

@CHAPTER = SOVIET UNION

After many years of hard and productive work on human rights for Soviet citizens, the United States is in danger of betraying the very people that it sought to help -- and at a moment when they are nearing victory. The administration has begun to soft-pedal human rights problems in the USSR in the mistaken belief that public criticism of continuing problems would undermine positive trends.

In the past, when relations between the superpowers were strained, we criticized the Reagan administration for at times exaggerating human rights problems in cold-war rhetoric designed to advance geopolitical or strategic interests. Now it appears that there is a reverse side of that coin, that during times of detente, human rights become irrelevant. The administration's failure to address continuing human rights abuses vocally and forcefully may be a tacit admission that it views human rights as a political football.

Just as the Carter administration was credited with making human rights a legitimate element of foreign policy, the Reagan administration was credited with making human rights a legitimate -- and seemingly permanent -- part of summitry with the Soviet Union. The Bush administration, however, has allowed civil rights to slip from the public agenda of the summits.

The treatment of the late human rights defender Andrei Sakharov is illustrative of the three administrations. President Carter personally supported Sakharov at a time when Soviet authorities had accused him of acting as a "tool of imperialism." The Reagan administration, although it noted Sakharov's achievement in symbolic ways at events like the Human Rights Day celebrations in the White House, turned down a request from Mrs. Sakharov for a presidential audience in the United States in the mistaken belief that this would harm "quiet" efforts to free Sakharov from exile. (She did have a meeting with National Security Advisor John Poindexter.) In 1989, when Sakharov had been restored to a position of prominence, he was not, apparently, invited to the White House by President Bush, although he did make a trip to the United States.

Soviet dissidents and establishment figures have expressed alarm to Helsinki Watch that the Bush administration no longer raises Soviet human rights problems publicly. Various U.S. officials have privately assured Helsinki Watch that human rights issues are being raised with the Soviet government in non-publicized meetings. But the lack of public statements significantly weakens the position of U.S. diplomats who engage in quiet diplomacy. And the victims of abuses can never be certain of U.S. support.

The U.S. embassy in Moscow continues to arrange events for Soviet citizens representing various independent movements, and this is important symbolic support for an emerging civil society. Some of these activists praised Attorney General Richard Thornburgh, for example, who listened sympathetically to their problems during a visit to Moscow. Unfortunately, Thornburgh offset his positive contribution by remarking to the press when he returned to the United States that he "sympathized" with Gorbachev's plight at a time when Gorbachev was giving the *glasnost* press a tongue-lashing. Because of the role of Western broadcasting to the USSR (the BBC, Voice of America, Radio Liberty and others), what U.S. officials say publicly in the United States about Soviet human rights abuse can be far more accessible and important than what they say in small meetings with leading dissidents at the embassy.

Curiously, some Soviet Foreign Ministry officials are now more critical about their country's human rights shortcomings than is the U.S. State Department. But they are hampered in making their case with more conservative colleagues because they cannot cite real U.S. pressure. Despite recent changes, Soviets

still often look to foreigners both for a standard and as a "court of last resort" in dealing with persistent human rights abuse. They are now deprived of that bulwark.

Important changes in the Soviet Union are cited as the reason for the U.S. change of course. Assistant Secretary of State for Human Rights and Humanitarian Affairs Richard Schifter, in a December 8, 1988 speech at a Georgetown University symposium, explained this shift:

"I have in my days done my share of castigating the Soviet Union for its human rights abuses. I believe it was then useful to do just that, so as to point up that country's failure to live up to internationally recognized standards of human rights. But that was the agenda of yesteryear. Soviet reformers have recognized their problem. They are groping for solutions at this time. I believe that we can play a useful role in that context. What is important under the circumstances is for us neither to minimize nor ignore past or present abuses. But we need not lord it over them. What we can do, in a friendly and cooperative fashion, is work with them on the major task of creating institutional guarantees of the rights of the individual.... In speaking of our future relationship with the Soviet Union on human rights issues, I have stressed the importance of working with the reform elements in helping them create an independent judicial system.

On the face of it, every intention expressed in such a statement is admirable. But problems arise with regard to the phrase "working with" -- which implies that the State Department should play an "insiders" rather than an "outsiders" role, i.e., that it should cooperate rather than criticize. The implication is that the two tracks cannot be pursued simultaneously. In reality, the Human Rights Bureau of the State Department, which ought to be documenting and criticizing human rights abuses, is assuming the role of the Soviet desk, that of diplomacy.

