

VITAL SPEECHES

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THE BEST THOUGHTS OF THE BEST MINDS ON CURRENT NATIONAL QUESTIONS

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Linking Human Rights to Anti-Corruption

HOW CORRUPTION CONNECTS WITH VIOLATIONS OF HUMAN RIGHTS

Address by RONALD BERENBEIM, Senior Fellow, The Conference Board

Delivered at the 7th Meeting of the Global Compact Working Group, United Nations, New York, N.Y., Dec. 10, 2010

The connection between corruption and human rights abuses has seldom been persuasively made. Indeed, Transparency International's 2009 report *Corruption and Human Rights: Making the Connection* notes that "Little work has been done to describe in precise terms what the links are between acts of corruption and violations of human rights".¹

Examination of the discussion surrounding the drafting of the Universal Declaration of Human Rights, promulgated 62 years ago today, sheds light on this problem. There was a division of opinion between, on the one hand, the United States and Western Europeans who defined human rights primarily in political terms such as freedom of worship and speech, and on the other, the Soviet Union and some developing countries that viewed human rights as the governmental ability to assure minimal standards of security, welfare and education. At the heart of this disagreement lay the differing explanations for the primary causes of the hardship suffered by many of the globe's inhabitants in the century's first half. Was the primary cause religious and political persecution by oppressive regimes or the inequitable distribution of resources that left many of the world's people deprived of life's fundamental necessities?

The answer was that both kinds of human rights deprivations need to be addressed. The Declaration's framers agreed to incorporate both rights concepts in the document whose anniversary we celebrate today. In so doing, they bequeathed to us a fundamental tension as to whether or not the conflicting priorities that emanate from these rights—security vs. due process, minimal education vs. subsistence—can be reconciled. A further problem is that rights abusive states and their allies have defended the abrogation of parts of the Declaration's mandate in the case of political rights on the grounds of cultural differences, or with economic rights the need for their temporary suspension to achieve development imperatives.

The implicit message of the Global Compact is that corruption violates both rights categories. It cannot be justified in the name of cultural tolerance or temporary developmental necessity to, for example, defend bribes to secure contracts with exploitative and unsafe working conditions or illicit payments to custodians of national resources for exploitation that depletes a country's resource base. In fact, these kinds of situations show the linkage between human rights and development because without the first the second is unsustainable.

There are further indications that corruption is the handmaiden of human rights abuses. For example, al-

though the Maplecroft 2011 Human Rights Risk and Business Integrity Indexes caution that *there is little empirical evidence to fully explain this relationship*, three countries—Somalia, DR Congo and Myanmar—are among the top ten worst offenders in both surveys. In fact, DR Congo heads both lists.

The failed state

Looking at these countries with 2010 eyes we can see a common factor that may not have been recognizable to Eleanor Roosevelt and her Committee: all of them are *failed states*, a category that may have been unknown in 1948. In the early aftermath of World War II, dictators were often perceived as austere incorruptible people. For some historians, the evolution of the modern state was one in which the founders shot their way in and were followed by a more open process in which a later generation of leaders bribed their way to the top. In such a model, it was possible to interpret corruption as a stage in the advancement of human rights through enlarged political participation (even if the voters were bribed to cast their ballots in a certain way—at least you had to pay for the support because the franchise had been enlarged to include them).

The post World War II history of developing nations hasn't always worked that way. More often, those who seize power use it as a means to amass wealth and to consolidate it. In so doing, they undermine, if not destroy the institutional legislative, judicial and regulatory frameworks that protect rights and guarantee public safety. In light of this fact, it is prudent to avoid driving over newly constructed bridges in truly corrupt states.

For the reasons cited, and in light of the crumbling buildings, devastating fires, and toxic waste that are endemic in corrupt states, it is no longer possible to view corruption as a step in the right direction in the development of a modern political system. In fact, experience with these kinds of problems has forced recognition that corrupt states are hosts for the virus of human rights abuses.

