

LOS ESTADOS DE EXCEPCIÓN Y LOS DERECHOS HUMANOS EN AMÉRICA LATINA

*States of exception
and human rights in Latin America*

Daniel Zovatto, Deputy Director of the Inter-American Institute for Human Rights (Instituto Interamericano de Derechos Humanos: IIDH) and Director of the Inter-American Centre for Assisting and Promoting the Electoral Process (Centro Interamericano de Asistencia y Promoción Electoral: CAPEL) deals in this book with states of exception or emergency and their impact on the effective implementation of human rights in Latin America.¹

Whenever the constitutional order has been disrupted, sometimes even within constitutionally democratic regimes, respect for human rights during the resulting states of exception is a particularly topical and significant issue. It is crucial to honour the guarantees and safeguards necessary for the exercise of fundamental rights so as to avoid undermining the monitoring mechanisms essential to enjoyment of those rights.

In this excellent work in five chapters, Dr. Zovatto begins by analysing the phenomenon of states of exception in Latin America, the conceptual approach which draws a distinction between restrictions on and suspension of human rights, and the most frequent forms of violation. He goes on to give a detailed analytical account of the rules of international law governing states of exception, and devotes two chapters to international monitoring mechanisms within the United Nations system and within the American regional system respectively. In the last chapter, the writer takes stock of the current situation and offers recommendations to make the international monitoring system more effective.

Despite the universal importance of the subject, a large proportion of the world's population having experienced living under a state of exception in the last few decades, Dr. Zovatto has purposely chosen to limit his analysis in two ways: first, he deals only with states of exception during periods of internal disturbances and tension, thus excluding those arising from armed conflict, *force majeure*, or any of the economic circumstances attendant upon underdevelopment; secondly, he has restricted his study to a given geographical region and time-frame, that is, Latin America between 1970 and 1989, in

¹ Daniel Zovatto G., *Los Estados de Excepción y los Derechos Humanos en América Latina*, Instituto Interamericano de Derechos Humanos, Editorial Jurídica Venezolana, Caracas, San José, 1990, 201 pp.

view of the prevalence of states of exception and the deterioration of the human rights situation during that period.

Latin American governments have generally invoked serious political crises caused by internal disturbances and tension as reasons for declaring states of exception. The author sets out to show that such declarations were usually unlawful from the standpoint of legal theory, rules and jurisprudence insofar as they did not meet the requirements of international human rights instruments. Furthermore, he draws attention to the risk involved, in that there was a diminution in the protection afforded by international human rights law while international humanitarian law lacked specific provisions to offset this deficiency. The last point can be explained by the fact that international humanitarian law does not *prima facie* or directly cover situations of internal disturbances and tension, although there may indeed be forms of humanitarian action applicable in such circumstances.

Within this framework, without going into detail on current attempts to promote the adoption of minimum humanitarian rules applicable in cases of internal disturbances and tension — which would provide material for another book — Dr. Zovatto does mention that it would be appropriate, under humanitarian law, to adopt *de lege ferenda* measures to make international monitoring mechanisms more effective in dealing with states of exception. Here the author stresses the need for an instrument to guarantee the fundamental rights of the individual during periods of internal disturbances and tension. The purpose of this instrument would be to strengthen the legal safeguards designed to protect human rights, to provide a means of resolving humanitarian problems arising in such circumstances, and to bolster the belief that, come what may, a basic minimum of humanity must be preserved.

We are sure that this book, given the wealth of information provided and the clarity and accuracy of the analyses, will prove most useful and will be highly appreciated by those interested in seeing the fundamental rights of the individual respected during states of exception.

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