Many in the administration have embraced Soviet reformers in the liberal establishment as the only hope for legal institutionalization of human rights. But they often fail to recognize the limitations of these reformers, their political constraints, and their tendency to make pronouncements in anticipation of reality -- if not to prevaricate. Once administration officials hitch their wagons to these reformers, they become involved in process rather than principle. They become "insiders" instead of outside critics.

There seems to be some disagreement within the administration about how to respond to Soviet changes. The suppression by Secretary of State James Baker of a speech prepared by Deputy National Security Advisor Robert Gates in which Gates analyzed Gorbachev's problems, particularly with the Soviet nationalities, reflects a problem endemic to the administration's human rights policy: the fear that sharp criticism will alienate or endanger Gorbachev. Gorbachev has survived five years of fierce criticism from domestic critics and from within his government and the Supreme Soviet, from both the left and right. Surely he will not wither up and die because of some insightful U.S. criticism.

In the past, the administration spoke out loudly about each political arrest, each visa denial, each instance of psychiatric abuse, and such statements were broadcast over Voice of America and Radio Liberty, which had wide audiences even during the period when they were jammed. Now that the lists of such victims have diminished, there are round-tables, symposia and embassy luncheons -- all mainly involving exchange of professional experience rather than human rights criticism. A conference of experts on the rule of law, for example, is undoubtedly beneficial. But the voices of the victims of Soviet lawlessness remain inaudible beyond the conference hall gates.

The Soviet system contains deeply embedded systemic abuses: a repressive internal passport system, an all-powerful Procurator's Office and KGB; restrictions on public assembly and association based on the content of an organization's programs; and most important, a Communist Party that refuses to relinquish power in the face of public demand for a multi-party system. A resolute condemnation by the State Department of events such as the arrest of the Karabakh Committee and the independent journalist Sergei Kuznetsov, or the freezing of the bank accounts of the parliamentary opposition known as the Inter-Regional Group, would send a signal of support to the victims and disapproval to the persecutors. A conference about due process cannot have the same effect, whatever its merits.

As for efforts to gain the release of the remaining political prisoners in the Soviet Union, the administration has fallen down on the job. This is particularly disappointing in view of the enormous successes of the past three years, during which the U.S. used various fora to gain the release of hundreds of political prisoners. In 1988, the U.S. delegation to the Vienna session of the Conference on Security and Cooperation in Europe ("CSCE") worked hard to obtain release of remaining political prisoners and refuseniks before a concluding document was signed. But with the end of the Reagan administration, there was pressure to end the conference. It was feared that substantial Soviet concessions would evaporate if the conference was dragged on during a transition between U.S. administrations. As a result, the Vienna Concluding Document was signed in January 1989 -- timing that now seems premature.

In the course of some two years of bilateral talks, the U.S. and Soviet governments had arrived at a working definition of "political prisoner," which, while not as broad as some would have wished, did represent progress. Under a compromise definition negotiated by the Human Rights Bureau, prisoners arrested under four articles of the Russian Penal Code$\\$F$The four were: Articles 70 (anti-Soviet agitation and propaganda), 190-1 (anti-state slander), 142 (separation of church and state) and 227 (violating rights under the guise of performing religious rituals).> would be unequivocally accepted as prisoners of conscience, while the political status of all others would be negotiated. Under pressure of the Vienna deadline and an upcoming speech by Gorbachev before the United Nations, the Soviets hurried to release labor camp prisoners held under the four "pure political" articles, except for those in psychiatric detention. The rest of the list (some 150 names) was called "disputed" by both sides and was set aside to be negotiated through a "mechanism" whereby each side could question the other on the status of persons believed to be political prisoners. These disputed cases included persons charged with "treason," "illegal boarder crossing," "disturbance of the peace," and conscientious objection to armed service. (There is no alternative civilian service in the USSR.) A list was presented to the Soviet government in May 1989 during a ministerial-level meeting, but when no answer was forthcoming, it was not re-presented at the next ministerial meeting in September. A *Washington Post* article at the time quoted Assistant Secretary Schifter as speaking of a list of "80 criminals" -- although the persons were listed by Helsinki Watch and the U.S. government's Helsinki Commission as political prisoners. According to available information, the list was not presented at the Malta summit, despite such new cases as that of Sergei Kuznetsov, an independent journalist sentenced to three years in labor camp for "slandering" security officials.

The administration has thus lost many opportunities to raise the remaining cases publicly and privately, using the already established "summit gesture" whereby a few cases are usually released "for humanitarian reasons" on the eve of a Soviet-American meeting in order to promote good will. Particularly

distressing are the cases of prisoners who were accused of "treason" for contacting U.S. diplomats in an effort to emigrate or send out manuscripts. Continuing silence on these cases only serves to reinforce the illegitimate "treason" charge.