Attacking Corruption's Supply Side—Good Medicine for the Virus of Human Rights Abuses

Systemic corruption can give rise to many human rights problems that can be addressed by public-private collaboration to at the very least reduce the level of harm. For example, lack of government transparency with regard to losses resulting from defense and construction procurement irregularities can lead to the muzzling or worse of whistleblowers and the stifling of press investigations.

Bribery to obtain permits for plant sites can cause forced relocation and deprivation of property without due process for entire communities. And marketing approvals or large scale purchases of pharmaceutical products obtained through bribes can result in illness and even death for unsuspecting consumers. Focusing on company policies and procedures that reduce the risk of such occurrences will result in significant human rights improvements for many of the world's most vulnerable citizens. There is a strong incentive to develop, implement, and monitor such practices for effectiveness because corrupt practices are subject to criminal prosecution under the United States Foreign Corrupt Practices Act or various national laws enacted and enforced pursuant to the OECD Anticorruption Convention.

In contrast, the Declaration's guidelines are enforceable with respect to member states primarily through moral suasion. What is the obligation of the state to respect the Universal Declaration? The United Nations recognizes three levels of state human rights obligation—*respect, protect, fulfill*. Corrupt state behavior fails all three responsibility tests but the likelihood of the United Nations sanctioning enforcement action against a member state for these kinds of derelictions is, at best, remote. Members of the Declaration's drafting committee foresaw such difficulties and for this reason were uncertain as to whether the Declaration's

mandates could work.

Charles Malik of Lebanon was an initial skeptic on this point. Though it is doubtful that Malik could have anticipated the vital role that global enterprise could play in promotion of human rights, he was eventually persuaded that "[I]n the long run the morally disturbing or judging is far more important than the legally binding". For Eleanor Roosevelt, the Committee Chair, enforceability was not the key issue. She believed that consensus with respect to *the morally disturbing* was in the long run the most important objective because of, as she put it, the discussions that the Declaration could provoke in "small places close to home".

Notwithstanding the size and scope of their global operations, company boardrooms, senior management meetings and the Global Compact are in their own way "small places close to home". In the final analysis, wherever a Global Compact conversation begins, inevitably human rights will be part of that discussion. And when there is a determination of effective collaborative means to address the problem, attacking corruption's supply side will be near or at the top of the list. ♦

¹ Corruption and Human Rights: Making the Connection, Transparency International (2009), p. 23.

The State of the National Archives

A GREAT INSTITUTION IN URGENT NEED OF TRANSFORMATION

Address by DAVID FERRIERO, Archivist of the United States
Delivered at the National Archives, College Park, Md., Dec. 2, 2010

Greetings to all of you here in College Park and all of you around the country who are joining us virtually. It has been just over a year now that I have been on the job and I think I know a little more than when I addressed you last year—after a month on the job.

It has been an intense year of listening and learning and adjusting to a new city and new work environment. And I have fallen in love with the District and the agency. In the process, I have become a huge fan of the daily horoscopes in the *Washington Post*. Earlier this month, my favorite, so far was printed:

"Many feel limited by the work they do. You won't be in this category today, though. Your work expands you. You'll be excited by what you learn, and you feel privileged to do what you do."

I do, indeed, feel both excited and privileged. Excited every day by the work that we do and privileged to be working with you.

It is a great privilege to be Archivist of the United States—to be the custodian of our most treasured documents and the head of an important government agency

with a unique mission:

To preserve the story of America and its people.

It's also a great privilege to work with such an accomplished, dedicated staff, in 18 states and the District of Columbia. I want to thank all of you for your hard work and passion in fulfilling the mission of the Archives.

I also want to recognize and thank our partner, the Foundation for the National Archives, for its generous support of our many public and education programs and so much more. The success of our innovative outreach programs is made possible by this support.

And a special thank you to our volunteers across the nation who help us in so many different ways. You are an important part of the Archives team.

You all helped to make 2010 a good year.

I'm proud to say I was able to meet many of you this past year in my visits to 21 of our locations, and I plan to see more of you when I visit the other 23 next year.

This year, I visited:

- The National Personnel Records Center's three locations in the St. Louis area