

Table of Contents

Chapter 6	131
Human Rights	131
A. GENERAL	131
1. Country Reports on Human Rights Practices	131
2. UN General Assembly Resolutions	131
3. Human Rights Council.....	132
a. Overview	132
b. <i>Guiding Principles on Business and Human Rights</i>	134
c. <i>Actions regarding Syria</i>	135
(1) <i>Actions at the 19th session</i>	136
(2) <i>Special Session on Syria</i>	137
(3) <i>Actions at the 20th session</i>	138
(4) <i>Actions at the 21st session</i>	139
d. <i>Sri Lanka</i>	140
e. <i>Belarus</i>	141
f. <i>Eritrea</i>	141
g. <i>Mali</i>	142
4. Strengthening the Human Rights Treaty Body System	143
B. DISCRIMINATION	147
1. Race.....	147
a. Overview	147
b. <i>Human Rights Council</i>	147
c. <i>Statement on U.S. efforts to eliminate racial discrimination at home and abroad</i> ...	148
d. <i>OAS Resolution on the Draft Inter-American Convention Against Racism</i>	150
e. <i>Ad Hoc Committee on the Elaboration of Complementary Standards</i>	151
2. Gender.....	151
a. <i>Women, Peace, and Security</i>	151
(1) <i>The United States National Action Plan on Women, Peace, and Security</i>	152
(2) <i>United Nations actions on women, peace, and security</i>	152
(3) <i>G8 work on women, peace, and security</i>	155
b. <i>Female Genital Cutting</i>	156
c. <i>Women and children: right to nationality</i>	156
d. <i>Opposition to resolution on “traditional values”</i>	157
e. <i>UN Commission on the Status of Women</i>	158
3. Sexual Orientation	160
a. <i>U.S. opposition to removing references to sexual orientation in UNGA resolution on extrajudicial, summary, and arbitrary executions</i>	160
b. <i>Follow-up to resolution adopted on LGBT rights at HRC 17</i>	161
c. <i>Presidential proclamation of Lesbian, Gay, Bisexual, and Transgender Pride Month, 2012</i>	162
d. <i>Organization of American States</i>	163
4. Age.....	164
a. <i>UN Working Group</i>	164
b. <i>Third Committee proposal for legal instrument to protect older persons</i>	166

c.	<i>Human Rights Council</i>	167
5.	Persons with Disabilities.....	168
a.	<i>Submission of Disabilities Convention for U.S. Senate Ratification</i>	168
b.	<i>Human Rights Council</i>	181
C.	CHILDREN	183
1.	Optional Protocols to the Convention on the Rights of the Child.....	183
2.	Children and Armed Conflict.....	183
a.	<i>Security Council</i>	183
b.	<i>Human Rights Council</i>	184
c.	<i>Child Soldiers Prevention Act</i>	186
3.	Resolutions on Rights of the Child.....	186
a.	<i>Human Rights Council</i>	186
b.	<i>General Assembly</i>	187
D.	ECONOMIC, SOCIAL, AND CULTURAL RIGHTS	189
1.	Health and Education.....	189
2.	Food.....	190
a.	<i>UN Convention on Food Assistance</i>	190
b.	<i>Human Rights Council resolution</i>	190
3.	Water and Sanitation.....	192
a.	<i>Human Rights Council resolution</i>	192
b.	<i>Secretary Clinton’s remarks on World Water Day</i>	193
4.	Housing.....	195
E.	OTHER ECONOMIC, SOCIAL, AND CULTURAL ISSUES	196
1.	Hazardous waste.....	196
2.	Development.....	197
a.	<i>Human Rights Council</i>	197
b.	<i>General Assembly</i>	198
F.	INDIGENOUS ISSUES	199
1.	UN Permanent Forum on Indigenous Issues (“PFII”).....	199
2.	UN World Conference on Indigenous Peoples.....	200
3.	U.S. Statements on Indigenous Peoples at HRC 21.....	202
4.	Response to report of Special Rapporteur Anaya.....	204
G.	PROTECTION OF INTERNALLY DISPLACED PERSONS	205
H.	TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT	206
I.	JUDICIAL PROCEDURE, PENALTIES, AND RELATED ISSUES	206
1.	Death Penalty.....	206
2.	Extrajudicial, Summary or Arbitrary Executions.....	207
3.	Arbitrary Detentions.....	208
J.	PROMOTION OF TRUTH, JUSTICE, REPARATION	209
K.	RULE OF LAW AND DEMOCRACY PROMOTION	210
1.	U.S. Pledges at UN General Assembly High-Level Event on Rule of Law.....	210
2.	Transparency and Accountability.....	212
3.	Open Government Partnership.....	213
4.	Civil Society.....	213
L.	FREEDOM OF EXPRESSION	215

1.	Media Freedom	215
2.	Internet Freedom	217
3.	Religion.....	219
a.	<i>Freedom of religion</i>	219
(1)	<i>Designations under the International Religious Freedom Act</i>	219
(2)	<i>Annual Report on International Religious Freedom</i>	219
(3)	<i>U.S. Statement at the Human Rights Council</i>	219
b.	<i>Combating discrimination based on religion</i>	220
4.	Expressions of Racism.....	222
a.	<i>U.S. submission to the Committee for the Elimination of Racial Discrimination</i> ...	222
b.	<i>Third Committee resolution</i>	225
M.	PROMOTION OF HUMAN RIGHTS IN THE CONTEXT OF PRIVATE MILITARY AND SECURITY COMPANIES (“PMSCs”)	226
1.	U.S. Submissions to the Working Group on the Use of Mercenaries.....	227
a.	<i>Legal status and accountability of PSCs</i>	227
b.	<i>National laws and regulations relating to PMCs and PSCs</i>	228
2.	Second Session of the Working Group on PMSCs.....	230
N.	FREEDOM OF ASSEMBLY AND ASSOCIATION	237
O.	U.S. CONCERNS OVER PUTATIVE RIGHT TO PEACE	238
	Cross References	242

Chapter 6

Human Rights

A. GENERAL

1. Country Reports on Human Rights Practices

On May 24, 2012, the Department of State released the 2011 Country Reports on Human Rights Practices. The Department of State submits the document annually to Congress in compliance with §§ 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (“FAA”), as amended, and § 504 of the Trade Act of 1974, as amended. These reports are often cited as a source for U.S. views on various aspects of human rights practice in other countries. The reports are available at

www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper; Secretary of State Hillary Rodham Clinton’s remarks on the release of the reports are available at www.state.gov/secretary/rm/2012/05/190826.htm.

2. UN General Assembly Resolutions

The United States co-sponsored three separate UN General Assembly resolutions in 2012 condemning human rights abuses in Iran, North Korea, and Syria. The resolutions were adopted by the General Assembly’s Third Committee in November 2012. U.N. Doc. A/C.3/67/L.50 (North Korea); U.N. Doc. A/C.3/67/L.51 (Iran); U.N. Doc. A/C.3/67/L.52 (Syria). The draft resolutions were subsequently adopted by the entirety of the General Assembly in December. U.N. Doc. A/RES/67/181 (North Korea); U.N. Doc. A/RES/67/182 (Iran); U.N. Doc. A/RES/67/183 (Syria). Ambassador Susan E. Rice, U.S. Permanent Representative to the UN, delivered a statement at the time the resolutions were adopted in the Third Committee, on November 27, 2012. Her statement is excerpted below and available at <http://usun.state.gov/briefing/statements/201113.htm>.

* * * *

The United States is pleased to co-sponsor three important resolutions adopted by the UN General Assembly’s Third Committee condemning human rights abuses in Iran, North Korea and Syria. Today’s votes show the international community deplors these continued violations of fundamental human rights.

On Iran, we share the General Assembly’s deep concern at serious ongoing and recurring human rights violations, including torture and such cruel, inhuman and degrading punishments as flogging, amputations and arbitrary executions. Lawyers, journalists, Internet providers, bloggers and netizens face harassment, intimidation and arbitrary detention in Iran, which also continues to violently repress women and minority groups. The General Assembly called upon the Government of Iran to cooperate fully with the UN Special Rapporteur on human rights.

On North Korea, for the first time ever, the General Assembly adopted by consensus a resolution condemning the atrocious state of human rights there. Today's resolution expresses serious concern about "persistent reports of systematic, widespread and grave violations of civil, political, economic, social and cultural rights" in the DPRK, including torture, the absence of due process, restrictions of movement, the mistreatment of refugees and asylum-seekers and pervasive and severe restrictions on the freedom of thought.

On Syria, the General Assembly strongly condemned the continued widespread and systematic gross violations of human rights by Syrian authorities and the government-controlled "shabbiha" militia... The resolution condemns the massacres, arbitrary executions, extrajudicial killings, torture, sexual violence, ill-treatment against children, and the killing and persecution of protestors, human rights defenders and journalists. Importantly, today's resolution urges Syrian authorities to release immediately all persons arbitrarily detained, including the members of the Syrian Centre for Media and Freedom of Expression, which works to promote freedom of opinion and expression in Syria and throughout the Arab world, and is the only Syrian NGO accredited to the UN.

* * * *

3. Human Rights Council

a. Overview

The United States participated in three regular sessions of the Human Rights Council in 2012. The Council convened for its 19th session in late February. For the U.S. statement on key outcomes at the 19th session, see <http://geneva.usmission.gov/2012/03/29/key-outcomes/>. Key outcomes at the 20th session, which concluded on July 6, are also described on the website of the U.S. Mission in Geneva at <http://geneva.usmission.gov/2012/07/07/key-u-s-outcomes-at-the-un-human-rights-council-20th-session/>. Ambassador Eileen Chamberlain Donahue, U.S. Permanent Representative to the Human Rights Council, summarized key accomplishments at the 21st session, which concluded on October 9, in a post available at <http://geneva.usmission.gov/2012/10/09/ambassador-donahoe-on-accomplishments-at-the-hrc-21st-session/>.

The United States was elected to a second three-year term on the Human Rights Council on November 12, 2012. Upon reelection, the State Department released a fact sheet summarizing accomplishments during its first term on the Council, available at www.state.gov/r/pa/prs/ps/2012/11/200447.htm, and excerpted below.

* * * *

The United States is pleased and proud of its reelection to the UN Human Rights Council earlier today. Since joining the Council in 2009, the United States has ardently worked to help the Council realize its full potential. Our efforts to reform the Council from within have resulted in historic and concrete actions against human rights violators around the world. While much work

remains to be done at the Council, in particular ending its excessive and unbalanced focus on Israel, with U.S. leadership the Council has spoken up for those who are suffering major human rights violations and are living under the grip of the world's cruelest regimes. The Council also has taken action to promote accountability for violations and expand human rights and fundamental freedoms worldwide. Today's vote will allow us to further strengthen the Council and build on what we have already accomplished at the Council by working together with our international partners.

As we prepare for another three years of close collaboration with partners from all corners of the globe to address the many human rights challenges remaining before us, we reflect on the Council's key accomplishments during our first term, including:

Robust Response to Country-Specific Situations:

Syria: The Human Rights Council has been an active, vocal body in condemning the atrocities in Syria, holding four special sessions and establishing an independent International Commission of Inquiry, as well as a Special Rapporteur to follow up on the work of the Commission of Inquiry once its mandate expires. The Council has adopted eight resolutions on Syria since 2011, all of which the United States co-sponsored, sharply and repeatedly criticizing and illuminating the conduct of the Syrian government.

Libya: Similarly, in 2011 the Council took assertive action to address the dire human rights situation in Libya, establishing a Commission of Inquiry mandated, among other things, to investigate all alleged violations of international human rights law in Libya and to make recommendations on accountability measures. With the support of the United States and on the recommendation of the Council, the UN General Assembly took unprecedented action in March 2011 to suspend Libya's membership rights on the Council helping to catalyze broader UN action to prevent the slaughter of civilians in Libya.

