. 1 (1961): 21-37.
- Buergenthal, Thomas. "The Revised OAS Charter and the Protection of Human Rights", *The American Journal of International Law* 69, no. 4 (1975): 828-836.
- Cabranes, Jose A. "The Protection of Human Rights by the Organization of American States", *The American Journal of International Law* 62, no. 4 (1968): 889-908.
- Crawley, Eduardo. *Dictators Never Die: A Portrait of Nicaragua and the Somoza Dynasty*. New York: St. Martin's Press, 1979.
- Corte Interamericana de Derechos Humanos. "Historia". Available from http://www.corteidh.or.cr/inf_general/historia.html; Internet. Accessed 3 December 2004.
- Inter-American Commission on Human Rights. "Nicaragua," *Annual Report of the Inter-American Commission on Human Rights 1987-1988*. Available from <http://www.oas.org/main/main.asp?sLang=S&sLink=../documents/spa/oasissues.asp>; Internet. Accessed 18 February 2005.
- Inter-American Commission on Human Rights. "Nicaragua," *Annual Report of the Inter-American Commission on Human Rights – 1988-1989*. Available from <http://www.oas.org/main/main.asp?sLang=S&sLink=../documents/spa/oasissues.asp>; Internet. Accessed 18 February 2005.
- Inter-American Commission on Human Rights. "Nicaragua," *Annual Report of the Inter-American Commission on Human Rights – 1992-1993*. Available from <http://www.oas.org/main/main.asp?sLang=S&sLink=../documents/spa/oasissues.asp>; Internet. Accessed 18 February 2005.
- Inter-American Commission on Human Rights. *Report on the Situation of Human Rights in the Republic of Nicaragua – 17 November 1978*. Available from <http://www.cidh.oas.org/countryrep/Nicaragua78eng/TOC.htm>; Internet. Accessed 22 February 2005.
- Inter-American Commission on Human Rights. *Report on the Situation of Human Rights in the Republic of Nicaragua, 30 June 1981*. Available from <http://www.cidh.oas.org/countryrep/Nica81eng/TOC.htm>; Internet. Accessed 22 February 2005.

- Inter-American Commission on Human Rights. "Situacion de los Derechos Humanos en Varios Paises," *Informe Annual de la Comision Interamericana de Derechos Humanos 1981-1982*. Available from <http://www.oas.org/main/main.asp?sLang=S&sLink=../documents/spa/oasissues.asp>; Internet. Accessed 16 February 2005.
- LeBlanc, Lawrence J. "Economic, Social and Cultural Rights and the Interamerican System", *Journal of Interamerican Studies and World Affairs* 19, no. 1 (1977): 61-82.
- Loveman, Brian. "'Protected Democracies' and Military Guardianship: Political Transitions in Latin America, 1978-1993." *Journal of Interamerican Studies and World Affairs* 36, no. 2 (1994): 105-189.
- Organization of American States. *Charter of the Organization of American States*. Available from http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/key_issues/eng; Internet. Accessed 20 November 2004.
- Organization of American States. "Protecting Human Rights". Available from http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/key_issues/eng; Internet. Accessed 3 December 2004.
- "The Military in Latin America". *Proceso*. San Salvador, El Salvador: Center for Information, Documentation and Research Support of the Central American University, November 1, 1995.