While Helsinki Watch recognizes that in fact some of the prisoners on the list may turn out to be guilty of criminal acts, the only way to resolve the matter is through *glasnost*: all the prosecutor's files must be made public so that a legal determination can be made. Although Assistant Secretary Schifter stated on a number of occasions in 1989 that these files would be opened, to date, Soviet authorities continue to refuse to make public the court records, apparently on grounds of "national security."

Distressingly, the State Department refuses to include in its list of political prisoners those persons who have been imprisoned for conscientious objection to armed service. There are currently about 40 known cases, and with waves of draft-card burning sweeping the Soviet Union, the list is likely to grow significantly in the coming year. Although conscientious objection to armed service is recognized by U.S. law, State Department officials justify their refusal to raise such cases by noting that some U.S. allies, such as Greece and Switzerland, do not recognize the status.

A new batch of prominent political prisoners -- the scholars and scientists who made up the Karabakh Committee -- appear to have been ignored in all of the administration's public statements of 1989, although apparently the case was raised privately. The Karabakh Committee members led the movement to incorporate into Armenia the disputed territory of Nagorno-Karabakh, now under the jurisdiction of neighboring Azerbaidzhan. Without taking a position on the disputed territory, it was certainly possible for the administration to defend the rights of these men to freedom of speech and peaceful assembly. They were arrested during a meeting at the Writers' Union and were not charged with using or advocating violence. They and their families were not informed of the exact charges against them, and they were held for about six months in "investigation isolation" -- essentially preventive detention to keep them from taking part in elections. Two of them were already members of the Armenian legislature, and all were nominated *in absentia* for the elections to the Soviet Congress of People's Deputies.

President Bush's first test on human rights came even before he was inaugurated, when he was criticized by conservatives for agreeing to an official CSCE conference on human rights in Moscow. Critics called it a "bouquet" to Gorbachev in exchange for his peace proposals. While we support the President's decision to endorse the conference in general, we advocate that conditions be set, including the release of remaining political prisoners and refuseniks, and the establishment of fair working conditions for independent journalists and nongovernmental organizations in Moscow. General statements were made by the administration about withdrawing endorsement of the 1991 conference if the Soviet human rights situation reversed sharply, but strict conditions were not set. The administration should exploit the opportunity to gain concessions before a conference that is still nearly two years away.

Just as economic *perestroika* has so far failed to put food on the store shelves, so legal *perestroika* has not yet put good laws on the books or into practice. In fact, in some cases, laws have been passed that further restrict human rights. Drafts of reform laws are frequently issued -- but then languish without ratification for months and even years. Yet the U.S. administration often greets each pronouncement of impending reform with enthusiasm, as if it had already come to pass. For example, Soviet officials announced in November 1987 that they were eliminating the system of exile as a form of punishment,

and that certain articles would be removed from the penal code. Officials greeted these announced reforms as if they were established fact. But the statement was based on a draft of the fundamentals of the penal code. While the draft of the fundamentals was eventually approved, the time period for ratification lapsed, and now the fundamentals -- which are still not the penal code itself -- must be redrafted and reissued.

Soviet authorities also claimed that they would move special psychiatric hospitals from the jurisdiction of the Ministry of Internal Affairs to that of the Ministry of Justice. The administration accepted this statement as a fait accompli and continued to repeat it as fact. But in a July report to the State Department from a delegation of U.S. psychiatrists, it became evident that the transfer had not been fully carried out or involved the change of only a few low-level personnel.

The Soviet psychiatric bureaucracy has been particularly recalcitrant in embarking on *perestroika* and has been attacked by even the official Soviet press. The U.S. psychiatrists' report as well as recent statements by one notorious apologist for psychiatric abuse -- Professor Georgy Morozov, head of the Serbsky Institute of Forensic Psychiatry -- indicate that the administration is wrong in its claim that abuse is "no longer systematic." Morozov and his colleagues continue to advocate the use of the painful and debilitating drug sulphazine; they continue to accept the discredited theory of "creeping schizophrenia," and they claim that the 13 patients found by the U.S. psychiatrists to be competent and not requiring detention were "dubious cases." All of this, as well as the U.S. psychiatric report, is evidence of *systematic* abuse. Conferences with Soviet psychiatric professionals are important, but not a substitute for resolute condemnation of these despicable practices.