Iran: In 2011, the United States led the Council in adopting a resolution that re-instituted the mandate of a Special Rapporteur on Iran to highlight Iran's deteriorating human rights situation. Today, the Special Rapporteur is speaking out on behalf of those Iranians who have suffered egregious human rights violations by the Iranian government.

Belarus: In 2012, the United States co-sponsored a resolution at the Council that established a Special Rapporteur to highlight human rights abuses in Belarus. In doing so, the Council re-instituted a mandate that the Council eliminated in 2006, when the United States was not a member.

Sri Lanka: In 2012, the United States led the Council in adopting a resolution on Sri Lanka, which sent a strong signal that Sri Lanka still needs to address outstanding issues of reconciliation and accountability.

Cote d'Ivoire: When the political and human rights environment in Cote d'Ivoire deteriorated in 2011, the Council acted quickly to establish a Commission of Inquiry to investigate human rights abuses. The Council later created an Independent Expert on human rights in Cote d'Ivoire, with a mandate to follow up on the Commission of Inquiry's recommendations and assist the Government of Cote d'Ivoire in combating impunity.

Burma: Since joining the Council in 2009, the United States supported the adoption of four resolutions addressing the human rights situation in Burma. The most recent resolution extended the mandate of the Special Rapporteur on the situation of human rights for another year. In doing so, the Council took into account the many recent positive changes in Burma, including the Government of Burma's stated commitment to democratization and the

reconciliation process as well as the Government's engagement with Aung San Suu Kyi and opposition parties.

Promoting Universal Human Rights:

Advancing the Rights of LGBT Persons: In June 2011 the Council adopted the first-ever UN resolution on the human rights of lesbian, gay, bisexual and transgender (LGBT) persons. This resolution commissioned a groundbreaking UN report on the human rights abuses that LGBT persons face around the globe, and has opened a broader international discussion on how to best promote and protect the human rights of LGBT persons. As a co-sponsor of this resolution, the United States demonstrated its commitment to an active role in ensuring fair treatment and equality for all people.

Promoting Freedom of Assembly and Association: Since 2010, the United States has led a cross-regional core group of countries in successfully presenting two landmark resolutions on the protection and promotion of freedom of assembly and association. The first resolution created the first new special rapporteur focused on fundamental freedoms in 17 years, the Special Rapporteur on the rights to freedom of peaceful assembly and freedom of association. The second resolution underscores the important role that civil society plays in the promotion and protection of human rights.

Highlighting Internet Freedom: In July 2012, the United States co-sponsored a landmark resolution, that underscores that all individuals are entitled to the same human rights and fundamental freedoms online as they are offline, including the freedom of expression, and that all governments must protect those rights regardless of the medium.

Underscoring the Right to Nationality: In 2012 the United States successfully introduced a landmark resolution addressing the right to a nationality, with a specific focus on women and children. The equal right to a nationality for women, including the ability to acquire and retain nationality and confer it on their children, reduces the likelihood that women and children will become stateless and vulnerable to serious harm.

Reinforcing Freedom of Expression in the Context of Religious Intolerance: The United States worked with a wide range of partners, including the Organization of Islamic Cooperation, to secure adoption in 2011 of the "Combating Discrimination and Violence" resolution, also known as resolution 16/18, which calls on states to take a range of positive actions to combat discrimination, violence, and intolerance on the basis of religion or belief without violating the freedom of expression. This resolution marked a sea change in the global dialogue on countering offensive and hateful speech based upon religion or belief.

* * * *

b. Guiding Principles on Business and Human Rights

In 2012, the State Department hosted workshops on implementation of the Guiding Principles on Business and Human Rights, which were endorsed by the Human Rights Council in 2011 in resolution 17/4, and were the result of the work of the Special Representative of the Secretary General on human rights and transnational corporations and other business enterprises, John Ruggie. See *Digest 2011* at 148-50. On April 30, 2012, representatives of major multinational corporations attended one such workshop, focusing on best practices and key challenges in respecting human rights in business operations. See State Department media note, available at

www.state.gov/r/pa/prs/ps/2012/04/188980.htm. A similar workshop for representatives of civil society organizations, think tanks, and multilateral and academic institutions was held on July 30, 2012. See State Department media note, available at www.state.gov/r/pa/prs/ps/2012/07/195901.htm.

On September 27, 2012, Ambassador Eileen Chamberlain Donahoe, U.S. Representative to the HRC, delivered a general statement by the United States on the issue of business and human rights. Her statement appears below and is available at <http://geneva.usmission.gov/2012/09/27/u-s-statement-on-business-and-human-rights/>.

* * * *

The United States is pleased to co-sponsor and join consensus on the important issue of business and human rights, including the implementation of the Guiding Principles as a framework for addressing a wide range of challenges raised by the business and human rights agenda.

In this context, we continue to stress the importance of States' implementation of their obligations under human rights law with respect to their own conduct. [In] states that violate human rights, it is then difficult for businesses to respect them. As the Guiding Principles remind us, it is important that States govern justly and effectively, and that individuals are protected from misconduct from both State and non-State actors. Our conviction regarding the State's "duty to protect" is grounded in the moral and political imperative to engage in good governance, [including] by properly addressing acts of abuse by private actors. International human rights law tells us that, in certain circumstances, a State's obligations can be implicated by private conduct. Yet governments have an imperative to provide for and improve the well-being of our populations, even where our obligations under international law do not require it. Our support for the resolution is based on this understanding.

We thank the Office of the Secretary General for the recommendations of its important report and its continued efforts in pushing forward the business and human rights agenda. The United States supports the integration and operationalization of the Guiding Principles into the UN system where appropriate. These efforts will prove to be a valuable approach towards progress on the business and human rights issue.

* * * *

c. Actions regarding Syria

By the end of 2012, the Human Rights Commission had issued five resolutions on Syria. The Commission renewed the mandate of the Commission of Inquiry. The United States persisted as a strong advocate for further action on Syria. For a discussion of UN Security Council and General Assembly actions on Syria, see Chapter 17. For a discussion of U.S. sanctions directed at the Syrian regime, see Chapter 16.

(1) Actions at the 19th session

On February 22, 2012, the Commission of Inquiry established in 2011 by HRC Resolution S-17/1 delivered its second report on Syria at the 19th session of the Human Rights Council. U.N. Doc. A/HRC/19/69. The United States hailed the report for its indictment of the Assad regime in a February 23 statement by Ambassador Rice, available at <http://usun.state.gov/briefing/statements/184589.htm>:

The United States welcomes the second report of the Independent International Commission of Inquiry on Syria and notes its indictment of the Assad regime's comprehensive campaign of violence against the Syrian people. Among the report's findings: the Syrian government has accelerated the killing of its people, particularly in Homs, resulting in the deaths of nearly 800 civilians in the first two weeks of February alone. Protestors have been arrested without cause, tortured, and summarily executed. Many of the dead are children.

The report vividly portrays the violence that has continued unabated for nearly a year at a breathtaking scale, in an environment of total impunity. We appreciate those who took great risks to contribute to the report.

The Human Rights Council also adopted two resolutions on Syria at its 19th session. U.N. Doc. A/HRC/RES/19/1; U.N. Doc. A/HRC/RES/19/22. On March 1, 2012, Ambassador Donahoe issued a statement on the adoption of resolution 19/1. That statement is excerpted below and available at <http://geneva.usmission.gov/2012/03/01/hrc-resolution-on-syria-sends-forceful-message-about-international-communitys-outrage/>.

* * * *

The outcome of today's vote at the Human Rights Council speaks for itself. It sends a forceful message about the international community's outrage at the ongoing human rights violations and deepening humanitarian crisis created by the Assad regime.

Over the past weeks the Syrian regime has intensified its inhumane campaign of cruelty in defiance of its obligations under human rights law. It has continued to block emergency humanitarian relief that is so desperately needed to respond to the humanitarian crisis caused by these gross human rights violations.

We urge all states to assist the Syrian people in their time of need as they struggle to realize their aspirations for universal human rights. The three countries that chose to vote no at the Human Rights Council today find themselves isolated from the strong international consensus on the need to protect the people of Syria.

* * * *

On March 23, 2012, Ambassador Donahoe issued a press statement on the adoption of resolution 19/22, available at <http://geneva.usmission.gov/2012/03/23/syria-resolution->

[highlights-growing-unity-of-international-community-isolation-of-three-who-voted-against/](#), and excerpted below.

* * * *

This session of the Human Rights Council opened with an Urgent Debate on Syria and the adoption of a resolution focused on humanitarian access, and we have remained seized with the situation throughout, even as events on the ground have sharply deteriorated.

Today, on the session's final day, Council members came together in their strongest show of unity yet to demand end to the violence by the Assad regime. The resolution on Syria we have just adopted highlights the growing unity of the international community and the increasing isolation of the three countries which stood alone to oppose the text.

Today's resolution is important. It renews and significantly strengthens the work of the Commission of Inquiry (COI), the team of investigators tasked by the HRC with documenting the situation inside Syria with a view to ensuring that those who are responsible are held to account.

For the first time, the Council has asked its team of investigators to provide continuous mapping of both human rights violations and casualties.

Expressing grave concern about systemic impunity for human rights violations, the Council has also asked the Office of the U.N. High Commissioner for Human Rights to ensure the safe and secure storage of all evidence of human rights violations gathered by the COI. This is the first time such a request has been included in a Human Rights Council resolution.

The Council has demanded that the regime lift without delay its blockade on Homs, Dar'a, Zabadani and all other cities under siege and that it ensure timely, safe, and unhindered access for medical and humanitarian aid.

With today's vote the Council sends a message to the people of Syria. We are with you. We support your aspirations. We are working to ensure that crimes against you will not go unpunished. Together we demand an end to the brutality of the Assad regime.

* * * *

(2) Special Session on Syria

In June 2012, the Human Rights Council convened a special session on Syria and adopted a resolution calling for an in-depth investigation by the Commission of Inquiry on Syria into the massacre in Houla in May 2012, in which over 100 Syrian civilians were killed, including over 40 children. Secretary Clinton's press statement on the special session is available at www.state.gov/secretary/rm/2012/06/191673.htm and included the following:

Our message is clear: to the people of Syria, the world stands by you, and we will not ignore your plight in the face of ongoing violence; to the Assad regime, the time has come to end the flagrant abuses of the human rights of your people and to step aside so that Syria can transition peacefully and democratically.

(3) *Actions at the 20th session*

At the 20th session of the Human Rights Council, the United States introduced a resolution on the situation of human rights in Syria that was adopted by the Council by a vote of 41 in favor with 3 opposed and 3 abstentions. U.N. Doc. A/HRC/RES/20/22. Ambassador Donahoe's introductory statement on the resolution is excerpted below and available at <http://geneva.usmission.gov/2012/07/06/syria-resolution-2/>.

* * * *

The United States is very pleased to introduce, with our partner Turkey, draft resolution L.22 Rev.1, on the Situation of Human Rights in the Syrian Arab Republic. This resolution, as was just mentioned, enjoys the broad support of over 50 co-sponsors.

This Council must continue to speak out clearly and forcefully on the gross human rights violations and atrocities being carried out by the Assad government. The Assad regime is waging a brutal campaign of violence against the Syrian people, characterized by aerial bombardment, mass killings, summary executions, torture, including rape, and other atrocities. We demand an end to these outrageous crimes against the people of Syria.

