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LATIN-AMERICA, FIGHTING TERRORISM AND THE 'DEEP STATE'

by Jose Luis Sardon¹

Good morning. I wish to thank Mr. Alex Chafuen and the Center for a Secure Free Society for their kind invitation to participate in this conference, sharing my ideas on the global impact of U.S. diplomacy, national security, and the 'deep state'. I will focus on the impact of these issues in Latin-America.

Before presenting my ideas, I have to emphasize that I will present my personal views on the topic, and not the opinion of the Constitutional Court of Peru, of which I am just one of its seven members. I will speak as a scholar borrowed to such Court for five years.

I come from a country which, for twelve years —between 1980 and 1992—, faced terrorist movements of an incredibly cruelty —perhaps the worst in the Americas. The main of these movements, Sendero Luminoso, was properly compared with Pol Pot's Cambodian Khmer Rouge.

Inspired by a marxist ideology in its maoist version, Sendero unleashed a vicious campaign to demolish Peru's society. Its brutal acts included indiscriminate attacks on peasants, selective killing of high-ranking authorities, and car bombings designed to terrify citizens, among many others.

In a July 1992 event held at the Inter-American Dialogue in Washington DC, a special mixture of academicians and military experts, from the U.S. and Peru's neighbors, contemplated the idea of partitioning the country. As AEI's Mark Falcoff mentioned, Peru was a sick horse that was to be pulled from the stable and shot.

In September 12 of the same year, a combination of old fashioned police work and political leadership managed to capture Sendero's leader, Abimael Guzman, in the second floor of a ballet studio, surrounded by liquor, tobacco and young women. Due to the verticality of its structure, this meant its collapse.

¹ Magistrate at Peru's Constitutional Court. Former Dean at UPC's Law School in Lima, Peru. Lecture delivered at the Conference "National Security and the Constitution of Free Societies" of the Center for a Secure Free Society. Dallas, Texas, March 31st, 2017. I wish to thank Mr. Lucas Gheri for his important help in writing this text.

Nobody denies that the Peruvian government —specially, during the 1980s— committed some excesses in its fight with terrorism. However, it is impossible to affirm that it deliberately and systematically violated basic rights —specially, when Peru’s methods are compared with those of other Latin-American governments.

Despite having clear responsibility for the death of tens of thousands of people, Guzman was not executed. Scrupulously respecting the fact that Peru’s Constitution allows death penalty only for treason in an external war, judges just sent him to jail. To this date, he has been there for twenty-five years.

This contrasts not only with what other Latin-American countries did against insurgents, but also with what the U.S. did to Osama bin Laden. When he was located in Pakistan, American troops raided his compound and killed him. Certainly, the U.S. did not ask Pakistan for his extradition.

Of course, there is a difference between Sendero Luminoso and Al-Qaeda. The first one was an eminently national phenomenon, while the second one still represents a global threat. This not only explains but justifies American behavior. Correctly, the U.S. tagged bin Laden not only as a criminal but as an enemy, subject to the rules of war.

Nevertheless, there is also an important similarity between these terrorist groups. Both of them employed —or still employ— vicious violence against civilians to advance their ideological objectives. In Peru, there is a feeling that this fact has not been adequately comprehended by the American political elite.

This is mainly a result of the role the U.S. has played in the Inter-American Human Rights System. Despite the fact that the U.S. does not accept the jurisdiction of the Inter-American Court of Human Rights, Americans have repeatedly presided over the Inter-American Commission on Human Rights, which files cases against governments before the Court. So, a double standard is here perceived.

On several occasions, this Court has ordered Peru to reopen cases related to alleged human rights abuses committed by the government in its fight against terrorism, even if these cases are more than thirty years old. One of the arguments for these rulings is the unfounded notion that Peru conducted a systematic dirty war against insurgents.

Another major argument is the rejection of Peru’s former anti-terrorist legislation, on the grounds that it did not comply with international standards. As a security measure, this legislation,

passed during the darkest moment of the country, provided for having faceless military courts try suspected terrorists.

In condemning this legislation, the Court forgets that Sendero killed several judges and threatened or blackmailed all of them. Ruling from its cave, contemplating its platonic *Topus Uranus*, the Court nullified all decisions taken under these laws. In this way, it forced Peru to conduct retrials of all Sendero members.

Peru is not the only Latin-American country to experience these misunderstandings. The Inter-American Court of Human Rights does not accept amnesty laws passed by any country, even if they have been repeatedly approved in referendums carried out by governments of impeccable democratic credentials.

Acting almost as an extended jury, for example, the Uruguayan people twice approved amnesty laws in referendums. However, the Court did not budge. For them, prosecuting Uruguayan soldiers and officers suspected of human rights violations was required by justice. Even leftist but talented Argentinian professor Roberto Gargarella, commenting the ruling in *Gelman vs. Uruguay*, described the Court's vision as simplistic, punitive and based on distrust towards citizens.

The U.S. foreign policy has a degree of responsibility in all of this. In 1999, when Peru tried to quit the jurisdiction of the Inter-American Court of Human Rights, following the American example, the U.S. transmitted its severe disapproval. So, it seems: Roman law is for Americans, and *ius gentium*, for Latin-Americans.

The important question now is whether this attitude reflects only the 'deep state' mentality or originates in a broader American foreign policy, common to conservatives and liberals. Americans need to recognize that countries must be awarded ample powers to defeat terrorist threats, and that local particularities are relevant.

If the U.S. reasonably distrusts the 'one size fits all' approach to justice developed by the Court, it should not encourage its application to other countries in the Americas through diplomacy, leadership in the Commission, and substantial contributions to the System's finances.

The rulings of this Court dealing with terrorism have deeply hurt Latin-Americans in their true vocation for justice. There has been an evident ideological bias in many of them. Such bias has nothing to do with the principles over which the U.S. was founded, and the values its Constitution enshrines.

The Trump administration —often seen as iconoclastic and erratic— may be capable of fixing the long standing contradictions in U.S. policy regarding the Inter-American Human Rights System. Let's hope it is done.