Regrettably, the U.S. psychiatric report was significantly delayed, in part because of technical difficulties but in part because of a reluctance on the part of State Department officials to make such a critical report a priority. When a Helsinki Commission Congressional hearing on the report was finally scheduled in July after several delays, a number of psychiatric associations around the world had already held meetings to decide their position on the Soviet re-entry to the World Psychiatric Association. The critical U.S. report could have informed those decisions.

According to the Moscow Helsinki Group, some 50 persons who were arrested under the "pure political articles" remain in psychiatric detention. The question of their sanity is not the issue; their actions were determined to be "criminal" by prosecutors, and they ended up in psychiatric hospitals because of the decisions of prosecutors and courts -- not psychiatrists. Many people who try to address the issue of psychiatric abuse have failed to grasp this point. The majority of past and present cases of political psychiatric abuse originate first in the criminal justice system -- not the mental health system. The State Department officials negotiating the visit of the U.S. psychiatrist delegation failed to obtain the patients' criminal records, and only received diagnostic sheets at the last minute. These were not enough to assess the cases properly.

For better or worse, the human rights situation in the Soviet Union has often been understood in terms of emigration. It is a simplification to reduce the many complex internal human rights problems that make people want to leave to a single issue of emigration. But rightly or wrongly, the number of people emigrating is linked in the public's perception with Soviet human rights practices in general. There is also a legislative hook -- the Jackson-Vanik Amendment to the 1974 Trade Act, which denies favorable economic ties with non-market economies that restrict emigration. The text of the amendment reads:
@QUOTENOIND = To assure the continued dedication of the United States to

fundamental human rights, and notwithstanding any other provision of law<-%-20><%0>.<-%-20> <%0>.<-%-20> <%0>.<-%-20> <%0>products from any nonmarket economy country shall not be eligible to receive nondiscriminatory treatment<-%-20><%0>.<-%-20> <%0>.<-%-20> <%0>.<-%-20> <%0>such country shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not include any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country --

@QUOTENOIND = (1) denies its citizens the right or opportunity to emigrate;

@QUOTENOIND = (2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever; or

@QUOTENOIND = (3) imposes more than a nominal tax, levy, fine, fee or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice.

In November, Soviet officials unveiled a long-promised emigration and travel bill, which they said would be passed by the Supreme Soviet in time for the Malta summit. As the summit drew near, and the bill was still stalled, they claimed that it would be passed in January 1990. White House, State Department and particularly Commerce Department officials greeted the announcement enthusiastically. Yet no one seemed to have read the actual text of the bill, made available by the Soviet embassy at the time. Regrettably, an opportunity was missed to criticize significant loopholes and obstructions in the draft legislation.<\$FFor a complete analysis of the Soviet emigration bill and other draft legislation, see *Toward the Rule of Law: Soviet Legal Reform and Human Rights Under Perestroika*, Helsinki Watch, December 1989.>

Everyone understands the need to institutionalize the proposed reforms of Gorbachev's *glasnost* campaign in terms of law. Yet this is the area that has been least permeable to real change. The administration has missed countless opportunities to remind Soviet reformers of their pronouncements -- especially after their stated deadlines elapsed without progress -- and to criticize flawed legislation.

At a briefing in preparation for the CSCE London Information Forum, Bush administration officials made clear that their intention was to criticize recalcitrant East-bloc countries resisting reform and to praise those countries that had embarked on *perestroika* as a way of shoring up their reforms. The point was made that sharp condemnation would undermine the position of Soviet liberals vis-a-vis their conservative critics -- the Soviets needed to bring home diplomatic kudos in order to prove that their foreign policy was a success. The Georgian massacre of 20 peaceful demonstrators took place and a harsh decree on "state crimes" was passed on the eve of the London meeting, both of which should have elicited sharp condemnation by the U.S. delegation. Instead, references to these events at the London meeting and later at the Paris CSCE human rights meeting were merely mild expressions of concern buried with general statements of praise. The U.S. delegates who staffed these CSCE talks were lackluster and uninformed. Those involved in day-to-day human rights work, such as the staff of the government's Helsinki Commission, seemed to be cut out of the process as other diplomatic concerns came to the fore.

Given the rapid pace of Soviet events, more human rights statements should probably be made by the U.S. embassy in Moscow. But given a series of unrelated problems -- a bugged building, flu epidemics decimating staff hours, reciprocity concerns and time-consuming security requirements (all staffers must visit Soviet citizens in pairs) -- the embassy is not able to play a

significant role in human rights advocacy or reporting. Its lone human rights officer is frequently bogged down with refugee work and the briefing of numerous Congressional and official delegations. Although there have been discussions about increasing staff, and emigration-application processing has been moved out of the embassy, reciprocity considerations apparently preclude an increase in staff. Human rights work -- especially travel to non-Russian republics -- has been an accidental victim of the policy. For some reason, the negotiations to establish a consulate in Kiev are still stalled. This is very unfortunate -- there was no official window on the coal miners' strikes in the Ukraine last summer, for example.