The Assad government has made no serious effort to comply with its commitment to the Annan six-point proposal and with UN Security Council resolutions 2042 and 2043. Assad continues to use heavy weapons against civilians; deploy tanks and troops in urban areas; detain activists, journalists, and others arbitrarily and without any pretense of due process and to torture them; and restrict fundamental freedoms. As long as Assad continues to attack the Syrian people, the international community must keep ratcheting up the pressure on the regime to halt the violence and do more to allow access for humanitarian assistance to civilians in need. This resolution reaffirms the international community's full commitment to supporting Joint Special Envoy Annan and his efforts on the implementation of his six-point proposal. This resolution reflects the Geneva Action Group's communiqué supporting Kofi Annan's principles and guidelines for a Syrian-led political transition, one in which the regime cedes full executive power to a transitional governing body.

It is vital that the Commission of Inquiry continue documenting violations and collecting evidence so that those who are responsible for gross human rights violations can be held accountable. This resolution appropriately calls for continued support and immediate, full, unfettered, and secure access on the ground for the COI. And it also rightly emphasizes the need for accountability for the atrocities and gross human rights violations being committed against the Syrian people. Several Syrian and international groups, like the Syria Justice and Accountability Center, are also working toward this end, to ensure that a comprehensive record of abuses is available to the Syrian people.

We have a clear message to the Syrian security forces: "Don't let Assad abuse your national loyalty. Your mission as the armed forces of Syria is to protect the Syrian people, not to prolong Assad's hold on power. The way to meet your responsibility is to end the repression and help set up a broad based interim administration that will lead Syria to a democratic future."

Madame President, distinguished delegates, the actions of the Assad government are contrary to the principles and values upon which the Human Rights Council was founded—no

State that engages in such actions should ever serve on this Council. Supporting this resolution is just one way to demonstrate our solidarity with the Syrian people. I call on all Council members to support this resolution and the people of Syria in their desperate time of need.

* * * *

(4) Actions at the 21st session

On September 28, 2012, the Human Rights Council adopted a resolution to renew the mandate of the Commission of Inquiry on Syria. U.N. Doc. A/HRC/RES/21/26. The vote was 41 in favor, with 3 opposed and 3 abstaining. Ambassador Donahoe provided the statement for the U.S. delegation on the continuation of the work of the COI. Her statement is excerpted below and available at <http://geneva.usmission.gov/2012/09/28/coi-will-continue-its-work-documenting-widespread-crimes-against-the-people-of-syria/>.

* * * *

The United States is proud to co-sponsor this resolution and thanks the main sponsors Morocco, Qatar and other members of the Arab Group for their leadership.

As you all know—the Human Rights Council began focusing on the human rights calamity in Syria in April 2011 with our first Special Session on the topic. Sadly as this 21st Council Session comes to a close, Assad continues to cling to power, and his campaign of brutality has sparked a deepening humanitarian crisis. We cannot afford to be silent.

This resolution strengthens our support for the work of the Commission of Inquiry, instituted by this Council more than a year ago. The COI has been doing its job—documenting widespread and systematic crimes against the people of Syria. In its current report to the Council, the COI has found that the crimes committed against the Syrian people are indicative of a deliberate state policy of collective punishment. The COI has also found that reasonable ground exist to believe that Government forces and the Shabbiha, have committed crimes against humanity, war crimes, and gross violations of international humanitarian law. With respect to its investigation of the specific case of Al-Houla, the COI was able to determine that Government forces, acting in concert with Shabbiha members, were responsible for the massacre in which dozens of women and children were killed.

The work of the COI is important because as they continue to document the names of individuals responsible for these crimes and violations, they help ensure that this will not be a case where impunity prevail, but rather that those responsible for these crimes against the Syrian people will face justice and accountability.

* * * *

d. Sri Lanka

On March 22, 2012, the Human Rights Council adopted a resolution on Sri Lanka. U.N. Doc. A/HRC/RES/19/2. Ambassador Rice's statement strongly endorsing the resolution appears below and is available at <http://usun.state.gov/briefing/statements/186670.htm>.

* * * *

Today, the UN Human Rights Council took strong action to promote a durable, just and equitable peace in Sri Lanka. The resolution adopted convincingly today promotes reconciliation and accountability after decades of terrorism and civil war. Through this resolution, a broad and diverse coalition of the international community sends a powerful message to the Government of Sri Lanka that the time for concrete action is now.

The resolution welcomes the constructive recommendations in the Lessons Learned and Reconciliation Commission, while acknowledging the need to address key issues of accountability. It also calls upon the Government of Sri Lanka to present a plan to implement the recommendations and address alleged violations of international law. To advance these efforts, the resolution encourages the UN to offer advice and technical assistance to Sri Lanka. We welcome these next steps and the United States stands ready to support the government and the people of Sri Lanka as they move forward with these important efforts.

* * * *

On the same day, Secretary Clinton also issued a statement on the Sri Lanka resolution, available at <http://geneva.usmission.gov/2012/03/22/clinton-statement/>. Secretary Clinton said:

Today's action by the UN Human Rights Council encourages the Government of Sri Lanka to continue on the path toward reconciliation following 27 years of civil war. The United States, together with the international community, sent a strong signal that Sri Lanka will only achieve lasting peace through real reconciliation and accountability, and the international community stands ready to help. The next steps are clear. We look to the Government of Sri Lanka to implement the constructive recommendations of the Lessons Learnt and Reconciliation Commission (LLRC) and take the necessary measures to address accountability. We are committed to working with the Sri Lankan government to help realize this goal, and I look forward to discussing future actions with Foreign Minister Peiris soon. We will continue the productive working relationship we have with the Sri Lankan Government based on shared values, respect and constructive dialogue. Most important, we seek to strengthen our partnership with all the people of Sri Lanka.

e. Belarus

At its 20th session, the Human Rights Council established a special rapporteur on the human rights situation in Belarus. U.N. Doc. A/HRC/RES/20/13. The resolution passed with 22 votes in favor, 5 against, and 20 abstentions. Ambassador Donahoe's July 6, 2012 press statement on the new rapporteur is excerpted below and available at <http://geneva.usmission.gov/2012/07/06/donahoe-special-rapporteur-will-monitor-and-highlight-the-grave-human-rights-situation-in-belarus/>.

* * * *

The 20th Session of the Human Rights Council in Geneva passed a resolution that will create a new independent Special Rapporteur on the human rights situation in Belarus. This effort was led by the European Union, with close cooperation and strong support from the United States. We were pleased to work with our EU partners to create the rapporteur, who will work to monitor and highlight the grave human rights situation in this country. This is the fifth country-specific monitor created by the Council since the United States joined in 2009.

Since the flawed 2010 Presidential elections, the Belarusian government has significantly curtailed the freedoms of association, assembly and expression, and the right to a fair trial. The United States is deeply concerned about the suppression of these and other fundamental freedoms and human rights, as well as widespread allegations of torture and ill-treatment. We also remain deeply concerned by the government's crackdown against human rights activists, independent journalists and media, and civil society. As Secretary Clinton has said, "Each time a reporter is silenced, or an activist is threatened, it doesn't strengthen a government, it weakens a nation. A stool cannot balance on one leg or even two. The system will not be sustainable."

The Special Rapporteur will encourage the government of Belarus to release and rehabilitate political prisoners, stop oppressive measures against journalists and human rights activists, and end the crackdown on civil society. The United States looks forward to continuing to work with our European partners to improve the situation in Belarus and to address key human rights concerns around the world.

* * * *

f. Eritrea

The 20th Session of the Human Rights Council also included passage of a resolution establishing a special rapporteur on the human rights situation in Eritrea. U.N. Doc. A/HRC/RES/20/20. Ambassador Donahoe's July 6, 2012 press statement on the Eritrea resolution is excerpted below and available at <http://geneva.usmission.gov/2012/07/06/ambassador-donahoe-u-s-welcomes-creation-of-a-special-rapporteur-on-eritrea/>.

* * * *

Today members of the Human Rights Council in Geneva adopted [by consensus] a resolution on the human rights situation in Eritrea. Nigeria, Djibouti and Somalia led the drafting of the resolution, which calls for the creation of a Special Rapporteur on Eritrea. This independent human rights expert will focus urgent attention on one of the most dire human rights situations in the world.

The Eritrean government continues to commit widespread human rights abuses. Eritreans suffer arbitrary and indefinite detention; inhumane conditions of confinement; restrictions on freedom of speech, movement, and belief. The government of Eritrea forces men and women to participate in the national service program from which there [are] no clear criteria for demobilization. Severe violations of religious freedom continue, including torture, detention, and denial of the right to life, liberty, and security. Elections have not taken place since the country's independence from Ethiopia in 1993. The constitution was unilaterally adopted in 1997, but has not been implemented.

The United States co-sponsored this important resolution along with a cross-regional group of supporters, including a strong African group, EU members, and other delegations. This is the first non-cooperative country mandate created by the Council by consensus. This speaks to both the increased credibility of the Council, and the international community's concern over human rights violations in Eritrea. Since joining the Council two years ago, U.S. engagement has made the Human Rights Council (HRC) a more effective and credible multilateral forum for responding to the world's most urgent human rights situations.

* * * *

g. Mali

Also on July 6, 2012, at its 20th session, the Human Rights Council adopted a resolution on the situation in Mali. U.N. Doc. A/HRC/RES/20/17. The U.S. explanation of position on the resolution, which was delivered by Patrick Reilly, is excerpted below and available at <http://geneva.usmission.gov/2012/07/06/u-s-joins-consensus-on-human-rights-council-resolution-on-the-situation-in-mali/>.

* * * *

The United States is pleased to join consensus on this resolution. We are pleased that the Council has focused on the situation in Mali and joins the international community in insisting that all actors in Mali respect international law. We also appreciate the willingness of the interim government of Mali to engage with the Council to address the human rights situation in their country. The people of Mali must be able to live in a secure environment, free from oppression where they can practice their human rights such as freedom of religion and expression. We support the interim government and ECOWAS's leadership in restoring democratically elected government in Mali.

We believe the resolution would have benefited from addressing the situation across Mali, rather than focusing solely on the situation in the north. We also believe the resolution would have benefited from properly characterizing the legal nature of the abuses committed by groups in northern Mali.

* * * *

4. Strengthening the Human Rights Treaty Body System

In February 2012, the United States requested a vote and abstained on a resolution in the UN General Assembly on the “Intergovernmental process of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system.” A/RES/66/254. The resolution was adopted by a vote of 85 in favor, none opposed, with 66 abstaining, including the United States. The U.S. statement explaining its position on the resolution was delivered by Mr. John F. Sammis, Deputy U.S. Representative of the Economic and Social Council. Mr. Sammis’s statement is excerpted below and available in full at <http://usun.state.gov/briefing/statements/184603.htm>.

* * * *

We continue in particular to have significant concerns about the timing and content of the inter-governmental process set forward in [the resolution]. We also think the text inadequately addresses the important concerns raised by civil society organizations and others regarding their participation in the proposed process.

The United States, along with many other member states, has been disappointed with the lack of flexibility the sponsors have shown during the final stages of the negotiations on this draft resolution. They unfortunately rejected a number of constructive proposals that would have allowed this resolution to be adopted by consensus—as the United States would very much have preferred.

The current text requires further consideration and improvement through continued negotiations. It sets up a comparable process to one already underway under the auspices of OHCHR, while leaving the timeline and the relationship between the two processes unclear.

The United States looks forward to participating in the intergovernmental process envisioned in this resolution. At the same time, we believe that the new intergovernmental process in New York should not begin until after the presentation of the report of the Office of the High Commissioner for Human Rights in June. The Office of the High Commissioner (OHCHR) has led an extensive multi-stakeholder process, with the participation of States Parties to the human rights treaties, treaty body experts, national human rights institutions, and civil society. We were pleased to submit our views in writing to the OHCHR in advance of our participation in the February 7-8 consultations in Geneva, and also look forward to the April consultations in New York.

While decisions on the strengthening of the treaty body system are a matter for States Parties to decide, the United States believes that the OHCHR should be given the time to complete its process of soliciting input from States and other stakeholders and to inform the inter-governmental deliberations.

We should make additional efforts to avoid duplication of work, redundancies, and waste of resources in New York and Geneva. We should also provide a clear timeline for the

completion of this process. While OHCHR is conducting consultations and issuing its report, the intergovernmental process should not be started. We hope that the OHCHR report will fully reflect perspectives expressed in Geneva, and we do not think there is a need for any alternate consultation process under the auspices of the Presidency of the Human Rights Council at this time. Moreover, we do not view this resolution as providing a mandate for any such consultation process.

As this process moves forward, it is important for the Member States of the UN to respect the independence of the treaty bodies and the role of the States Parties themselves in deciding on issues related to the scope and implementation of the respective treaties. In that regard, this process should avoid proposals that would endanger that independence or that would require treaty amendments.

For the avoidance of doubt, I would like to underline that the United States does not interpret any element of the draft resolution as altering the existing legal competences of the relevant institutions, including the General Assembly and any conferences of states parties that would be convened with respect to each treaty.

As we discuss the various proposals in more depth, and look for ways to strengthen the treaty body system, we believe it would be useful to better understand the budgetary implications of each proposal. In our view, throughout the discussion of the range of proposals, detailed budgetary analysis would help to better inform our discussions. This is yet another reason why the intergovernmental process should not begin until OHCHR has completed its report, as we understand that that report will include budgetary information that will better inform these discussions.

* * * *

As mentioned in Mr. Sammis's statement above, the United States submitted its views on strengthening the treaty body system to the Office of High Commissioner for Human Rights ("OHCHR"). Excerpts follow from the submission made by the United States on February 2, 2012. The submission is also available on the OHCHR website at www2.ohchr.org/english/bodies/HRTD/docs/submissions2011-12/states/USSubmission.pdf.

* * * *

The United States thanks OHCHR for leading a process of extensive consultations on measures to strengthen the treaty body system. The United States appreciates OHCHR's ongoing multi-stakeholder consultations, including OHCHR's extensive efforts to engage States Parties to the human rights treaties (the "States Parties"), treaty body experts, national human rights institutions, and civil society. The comprehensiveness and thoroughness of this process is essential to its success. Given OHCHR's broad perspective and expertise built on working with all of the human rights treaty bodies, the United States believes that OHCHR is uniquely positioned to conduct this work. While ultimately decisions on the strengthening of the treaty body system are a matter for States Parties to decide, it is important that OHCHR's work inform such deliberations. The United States looks forward to engaging with OHCHR and other States Parties during the forthcoming consultations in Geneva and New York. It is crucial that all States Parties have the opportunity to participate in the OHCHR process, so the United States welcomes

the breadth of OHCHR's consultations, and in particular the fact that OHCHR's efforts are being conducted in both Geneva and New York to ensure the greatest possible participation. This includes those States without representation in Geneva. The United States also welcomes OHCHR's efforts to make available through the internet comments by States Parties. Such broad consultations will ensure that the OHCHR process will have the necessary level of inclusiveness.

The United States believes that treaty bodies play a critical role in reviewing States Parties' implementation of their human rights obligations, and supports ongoing efforts to strengthen their work.

This Note is in response to the High Commissioner's November 14, 2011 request to Permanent Representatives in Geneva to provide "suggestions to enhance the efficiency, effectiveness and impact of the treaty body system..."

At this time, before getting into the specifics of the non-exhaustive list of proposals OHCHR has provided, the United States wanted to provide some general comments for stakeholders to consider as this process moves forward.

The United States Government's suggestions are as follows:

Strengthening the Existing Treaty Framework

It bears emphasizing that the discussion of strengthening the treaty bodies and enhancing their effectiveness must take into account the framework that is set forth in the treaties themselves. In negotiating the treaties and through their ratification, States vested the treaty bodies with certain enumerated functions. It is important to bear this in mind when reviewing the various proposals to ensure that all are cognizant of when a recommendation would alter the existing framework, and possibly require consideration of an amendment to a treaty. For example, pursuant to the treaties, treaty bodies are assigned responsibility for establishing their own rules of procedure, thereby recognizing the independence of the treaty bodies. In light of the cumbersome process for amending multilateral treaties, in the view of the United States, discussion of proposals requiring treaty amendments should be avoided.

Qualifications and Independence of Experts

The United States takes the process of nominating and electing qualified and independent experts to applicable treaty bodies as a privilege and serious responsibility. In the last two years, the United States conducted rigorous vetting processes to be able to nominate highly qualified candidates to the Human Rights Committee, the Committee Against Torture, and the Committee on the Elimination of Racial Discrimination.

Once candidates have been nominated by States Parties, and before elections, the United States would welcome additional voluntary transparent mechanisms for interested civil society organizations, national human rights institutions, and academic experts to be able to provide input and analysis on candidates. It remains the prerogative and duty of individual States Parties to nominate and vote for those candidates they feel are best qualified, but outside actors can play an important role in helping to provide increased transparency, information, and recommendations to States Parties.

The United States strongly believes that candidates should be independent, and should therefore not be employed or directly affiliated with any government at the time of their candidacy or while serving on a treaty body, and also have strong substantive and legal background in the treaty subject area.

Core Competencies

Given the serious backlog of reports, the United States believes it is increasingly important for treaty bodies to focus on their core function of considering States Parties' reports, and, as mandated, individual communications.

The Secretary General estimates that 19 percent of treaty body meeting time was used for activities other than considering States Parties' reports and individual communications. The United States would appreciate a more detailed breakdown of how this percentage was calculated, a better sense of what time and resources are devoted outside of formal sessions, and how this may vary for each individual treaty body. While the United States notes that some of this time was used by the treaty bodies to discuss improvement and harmonization of their working methods, it also included time for the elaboration of general comments or recommendations, days of general discussion, informal meetings with States Parties, inquiries, etc.

Recognizing the profound budgetary implications associated with increasing the amount of meeting time to reduce the backlog in reviewing States Parties' reports alone, not to mention costs associated with any proposals for work in new areas not contemplated by the treaties, the United States would welcome proposals that encourage and allow for the treaty bodies to increase the percentage of time spent working on responding to States Parties' reports and individual communications, and reduce the amount of time spent on other activities.

More Focused Exchange of Views

The United States is in favor of exploring ways to encourage a more focused exchange of information at all stages of the reporting process, including the development of the report, the hearing and the concluding recommendations. The United States is interested in exploring whether use of the List of Issues Prior to Reporting as has been utilized by the Committee Against Torture and the Human Rights Committee has resulted in more targeted reporting and constructive dialogue on significant issues related to treaty implementation. The United States would also welcome improved time management practices during the sessions that encourage a more focused exchange of views between the treaty body members and the representatives of the States Parties. Additionally, the United States anticipates more limited and targeted conclusions and recommendations would result in further efficiencies throughout the process.

Transparency/Digital Video Teleconferencing

The United States believes that the proposals that would make use of the latest technologies deserve further discussion. The United States believes it would be worthwhile for OHCHR to work with treaty body experts to offer, as a pilot program, to conduct a limited number of reviews through digital video teleconferencing.

Reviews and discussions of State Party reports could also be webcast. This would allow for greater transparency and contribute to the quality of reporting.

The United States would encourage OHCHR to explore launching a pilot program in this area within existing resources.

Additional Efficiencies and Budgetary Implications

As the various proposals are discussed in more depth, and ways to strengthen the treaty body system are looked for, the United States believes it would be useful to better understand the budgetary implications of each proposal. The United States therefore encourages OHCHR to provide potential budgetary implications for each of the proposals, and also indicate which proposals may be implemented without additional resources.

* * * *

B. DISCRIMINATION

1. Race

a. Overview

In 2012 the United States continued to promote implementation by States Parties of their obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and to advocate international cooperation to combat racial discrimination. The United States also pursued its domestic efforts to counter racial discrimination and stressed its view that combating racial discrimination and intolerance must not and need not occur at the expense of the right to freedom of expression. See section L.4., *infra*, for a discussion of U.S. views on racist hate speech, including the U.S. submission to the CERD Committee in August 2012.

b. Human Rights Council

On September 28, 2012, at the 21st session of the Human Rights Council, the United States provided an explanation of its “no” vote on a resolution entitled, “From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance.” U.N. Doc. A/HRC/RES/21/33. The U.S. explanation of vote follows, and is available at <http://geneva.usmission.gov/2012/09/28/22558/>.

* * * *

The United States remains fully and firmly committed to combating racism, racial discrimination, and related forms of intolerance. We believe the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) provides comprehensive protections in this area and constitutes the relevant international framework to address all forms of racial discrimination.

For the United States, our commitment to combat these problems is rooted in the saddest chapters of our history and reflected in the most cherished values of our union. And it is an ongoing challenge, as we heard from some of our colleagues in civil society at this session. We will continue to work with civil society and all nations of goodwill to combat racism, racial discrimination, and related forms of intolerance in all forms and all places, including through enhancing our implementation of the CERD.

Nevertheless, while we agree with many elements of this resolution, we regret that we cannot support it for a number of reasons, including the ones described here. We believe it serves as a vehicle to prolong the divisions caused by the Durban conference and its follow-up rather than a concrete approach for the international community to combat racism and racial discrimination. Our concerns about the Durban Declaration are well-known, including its unfair

and unacceptable singling out of Israel and its endorsement of overly broad restrictions on freedom of expression that run counter to the U.S. commitment to robust free speech.

This resolution also inappropriately attempts to revive the concept of defamation of religions, which had been correctly set aside by the OIC in resolution 16/18. Additionally, while we agree with the Working Group of Experts on People of African Descent about the need for continued vigilance and concrete efforts to address the inequality faced by persons of African descent, as well as members of other racial and ethnic minorities, we are concerned that its proposed draft Programme of Action for a Decade for People of African Descent, including efforts to create new human rights instruments and programs, will—in our view—do little to advance the needs of those it attempts to serve.

For these reasons we have voted no on this resolution.

* * * *

c. *Statement on U.S. efforts to eliminate racial discrimination at home and abroad*

At the 19th session of the Human Rights Council, the United States delivered a statement in the context of discussing item 9 on the agenda: racism, racial discrimination, xenophobia, and related forms of intolerance. The discussion followed up on implementation of the Durban Declaration and Programme of Action, on which the United States has consistently voiced its concerns. For background on Durban, see *Digest 2001* at 267-68, *Digest 2007* at 315-17, *Digest 2008* at 284-85, *Digest 2009* at 174-75, *Digest 2010* at 222-23, and *Digest 2011* at 159-62. The U.S. statement at the 19th session of the HRC, as delivered by Kelly C. Landry on March 20, 2012, is available at <http://geneva.usmission.gov/2012/03/20/u-s-strongly-supports-efforts-to-eliminate-racial-discrimination-both-at-home-and-abroad/> and is excerpted below.

* * * *

The United States strongly supports the elimination of racial discrimination at home and abroad. U.S. history reflects lapses, challenges, struggles, and, encouragingly, ongoing progress. We continue to examine ourselves, knowing that we still need to make progress in addressing discrimination and intolerance within our own country, and that it is only through hard work and careful scrutiny that we can push back against intolerance and discrimination both at home and around the world.

This battle continues as we enforce laws within the United States that protect the human rights of all individuals, including members of racial and ethnic minorities. Our laws recognize that promotion and protection of civil rights, non-discrimination, and equal opportunity are fundamental to ensuring universal respect for human rights.

The U.S. Department of Justice enforces some of our nation's most significant laws in this area – laws that combat discrimination based on race, ethnicity, religion, national origin, gender, sexual orientation and disability, so that our nation can fulfill its promise of true equal opportunity and equal justice. Thematically, we have been working to protect and promote human rights of minority individuals in many areas: law enforcement, housing, education,

employment, and political participation.