Although Afghanistan continues to figure in U.S.-Soviet summit talks, the question of Soviet war crimes apparently has not been raised. In December, the Soviet parliament decided to amnesty all veterans accused of crimes. Most of the soldiers who were amnestied had been charged with "treason" merely for having been caught by the enemy. But an untold number of soldiers who committed atrocities against Afghan civilians were not mentioned, and it was unclear whether they had been prosecuted, let alone included in an amnesty. This matter should be addressed by the administration in talks with Soviet officials.

With *glasnost* and *perestroika*, the aspirations, frustrations and tensions of Soviet ethnic and national groups -- long submerged by official repression -- are finding public expression in mass demonstrations and new citizens' groups espousing linguistic and cultural demands and occasionally national self-determination. Some demonstrations have involved hundreds of thousands. The vast majority of these demonstrations have been peaceful and were met with official restraint.

However, ethnic tension has also found expression in riots, sometimes resulting in dozens of deaths -- as happened during the summer of 1989 in the Fergana valley of Uzbekistan. The use or threat of force has led Soviet authorities to declare states of emergency since 1985 in six Soviet republics: Georgia, Armenia, Azerbaidzhan, Moldavia, Uzbekistan and Kazakhstan. Although the initial imposition of states of emergency may have been justified, there is reason to doubt the need for continuing restrictions, including curfews and bans on public assembly. But the Bush administration has maintained public silence on this issue.

Although administration officials have insisted privately that official Soviet violence against peaceful demonstrators will mean the end of cordial bilateral relations, Secretary Baker seemed to be preparing a justification for a possible Soviet crackdown at a pre-Malta White House press conference on November 29. Secretary Baker gave a positive gloss to recent dramatic changes in Czechoslovakia and East Germany, which he referred to as an example of "people power." But when he turned to the Soviet Union, Baker mentioned only Azerbaidzhanis and Armenians "killing each other," thereby giving the false impression that most national protests in the USSR are violent. Baker said that martial law would "restore peace" in such situations, without noting that it might also have other less positive effects on human rights.

Evidence of this approach can be seen in the administration's response to the biggest blot on the Soviet human rights record in 1989 -- the April 9 killing of 20 peaceful demonstrators by troops in Georgia. Soldiers used sharp shovels, as well as toxic and tear gas, to attack protestors. Most of the victims were women. Despite eventual condemnation -- by the Soviet government and several commissions of inquiry -- the issue of official responsibility has not been settled. The major unresolved question is who -- and at what level -- ordered troops to use violence.

The official U.S. response to the tragedy was muted. Although in April the

State Department urged the Soviet government to investigate "fully" the events and "strongly condemn[ed] the use of any chemical agents against peaceful protesters that cause serious injury or death," it never addressed the issue of responsibility. At the Paris CSCE meeting in June, a U.S. representative noted: "Our concern is heightened when peaceful protest leads to violence and death as it did in the still unexplained events in Tbilisi." But she did not make clear that the violence was one-sided -- directed by soldiers against peaceful protesters.

Until recently, U.S. policy-makers have shown less interest in the vast non-Russian areas of the USSR, which have seemed remote and obscure, than in more accessible Moscow. U.S. interest in the non-Russian nationalities has traditionally been in response to pressure from ethnic constituencies in the United States: U.S. Jewry, for example, on emigration issues; the U.S. Baltic community, with regard to Lithuania, Latvia and Estonia; and Armenian-Ukrainian- and Russian-Americans on behalf of their former countrymen. Dozens of other ethnic groups in the USSR which lack ethnic advocates in the United States rarely caught the U.S. government's attention.

The U.S. delegation to the CSCE meeting in Paris continued to reflect these pressures. U.S. representatives mentioned problems faced by Soviet Jews, the Baltic Popular Fronts, and certain ethnic minorities who continue to suffer from Stalin's deportations. But there was no public concern expressed over difficulties encountered by such grassroots groups as Birlik in Uzbekistan and the Moldavian and Belorussian Popular Fronts, which espouse democratic solutions for the Soviet nationalities they represent. As the Soviet ethnic situation evolves, the administration will need to devote attention to the increasingly complex, important and difficult nationalities issue across the span of ethnic and national groups in the Soviet Union.