In the area of law enforcement, in the last three years the United States has filed a record number of law enforcement misconduct and human trafficking cases.

We secured a landmark conviction against five New Orleans police officers involved in shootings of civilians and an extensive cover-up that occurred in the wake of Hurricane Katrina.

In housing, in December 2011 the U.S. Government filed its largest residential fair lending settlement in history to resolve allegations that a mortgage company engaged in a widespread pattern or practice of discrimination against qualified African-American and Hispanic borrowers.

In the area of education, we entered into a comprehensive settlement agreement that resolved allegations of severe and pervasive harassment of Asian-American students.

Another area in which we continue to work toward the elimination of racial discrimination is in protecting the right to vote. We are committed to ensuring full participation in our democratic process through enforcement of our voting rights laws.

The right to vote is not only the cornerstone of our system of government—it is the lifeblood of our democracy. And no force has proved more powerful—or more integral to the success of the great American experiment—than efforts to expand the right to vote.

The United States also seeks to strengthen its partnership with other countries in the fight against racial discrimination. We are proud of this effort, including the U.S.-Brazil Joint Action Plan to Eliminate Racial and Ethnic Discrimination and Promote Equality, and a similar Action Plan with Colombia.

* * * *

On July 3, 2012, at the 20th session of the HRC, the U.S. delegation again delivered a statement that referred to its concerns about Durban. The statement, delivered by Emily Fleckner at an interactive dialogue with the special rapporteur on “Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance” emphasized that free expression exposes bigotry and hatred to the forces of reason and criticism. The statement is excerpted below and available in full at <http://geneva.usmission.gov/2012/07/03/open-and-free-expression-exposes-biqotry-and-hatred-to-the-forces-of-reason-and-criticism/>.

* * * *

The United States thanks the Special Rapporteur for his two reports—the first he has submitted to this Council since his appointment. We are profoundly committed to combating racism, racial discrimination, xenophobia and related intolerance and firmly agree with the Special Rapporteur that the importance and value of preventive measures cannot be overemphasized.

We support his recognition, in particular, that efforts to prevent and combat racism and racial discrimination must have meaningful participation by groups or individuals discriminated against in political life and decision-making processes on the grounds of their race, color, descent, or national or ethnic origin. For our part, the United States is committed to ensuring full political participation in our democratic process through enforcement of our voting rights laws. The right to vote is not only the cornerstone of our system of government—it is the lifeblood of

our democracy.

We also welcome the Special Rapporteur's call, in particular, to leaders to condemn political messages based on racism, racial discrimination and other forms of intolerance and xenophobia—including religious intolerance, anti-Semitism, and the targeting of individuals on account of their sexual orientation or gender identity.

In response to the Special Rapporteur's reliance throughout his reports on the Durban Declaration and Programme of Action as a normative framework, we would like to reiterate our well-known concerns. We cannot agree with the idea that criminalizing speech or prohibiting expression are effective approaches to combating the roots of racial discrimination and bigotry. We have learned over the course of our history that open and free expression exposes bigotry and hatred to the forces of reason and criticism and is therefore part of the solution in ending discrimination. Further, we cannot support the DDPA's unfair singling out of one country.

The United States is committed to effectively implementing our human rights treaty obligations with respect to non-discrimination and equal opportunity, including under the International Convention on the Elimination of All Forms of Racial Discrimination. To this end, the United States recently created an Equality Working Group to coordinate efforts by U.S. federal agencies in this regard. The Working Group will provide a mechanism to integrate and implement more fully a human rights perspective in U.S. agencies' programmatic and enforcement responsibilities in this area and engage with civil society.

The United States is deeply committed to engaging in an ongoing, thoughtful dialogue that can result in vigorous action to effectively combat racism and racial discrimination. We hope to work together to find common ground on concrete approaches that both protect the freedom of expression and combat all forms of racism and racial discrimination through constructive mechanisms.

* * * *

d. OAS Resolution on the Draft Inter-American Convention Against Racism

On June 4, 2012, the General Assembly of the Organization of American States ("OAS") adopted a resolution at its second plenary session relating to the Draft Inter-American Convention Against Racism and All Forms of Discrimination and Intolerance. AG/RES. 2718 (XLII-O/12). As in 2011 when the OAS General Assembly passed a similar resolution (see *Digest 2011* at 165-66), the United States provided a footnote (note 1) to the resolution expressing its views:

The United States continues to object to the negotiation of new legally binding instruments against racism, racial discrimination and other forms of discrimination or intolerance and reiterates our longstanding reservations and concerns with this and prior resolutions on the topic. The International Convention on the Elimination of All Forms of Racial Discrimination, to which some 170 countries are States Parties, including 33 members of this organization, prohibits discrimination on the basis of race, color, descent, or national or ethnic origin, and obliges States Parties to "undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination

in all its forms.” As this robust global treaty regime already provides comprehensive protections in this area, a regional instrument is not necessary and runs the risk of creating inconsistencies with this global regime. As early as 2002, the Inter-American Juridical Committee articulated similar concerns, concluding that it was not advisable to negotiate a new convention in this area. The United States believes that the resources of the OAS and of its member states would be better utilized at identifying practical steps that governments in the Americas might adopt to combat racism, racial discrimination and other forms of discrimination and intolerance, including best practices in the form of national legislation and enhanced implementation of existing international instruments. Such efforts should be aimed at bringing immediate and real-world protection against discrimination.

e. Ad Hoc Committee on the Elaboration of Complementary Standards

For background on U.S. work with the Human Rights Council’s Ad Hoc Committee on the Elaboration of Complementary Standards, see *Digest 2009* at 179-83). On September 28, 2012, the United States provided an explanation of position on a resolution adopted without a vote at the 21st session of the Human Rights Council on the elaboration of complementary standards for the International Convention on the Elimination of All Forms of Racial Discrimination. U.N. Doc. A/HRC/RES/21/30. The U.S. explanation of position follows, and is available at <http://geneva.usmission.gov/2012/10/10/u-s-explanation-of-position-complementary-standards-to-icerd/>.

The United States strongly supports concrete actions to better address racial and religious discrimination and intolerance. We believe it is evident that there are gaps in effective implementation by governments of their existing obligations under international human rights law. It was for this reason that we presented an extensive action plan to the Ad Hoc Committee in October 2009 that suggested concrete measures States can take to combat discrimination and intolerance in their nations. We look forward to working within the Committee to strengthen implementation as an effective approach to complementary standards.

2. Gender

a. Women, Peace, and Security

In 2012, both the Obama Administration and the United Nations continued efforts to promote the important role of women in conflict resolution and promoting and maintaining peace. Some of those initiatives, which follow on UN Security Council Resolution 1325 and related resolutions, are discussed below. See *Digest 2010* at 232-35 for a discussion of the efforts to implement Resolution 1325 as of its tenth anniversary.

(1) *The United States National Action Plan on Women, Peace, and Security*

See discussion in Chapter 17.C.3.

(2) *United Nations actions on women, peace, and security*

On February 23, 2012, U.S. Deputy Permanent Representative to the UN Rosemary A. DiCarlo delivered remarks during an open debate in the Security Council on women, peace, and security. In her remarks, excerpted below and available in full at <http://usun.state.gov/briefing/statements/184579.htm>, Ambassador DiCarlo praised the work of the UN Secretary General's special representative on sexual violence in conflict.

* * * *

...[T]he Secretary-General's report on conflict-related sexual violence demonstrates the importance of having a Special Representative on Sexual Violence in Conflict. In just the past year she was able, together with the Team of Experts, to assemble the evidence available in this report, and to begin to address some of the horrors it describes. From the beginning, the United States has supported the Special Representative and the Team of Experts, both in advocating their mandates and financing their work. It is time and money well spent.

The Special Representative has, first of all, gathered facts. We know now how rape was used to humiliate and punish during the post-election crisis in Cote d'Ivoire. We now know that 625 cases of sexual violence by warring parties were recorded by the United Nations from December 2010 to November 2011 in the provinces of North and South Kivu and Orientale, in the Democratic Republic of Congo. We have before us figures, dates, and names of perpetrators and perpetrating forces in these countries as well as in Burma, Somalia, Sudan and South Sudan. We also now have information, sometimes very extensive information, about sexual violence perpetrated in post-conflict situations and situations of civil unrest, in the Central African Republic, Syria, Guinea, Nepal and elsewhere.

The Special Representative and the Team of Experts have demonstrated the extent of the problem. Their work is also increasing awareness of the issue and encouraging best practices. In the reporting period, more than 150 people in the DRC, from various types of security forces, were sentenced after trial to punishment for crimes of sexual violence. 9,534 Congolese survivors of sexual violence in North and South Kivu and Ituri provinces, including at least 1,700 children, received medical and psychosocial support. Congolese officers in two conflict-affected provinces are now receiving training from MONUSCO to train their own soldiers in how to prevent sexual violence and deal properly with witnesses and victims. These training modules will become the national standard for the DRC. In Cote d'Ivoire, the Special Representative received a commitment from the president of the Truth and Reconciliation Commission that reparations for victims of sexual violence would be part of the commission's mandate. In Liberia and South Sudan, the Team of Experts has worked with national justice sectors on sentencing guidelines, training of police, Constitution drafting, and a host of other initiatives.

* * * *

The problem, unfortunately, remains vast. We have only begun. Impunity is still alarmingly common. In the DRC, Sheka Ntaberi ran as a candidate for office even as a warrant was out for his arrest for sexual violence. In Guinea, as detailed in the Secretary General's report, two men connected to the violence of September 2009, which included sexual violence, have since been given high government positions. Such impunity should not be tolerated. Apart from keeping a strong focus on ending impunity, we need to build our institutional capacity for early warning. We applaud the efforts of the Special Representative, United Nations Action, and UN Women to develop an early-warning framework.

As Council members, we need to make combating sexual violence part of our discussions with briefers, so that it becomes an integral part of our practice. We have recognized for some time that conflict-related sexual violence is a security issue, but this report places that matter beyond dispute. As is shown quite clearly, it is a security matter that impacts entire countries as well as individual communities, families, and individuals. It is also one that very much affects men and boys as well as women and girls. The report shows that in many places men are forced to watch their wives and daughters as they are being abused, and there are numerous cases of men and boys being sexually attacked by other men as a deliberate tactic of conflict. This is a security issue, not a women's issue. We must treat it as such, and develop the same strategies of early warning and prevention that we use for other security threats.

The United States welcomes and supports the recommendations in the Secretary-General's report, particularly the need for all parties to conflict to make specific and time-bound commitments to cease acts of sexual violence and bring perpetrators to justice. We particularly endorse the recommendation to address conflict-related sexual violence in the context of security-sector reform initiatives, including personnel training and civilian oversight mechanisms. The Council should also continue to consider conflict-related sexual violence in authorizing and renewing the mandates of peacekeeping missions, including monitoring, analysis and reporting arrangements.

...[T]he United States will stay engaged with this issue. As part of our new National Action Plan on Women, Peace and Security, the United States is working to strengthen our efforts to prevent and combat conflict-related sexual violence as we advance women's participation in preventing conflict and keeping peace. Our ultimate objective is to incorporate women and girls into our diplomatic, security, and humanitarian and development efforts in conflict-affected countries—not simply as beneficiaries, but as agents of peace, reconciliation, development, growth, and stability.

For example, the United States believes it is crucial to increase women's participation in security forces involved in preventing conflict and building peace as one way to reduce conflict-related sexual violence. The United States funds and implements the Global Peace Operations Initiative, which has facilitated the training of 2,451 female peacekeepers worldwide. This initiative supports instruction on prevention of sexual exploitation and abuse. Beginning last year, we have supported the pre-deployment training of Peruvian women peacekeepers focused on women, peace, and security issues in support of the United Nations Stabilization Mission in Haiti. And in Afghanistan, U.S. and Afghan officers provide instruction and mentoring to female soldiers in the Afghan National Army. In 2014, 10 percent of the Afghan military academy's class will be women, and there are already more than 1,200 women serving in the Afghan National Police, many of whom serve in leadership positions.

On July 2, 2012, at the 20th session of the Human Rights Council, the United States co-sponsored a statement on women's rights, peace, and security that was joined by 66 countries. The statement appears below and is available at <http://geneva.usmission.gov/2012/07/02/u-s-co-sponsors-joint-statement-on-womens-rights-peace-and-security/>.

* * * *

We recognise women's vital role in achieving and maintaining international peace and security and as such understand the need for equal political, civic and economic participation in times of peace, conflict and during periods of political transition. We also recognise that failure to respect human rights impacts on the wider peace and security agenda and reaffirm that women are equally entitled as men to the same rights enshrined in the UDHR and the two international covenants.

As such, we call on States:

- To protect the rights of women, especially in conflict and post-conflict situations;
- To promote equal involvement in all aspects of life during times of transition;
- And to ensure women's access to positions of decision making in order to build and maintain democratic and stable societies

...Sexual violence, specifically during periods of armed conflict, insecurity and transition as well as in post-conflict situations, disproportionately affects women and girls. Such violence not only undermines the safety, dignity and human rights of women and girls, but also undermines the critical contributions they make to society and hinders inclusive and sustainable peace processes. Sexual violence must therefore be addressed throughout all stages of conflict resolution, starting with ceasefire agreements, and we encourage the presence of adequate gender expertise at the peace table.

The Vienna World Conference on Human Rights expressed its dismay at massive violations of human rights including systematic rape of women in conflict. It stressed that perpetrators must be punished and such practices immediately stopped.

Sexual violence may constitute a war crime or crime against humanity and states are responsible for complying with their relevant international obligations to prosecute these crimes. We therefore commit to work through appropriate national and international mechanisms towards the prevention, early warning and effective response to sexual violence in conflict-related situations, including through tackling impunity and increasing the number of prosecutions.

We remind all States, particularly parties to conflict, of their obligations under applicable international law with regard to the prohibition of all forms of sexual violence.

...Times of transition have many causes. Elections or political change, conflict and natural disasters can all create uncertainty and upheaval. Whatever the cause, these times can present a period of immense vulnerability for women, but also a unique window of opportunity. Human rights violations and abuses must be prevented and the foundation for women's longer term empowerment must be laid.

To this end, we call upon all States, including those affected by conflict and undergoing political transitions, to protect and promote the human rights of women including such rights as

education and to the enjoyment of the highest attainable standard of health. We encourage all States to take proactive measures to address the barriers that prevent and discourage women from meaningful civic, economic and political participation, such as gender-based violence, poverty, unequal access to financing and to justice. We urge States to ratify CEDAW and implement their obligations under it. We urge all States to implement fully Security Council Resolution 1325 and its follow-up resolutions on Women and Peace and Security and General Assembly Resolution 66/130 on women and political participation

Finally we reaffirm and express full support for the important role of the UN in promoting gender equality between men and women and advancing the status of women. We welcome the role of UN Women and efforts to strengthen internal accountability and coordination. We especially note the role that the Human Rights Council and its Special Procedures could play within their respective mandates in supporting implementation of 1325.

* * * *

(3) G8 work on women, peace, and security

The Foreign Ministers of the G8 met in Washington, DC from April 11-12, 2012 to discuss a wide range of issues. Among the meetings hosted by the United States was an expert meeting on women, peace, and security. The G8 Foreign Ministers Meeting Chair's Statement, available at www.state.gov/r/pa/prs/ps/2012/04/187815.htm, includes the following on the role of women in international peace and security:

Women can be powerful actors for peace, security, and prosperity. When women participate in peace processes and other formal decision-making processes, they can initiate and inspire more progress on human rights, justice, national reconciliation, and economic revitalization. They can build coalitions across ethnic and sectarian lines and speak up for marginalized and minority groups. Yet women are regularly excluded, whether in peace negotiations or in political transitions. Recognizing that the political transitions in the Middle East and North Africa are unprecedented opportunities to broaden political participation and legitimacy across the region, the Ministers noted that more needs to be done to take advantage of this opportunity. The Ministers have strong concerns that women's political participation has been reduced in some countries and human rights and fundamental freedoms of women are at the risk of even further regression. They expressed strong concern over the continuing violence against women and girls worldwide, particularly sexual and gender-based violence in conflict and post-conflict situations and the fact that gender discrimination remains enshrined in many countries' legal systems. In response to these concerns, Ministers noted the important role the G8 can have in advancing the implementation of relevant UN Security Council resolutions on women, peace and security issues, and requested that G8 experts develop options for how the G8 might work together and with others to enhance the role of women in international peace and security.

b. Female Genital Cutting

On February 16, 2012, Secretary Clinton marked the day of zero tolerance for female genital mutilation with remarks delivered at the Department of State in Washington, DC. Her remarks are available at www.state.gov/secretary/rm/2012/02/184071.htm. Among other comments, Secretary Clinton announced U.S. support for a center in Kenya to advance strategies to end female genital cutting (“FGC”), lauded the growing number of African states that have outlawed the practice, and pledged to support a UN resolution banning it:

I’m very proud to announce today that we will join with the University of Nairobi to fund a pan-African Center of Excellence in Kenya, which will advance African research and strategies to address FGC. This center will focus on developing local solutions to end the practice and offer medical training on how to support the women who have been hurt and damaged by it. I hope others in the business and international communities will join the United States in supporting this very important new initiative based in Africa, where we think it needs to be.

Now, Kenya has just passed an outright national ban on FGC, becoming the 18th African country to do so. Last year, the African Union called on the UN General Assembly to adopt a resolution banning it, and we will certainly work in any way we can to support the African Union in that. There is more to be done. We need more advocacy, more interaction between policy makers and those in the field. We need to empower men and women, and especially girls, to speak up for themselves. We need to ultimately overcome the deeply-rooted gender inequalities that, either tacitly or actively, permit and promote such practices.

At the end of 2012, the UN General Assembly adopted its first ever resolution aimed at ending female genital mutilation. U.N. Doc. A/RES/67/146. The United States joined consensus on the resolution.

c. Women and children: right to nationality

On July 5, 2012, the Human Rights Council adopted by consensus a U.S.-led resolution on the right to nationality, with a specific focus on women and children. A State Department media note on the resolution is excerpted below and available at www.state.gov/r/pa/prs/ps/2012/07/194615.htm. Ambassador Donahoe also delivered an introductory statement at the time the United States introduced the resolution, available at <http://geneva.usmission.gov/2012/07/05/u-s-introduces-human-rights-council-resolution-on-the-right-to-a-nationality/>.

* * * *

...This is the first time that the Human Rights Council has addressed the issue of discriminatory nationality laws targeting women, which can lead to statelessness. In total, there were 49 co-sponsors supporting the resolution, with representation from every geographical region.

The resolution focused on the issues of protecting both a woman's and a child's right to a nationality, with the goal of reducing statelessness. The equal right to a nationality for women, including the ability to acquire and retain nationality and confer it on their children, reduces the likelihood that they will become stateless and vulnerable to serious harm. As many as 12 million people around the world are stateless. Without recognition as citizens by any government, stateless persons often lack access to legal employment, birth registration, marriage and property ownership, and face travel restrictions, all of which can increase the risk of exploitation and abuse, including forced migration and trafficking in persons.

While recognizing the right of each State to determine by law who its nationals are, the resolution urged States to refrain from enacting or maintaining discriminatory nationality legislation and to reform nationality laws that discriminate against women. Such actions would be consistent with States' obligations under international law, including Article 2 of the Universal Declaration of Human Rights, which provide that everyone is entitled to the rights and freedoms set forth in the Declaration without distinction on the basis of sex. In this regard, the United States recalls our own history of seeking to achieve equal nationality rights for women.

The resolution also welcomed the increased efforts of the United Nations High Commissioner for Refugees to prevent and reduce statelessness among women and children, particularly in light of last year's 50th anniversary of the 1961 Convention on the Reduction of Statelessness. The resolution also called for free birth registration for every child.

This resolution supports the Secretary's initiative to promote women's equal right to nationality, which emphasizes that women's rights are human rights.

* * * *

d. *Opposition to resolution on "traditional values"*

On September 27, 2012, Ambassador Donahoe delivered the statement by the United States explaining the U.S. vote in opposition to the resolution at the 21st session of the Human Rights Council on "Traditional Values." Ambassador Donahoe's statement, excerpted below, is available at <http://geneva.usmission.gov/2012/09/27/u-s-opposes-resolution-on-traditional-values-could-have-negative-effect-on-women-minorities-vulnerable-groups/>.

* * * *

Thank you. As we have said in the past, the concept of Traditional Values, not anchored to, or in conformity with, human rights law, undermines the universal principles enshrined in international human rights instruments, such as the Universal Declaration of Human Rights, and can have a particularly negative effect on the rights of women, minorities, LGBT individuals, and other vulnerable groups. We continue to have concerns about this resolution, and, for the following reasons, we will request a vote and will vote NO.

First, as the Human Rights Council's Advisory Committee noted in its initial Report (footnote 42), the common set of values of humankind are those in the Universal Declaration of Human Rights.

Second, we are also concerned, as was the Advisory Committee in its initial report, that the term "Traditional Values" has no internationally agreed-upon definition. The term has thus far been vague and open-ended and, as the Advisory Committee recognized, it could be used to legitimize human rights abuses.

Third, we also observe that the resolution quotes selectively from the Advisory Committee initial Report, disregarding core themes, thus presenting the Committee's conclusions in a wholly imbalanced and distorted manner. By way of example, and there are many, the initial Report makes the following salient points, all of which were ignored in the resolution:

Paragraph 40: "[I]t was equally necessary to recognize that some practices and attitudes at odds with human dignity also derived from traditional values."

Paragraph 41: "Those who benefit most from the status quo are more likely to appeal to tradition ... while those most marginalized and disenfranchised have the most to lose from a traditional values approach to human rights."

Paragraph 43: "[T]hose who challenge gender roles reinforced by values said to be traditional, cultural, or religious are particularly subject to violence and abuse of human rights."

Paragraph 48: "The negative impact of traditional values can be felt not only in non-Western countries... Traditional and cultural values in Western countries propagate harmful practices, such as domestic violence."

Paragraph 74: "[T]raditional Values must never be presented as a substitute for international standards, given the generally vague, subjective, and unclear framing of values when compared to human rights."

Paragraph 77: "In international human rights law, responsibility describes the State's obligation to promote and protect all human rights for all people. States have a responsibility to take sustained and systematic action to modify or eliminate stereotypes and negative traditional values and practices, and are encouraged to identify progress in this regard when reporting to international human rights monitoring mechanisms."

For these reasons, the United States will vote NO on this resolution.

* * * *

e. UN Commission on the Status of Women

The United States participated in the 56th session of the UN Commission on the Status of Women ("CSW") in February 2012. In her remarks at the session on February 29, Ambassador Rice spoke about the importance to global development of empowering rural women. Her remarks are excerpted below and available in full at <http://usun.state.gov/briefing/statements/184903.htm>.

* * * *

Thank you, Madame Chair. It is a great pleasure to join you today at the Commission on the Status of Women to speak about why the empowerment of rural women is vital to global development.

Growing evidence shows that investing in women is not only the right thing to do—it is the smart thing to do.

As Secretary Clinton has said, “To achieve the economic expansion we all seek, we need to unlock a vital source of growth that can power our economies in the decades to come. And that vital source of growth is women.” In rural economies—on which 70 percent of the world’s poor depend—women have a unique potential not only to help drive economic growth but also to help solve the crucial development challenges of our time, from food security to sustainable energy to global health. It is for this reason that the United States champions the advancement of rural women across a wide range of policies in key areas.

Take food security. Women are a sizable part of the world’s agricultural workforce, and are the outright majority in dozens of countries. They manage this in addition to caring for children and families, preparing meals and managing households, procuring water and firewood, and often also laboring in small-scale trading and enterprise.

Yet many rural women lack access to the capital, property, education and physical security that are essential to unlocking their potential. Women receive fewer and smaller loans than men do, and lack equal access to seeds, tools, and fertilizer. Closing the gender gap in agriculture would generate significant gains. According to the Food and Agriculture Organization, providing women equal access to productive resources could raise total agricultural output in developing countries by 2.5 to 4 percent and reduce the number of hungry by 100 to 150 million people worldwide.

That is why women are central to the U.S. global hunger and food security initiative, Feed the Future. In Kenya, we are tailoring agriculture extension services to fit women’s schedules and training women in leadership and business development. In Uganda, we are working with partners to implement a women-led “community connector” program that addresses nutrition, sanitation, and agriculture in an integrated way. And we are piloting new tools to measure gender-specific results, including an innovative “Women’s Empowerment in Agriculture Index” that was launched yesterday here at the CSW.

Rural women also have significant potential to contribute to sustainable energy solutions. Nearly 3 billion people globally still rely on traditional cookstoves and open fires to prepare food. Smoke exposure from these traditional methods causes an estimated two million premature deaths annually, predominantly women and children. Cookstoves also emit black carbon and greenhouse gases. As we work to build a global market for clean cookstoves, we need to involve women at every step in order to increase adoption rates and generate new economic opportunities, such as local businesses for sales, distribution and repair. We also need to make women a high priority at Rio+20.

Women can drive global health outcomes, and unlocking the potential of rural women requires focusing on the health needs of women and girls. That is why a key priority of the Obama Administration’s Global Health Initiative (GHI) is the Women, Girls, and Gender Equality Principle, which aims to redress gender imbalances related to health. We know it can work: in countries with a long-term commitment to family planning and maternal and newborn health, we have seen maternal mortality drop 30 percent or more. That is also why United States is proud to co-sponsor this year’s resolution on maternal mortality— as we have done in prior years—with dozens of partners from every continent.

Finally, women and girls should be at the forefront of our common efforts to combat violence, abuse and discrimination, with special attention to lesbian and transgender women, ethnic minorities, and the displaced, who are among the most vulnerable.

When President Obama signed his landmark Presidential Policy Directive on Global Development, the first of its kind by a U.S. administration, he elevated development as a core pillar of American foreign policy. He also called for new investment in women and girls as powerful forces for change in their economies and societies.

In my travels around the world, I seek out women to hear their views on the future, and I am always honored and humbled by their courage, ingenuity, and determination. A few months ago, I met with brave women in Libya. They spoke proudly of their role in the revolution and sought no less of a role in leading Libya into the future. Their experience, like so many others, shows us that we cannot leave half of any country's rich human potential untapped.

Speaking before the UN General Assembly last fall, President Obama challenged UN member states to “announce the steps we are taking to break down economic and political barriers that stand in the way of women and girls. That is what our commitment to human progress demands.” This is why we are here today. This session is an opportunity for us to challenge ourselves to go still farther, for there is much work yet to be done.

* * * *

3. Sexual Orientation

a. U.S. opposition to removing references to sexual orientation in UNGA resolution on extrajudicial, summary, and arbitrary executions

On November 20, 2012, Ambassador Elizabeth Cousens, U.S. Representative to ECOSOC, delivered the U.S. explanation of vote in opposition to a proposed amendment removing “sexual orientation” and “gender identity” from the UNGA resolution on extrajudicial, summary, and arbitrary executions. Ambassador Cousens’ statement appears below and is available at <http://usun.state.gov/briefing/statements/200946.htm>.

* * * *

The United States strongly opposes the proposed amendment to remove reference to sexual orientation and gender identity from resolution L.36. We will be voting “no” against the amendment and urge that all delegations do the same.

The deletion of this specific language suggests that people targeted for extrajudicial killing on account of their sexual orientation or gender identity do not enjoy the same right to life as others. Surely no country here today would condone the extrajudicial, summary, or arbitrary execution of any individual on the basis of sexual orientation or gender identity. That basic right to life is what is at stake. We must affirm that “all human rights apply to all” by voting to oppose this measure.

Two years ago, the General Assembly overwhelmingly voted to reinsert language on sexual orientation to this very resolution. Since that time, the Human Rights Council has

affirmed that all human rights apply to everyone, regardless of their sexual orientation or gender identity. As in 2010, we must reaffirm that principle by opposing this amendment today. The United States urges all delegations present here to oppose the deletion of this language and vote NO on this amendment to ensure that this language remains in the text that the Third Committee adopts today.

* * * *

b. Follow-up to resolution adopted on LGBT rights at HRC 17

One of the key outcomes to the United States from the 19th session of the Human Rights Council was the UN's first panel discussion on discrimination and violence based on sexual orientation and gender identity, as called for in resolution 17/19. See *Digest 2011* at 177-79 for discussion of this landmark resolution at the Human Rights Council on human rights, sexual orientation, and gender identity. Daniel B. Baer, Deputy Assistant Secretary of State for Democracy, Human Rights and Labor, delivered the U.S. statement at the panel discussion at the 19th session of the Human Rights Council on March 7, 2012, affirming support for the human rights of LGBT persons. That statement appears below and is also available at <http://geneva.usmission.gov/2012/03/07/lgbt-panel-2/>.

* * * *

The United States thanks the High Commissioner for her continued promotion of the human rights of LGBT persons, and for her office's December report clarifying the numerous ways in which the human rights of LGBT persons are protected under international law. We thank the 85 countries who joined a joint statement calling for an end to criminalization or violence against LGBT people in March of 2011. And we express our appreciation for South Africa's leadership on the resolution last June—the first-ever UN resolution affirming the human rights of LGBT people—which called for the High Commissioner's report and our discussion today.

In December, Secretary of State Clinton spoke here in Geneva about how protecting the human rights of all people, including LGBT people, remains part of the urgent unfinished work for those committed to making human rights a human reality. She came in a spirit of humility. She spoke about our own country's ongoing work—including the repeal of “don't ask, don't tell” which took effect last year and allows gay men and lesbians to serve openly in our armed forces. And she acknowledged that, for many, accepting that sexual orientation and gender identity do not affect a person's human rights is hard. But she also explained why it is both necessary and right.

So while she noted that sometimes religious or cultural values are offered as a reason to violate or not to protect the human rights of LGBT people, she also observed that “our commitments to protect the freedom of religion and to defend the dignity of LGBT people emanate from a common source. For many of us, religious belief and practice is a vital source of meaning and identity, and fundamental to who we are as people. And likewise, for most of us, the bonds of love and family that we forge are also vital sources of meaning and identity...Human rights are universal and cut across all religions and cultures... While we are

each free to believe whatever we choose, we cannot do whatever we choose, not in a world where we protect the human rights of all.”

And so, she said, “Like being a woman, like being a racial, religious, tribal, or ethnic minority, being LGBT does not make you less human. And that is why gay rights are human rights, and human rights are gay rights. . . . No matter what we look like, where we come from, or who we are, we are all equally entitled to our human rights and dignity.” And that’s why a commitment to the universality of human rights remains a central tenet of U.S. foreign policy.

There is much work to be done. Today, 76 countries still criminalize consensual same-sex relationships or conduct, five under penalty of death, and in far more countries, LGBT people face hatred, discrimination, violence or even death because of who they are or who they love.

The United States would welcome the panel’s comments on how protection of the human rights of LGBT persons is fully compatible with and in fact enhances protection of human rights—including freedom of religion, freedom of expression, and freedom of association and assembly—for all individuals.

* * * *

c. Presidential proclamation of Lesbian, Gay, Bisexual, and Transgender Pride Month, 2012

On June 1, 2012, President Obama issued proclamation 8834, making June 2012 “Lesbian, Gay, Bisexual, and Transgender Pride Month” and calling on “the people of the United States to eliminate prejudice everywhere it exists, and to celebrate the great diversity of the American people.” Daily Comp. Pres. Docs. 2012 DCPD No. 00439. Excerpts from the proclamation appear below.

* * * *

Since I took office, my Administration has worked to broaden opportunity, advance equality, and level the playing field for LGBT people and communities. We have fought to secure justice for all under the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, and we have taken action to end housing discrimination based on sexual orientation and gender identity. We expanded hospital visitation rights for LGBT patients and their loved ones, and under the Affordable Care Act, we ensured that insurance companies will no longer be able to deny coverage to someone just because they are lesbian, gay, bisexual, or transgender. Because we understand that LGBT rights are human rights, we continue to engage with the international community in promoting and protecting the rights of LGBT persons around the world. Because we repealed “Don’t Ask, Don’t Tell,” gay, lesbian, and bisexual Americans can serve their country openly, honestly, and without fear of losing their jobs because of whom they love. And because we must treat others the way we want to be treated, I personally believe in marriage equality for same-sex couples.

More remains to be done to ensure every single American is treated equally, regardless of sexual orientation or gender identity. Moving forward, my Administration will continue its work to advance the rights of LGBT Americans. This month, as we reflect on how far we have come

and how far we have yet to go, let us recall that the progress we have made is built on the words and deeds of ordinary Americans. Let us pay tribute to those who came before us, and those who continue their work today; and let us rededicate ourselves to a task that is unending—the pursuit of a Nation where all are equal, and all have the full and unfettered opportunity to pursue happiness and live openly and freely.

* * * *

The State Department observed Pride month, with remarks by Secretary Clinton broadcast on-line, available at

www.state.gov/secretary/rm/2012/06/192136.htm?goMobile=0. Secretary Clinton described State Department efforts on behalf of LGBT persons:

United States Embassies and Missions throughout the world are working to defend the rights of LGBT people of all races, religions, and nationalities as part of our comprehensive human rights policy and as a priority of our foreign policy. From Riga, where two U.S. Ambassadors and a Deputy Assistant Secretary marched in solidarity with Baltic Pride; to Nassau, where the Embassy joined together with civil society to screen a film about LGBT issues in Caribbean societies; to Albania, where our Embassy is coordinating the first-ever regional Pride conference for diplomats and activists to discuss human rights and shared experiences. And through the Global Equality Fund that I launched last December, we have strengthened our support for civil society and programs to protect and promote human rights.

We will not rest until full and equal rights are a reality for everyone. History proves that the march toward equality and justice will overcome barriers of intolerance and discrimination. But it requires a concerted effort from all of us. No matter how long the road ahead, I'm confident that we will travel it successfully together.

d. *Organization of American States*

On June 4, 2012, the General Assembly of the Organization of American States (“OAS”) adopted a resolution on “Human Rights, Sexual Orientation, and Gender Identity.” OAS Doc. No. AG/RES. 2721 (XLII-O/12) (included among the declarations and resolutions of the forty-second regular session, available at

www.oas.org/consejo/GENERAL%20ASSEMBLY/Resoluciones-Declaraciones.asp). The United States was among the co-sponsors of the resolution, which, among other things, resolves:

To condemn discrimination against persons by reason of their sexual orientation and gender identity; to urge member states within the parameters of the legal institutions of their domestic systems to eliminate, where they exist, barriers faced by lesbians, gays, and bisexual, transsexual, and intersex (LGBTI) persons in access to political participation and to other areas of public life; and to prevent interference in their private life.

4. Age

a. UN Working Group

In 2012, the United States continued to participate in the United Nations Open-Ended Working Group on Ageing. On August 21, 2012, Henry Claypool, a principal deputy administrator at the U.S. Department of Health and Human Services, delivered the U.S. statement at the working group's third session in New York. His statement, excerpted below and available in full at <http://usun.state.gov/briefing/statements/196777.htm>, emphasized the U.S. view that states should focus on implementing existing international obligations applicable to older persons as a more timely way of addressing aging issues than pursuing a new convention.

* * * *

In deliberating on whether or not to support a new convention, we urge member states to consider what new protections this treaty would contain that are not already present in existing treaties, as the rights articulated in existing treaties apply to older persons as well as younger persons. Furthermore, under the best of circumstances, producing a new convention will take years to negotiate and enter into force. And, as we know, unless a country has ratified a particular convention, it has no obligations under the treaty. Therefore, the U.S. government continues to favor the full exploration of options in addition to that of a new UN convention on the rights of older persons. We continue to favor actions that review and assess the status of aging in member countries and that effect improvements in older persons' lives in a timely way.

It is important to focus attention on implementing provisions in existing treaties as they apply to older persons, and to call upon existing Special Rapporteurs to examine aging issues within their mandates. Special Rapporteurs should, for example, identify aging-related concerns in countries they visit and advise on best practices for addressing them.

The United States attaches great importance to the completion of the ten-year review of the Madrid International Plan of Action on Ageing and the report to be presented to the UN Commission for Social Development in 2013. Countries are being asked to comment on all ten priority areas, including the topic of "realization of all human rights and fundamental freedoms of all older persons." After this process, we should then have a much better idea of how best to proceed to protect the rights of older persons, whether through a convention, a Special Rapporteur, or by other measures. We will have a better understanding of what is in place in countries, what gaps exist, and what best practices countries could implement.

* * * *

At the conclusion of the third session of the Open-Ended Working Group on Aging in August 2012, Courtney Nemroff delivered the U.S. closing statement, which follows. The closing statement looks forward to further action on the Madrid International Plan of Action on Ageing ("MIPAA" or "Madrid Plan"). The United States favors the Madrid Plan as a useful, balanced, pragmatic approach to the various difficulties facing older persons.

* * * *

The United States thanks Argentina for chairing this Third Working Group session, and has listened with interest to the panelists, member states, and civil society groups offering their views. We would like to address a topic of much discussion: whether it is advisable to pursue a UN convention on the rights of older persons.

Our overall goal should be to have states protect the rights of older persons. And this must be done in a timely way, to respond to the challenges older persons face now. After three Open-Ended Working Group sessions, no consensus has emerged on whether a new UN convention is the best way to do this. As many states and NGOs have pointed out, the rights of older persons are protected by current human rights law. It is not clear that a convention would be the best way to ensure implementation of these rights. A new convention would take sustained time and resources to develop. The U.S. government therefore continues to favor exploring all possible options to protect the rights of older persons, while not ruling out the possibility of a new UN convention.

The United States continues to favor focusing on identifying gaps and best practices to address them. The September meeting in Vienna on the Madrid International Plan of Action on Ageing offers an excellent opportunity for that. The U.S. delegation to that meeting will be reporting on all ten priority areas, including the topic of “realization of all human rights and fundamental freedoms of all older persons.” After the Madrid review and appraisal and the discussion of the report to the Commission on Social Development in 2013, we will have a better idea of what is needed to best protect the rights of older persons. In addition to a convention, one idea to consider might be the creation of a special procedure or independent expert on the rights of older persons, who could identify problems with the implementation of older persons’ rights and formulate best practices for addressing them.

There are also actions that can be taken in the very short term. Provisions in existing treaties applicable to older persons should be implemented. States Parties’ reports to existing treaty bodies could include specific information on implementation of their provisions with regard to older persons. Existing Special Rapporteurs could examine ageing issues within their mandates. And States and NGOs can discuss best practices, as they have been doing over the past few days.

Regarding the separate initiatives within the OAS and ECLAC, we would caution against proceeding with activities that would potentially be inconsistent with the work of the Open-Ended Working Group. ECLAC and OAS nations should await the results of the Open-Ended Working Group before deciding how to move forward. We firmly believe that a multilateral process involving member states and civil society representatives from all geographic regions would have more credibility and support than a regional effort.

We have heard much about the challenges and difficulties facing older persons in their day-to-day lives, as well as many interesting best practices from various countries. We would like to encourage governments and civil society to put into practice steps to improve the living conditions and protect the rights of older persons, so that they may overcome those challenges and continue to contribute to the richness of society. Thank you for your attention.

* * * *

b. Third Committee proposal for legal instrument to protect older persons

On November 27, 2012, U.S. Deputy Representative to ECOSOC Teri Robl provided the U.S. explanation of vote in the Third Committee of the UN General Assembly on a proposal to develop a new legal instrument on the rights of older persons. The U.S. explanation of vote follows, and is available at <http://usun.state.gov/briefing/statements/201377.htm>.

* * * *

Thank you, Mr. Chair. The United States has a strong history of policies, legislation, and programs that have focused on establishing and protecting the rights and dignity of older people, while promoting their independence. The goals of U.S. domestic policy are to increase older persons' access to services and full participation in the community, and focus attention and resources on the unique needs of older Americans.

During this Third Committee session, a consensus resolution on ageing issues and older persons has been put forward by the Group of 77 and is expected to be adopted with strong support from the United States and many other delegations. That resolution, entitled "Follow-up to the Second World Assembly on Ageing," and numbered A/C.3/67/L.13, calls for a fourth session of the Open-Ended Working Group on Ageing to be held in 2013, without pre-judging what its mandate should be. That resolution focuses on the Madrid International Plan of Action on Ageing and its upcoming Second Global Review, and looks forward to synergies between the Madrid Process and the work of the Open-Ended Working Group on Ageing. The United States will co-sponsor the G-77 resolution on the Follow-up to the Second World Assembly on Ageing.

In contrast, the resolution now before us would give the Open-Ended Working Group a mandate of considering proposals for a new international legal instrument on older persons, asking the Working Group to present to the General Assembly a proposal containing the main elements that should be included in such an instrument.

The main thrust of this resolution does not take into account the considerable discussions at the three Open-Ended Working Group sessions taking place during 2011 and 2012. During these discussions, no consensus has emerged on whether a new convention is the best way to protect older persons and advance their well-being.

Older persons face critical challenges involving violence and abuse, economic security, and health and nutrition needs—but older persons are already entitled to human rights protections under existing human rights instruments that provide for promotion and protection of human rights for all. There are actions that can be taken in the short term and within existing instruments that should be considered. Therefore, at this time, we find it inappropriate to have a resolution that would initiate steps towards drafting an international legally binding instrument. Scarce resources would be better spent on implementation of these existing rights, rather than on negotiation of a new document that reiterated those rights.

Negotiating a convention or other international instrument would require substantial human and monetary resources. Member state delegations would need to meet multiple times, most likely in a process lasting several years, in order to arrive at a document that could be adopted by consensus. Considering the budget constraints the UN, member states, and civil society organizations currently face, more reflection is needed to decide on the wisdom of such a

course of action, which would inevitably divert resources from addressing the more immediate and concrete needs of older persons.

For these reasons, the United States will vote no on the resolution “Towards a comprehensive and integral international legal instrument to promote and protect the rights and dignity of older persons.” We urge other Member States to do the same, in order to avoid sending conflicting messages about the appropriate way forward to address the issues of ageing and older persons.

* * * *

c. Human Rights Council

On September 28, 2012, the U.S. delegation to the 21st session of the Human Rights Council provided the U.S. explanation of position on a resolution on the human rights of older persons. U.N. Doc. A/HRC/RES/21/23. The U.S. explanation of position is excerpted below, and is available at <http://geneva.usmission.gov/2012/10/10/u-s-explanation-of-position-the-human-rights-of-older-persons/>.

* * * *

The United States places great importance on protecting the rights of older persons. We have sent senior representation from the Department of Health and Human Services to the Open Ended Working Group on Ageing in New York. In the conversations in New York, it has become apparent that there is no consensus among the member states on whether there is a normative gap with respect to the rights of older persons.

This resolution notes that older persons face many challenges, and highlights issues that affect older persons, such as abuse and violence. It does not, however, enumerate any new human rights. Rather, it stresses the importance of ensuring that older persons enjoy the same human rights as all other persons.

The working group in New York has also taken up the issues that this resolution proposes to address in an inter-sessional meeting. We feel this is duplicative of ongoing work and represents an inefficiency in the United Nations. We are also concerned about the significant budgetary strain this resolution places on OHCHR, and the limited ability of member states to provide increasing amounts of resources to enable OHCHR to perform the substantial amount of work that we have given it.

* * * *

5. Persons with Disabilities

a. Submission of Disabilities Convention for U.S. Senate Ratification

In May 2012, the U.S. Department of State hosted a major civil society conference on international disability rights. State Department Legal Adviser Harold H. Koh was one of the speakers at the conference. His remarks, excerpted below and available at www.humanrights.gov/2012/08/02/remarks-by-u-s-state-department-legal-advisor-koh-and-special-advisor-heumann-at-the-international-disability-rights-leadership-conference/, focused on U.S. support for the Convention on the Rights of Persons with Disabilities in anticipation of its submission later that month to the U.S. Senate for its advice and consent to ratification.

* * * *

...Today, let me stress that this administration is committed to the ratification of the Convention on the Rights of Persons with Disabilities

The treaty, as you know, internationalizes core domestic principles on disabilities that have been embodied in our law since at least 1973, when the Rehabilitation Act was passed, which includes principles of non-discrimination, reasonable accommodations, and equality of opportunity. And it has been carried forward, of course, in the American with Disabilities Act, which continue to address these points: non-discrimination, access, inclusion, and proactive exercise. At its core, the treaty expresses that these are universal values and applies existing human rights law to this context with specific detailed guidance on such rights as political participation, access to employment, and liberty of movement and how these should be applied and interpreted to protect persons with disabilities. Your presence here at the State Department should convince you of the importance and urgency of this issue to all of our State Department leaders and officials as well as the Secretary of State's own personal commitment on this issue.

* * * *

...[L]et's ... start to crystallize and agree upon the reasons why ratifying the disabilities convention is strongly in our national interest. And let me give you seven reasons which are the ones that I will be using in the days ahead. Not just on behalf of the U.S. government, but as an American committed to these issues. First, to ratify the Disabilities Convention would be a paradigm shift as with existing landmark domestic legislation. It would be a paradigm shift in the treatment of persons abroad, anchored in principles of inclusion, equality, and non-discrimination that Americans enjoy at home. It would underscore our commitment to these rights and enhance our ability to promote these rights overseas.

Second, and this is something that obviously matters to legislators, it would be good for Americans. The Disabilities Convention is intended to improve protections around the world for all persons with disabilities, but it would extend abroad rights that Americans with disabilities already enjoy at home. Partly because of the successful domestic legislation, there have been tremendous changes in our time here the United States.

Those of you who are my age remember when it was very unusual to have good access, when it was very rare to have signing at public events. We take these things now as things that we expect at ordinary occasions. But, when you travel abroad, when you conduct business, when you study, reside or retire overseas, if you're a U.S. citizen with disabilities, you will not be assured of these accommodations. And ratification would help to lead to greater protections, opportunities and benefits for millions of Americans with disabilities.

And let me underscore, those Americans include our veterans, and our wounded warriors for whom Congress has always shown in various ways unusual concern. And I think this issue ought to be emphasized if you really care about our veteran, you should care about whether those who live abroad are going to enjoy benefits because of disabilities rights being extended through the disabilities convention. Third, ratification would be good for U.S. leadership. It would better position for us to guide and encourage other countries to ratify and implement the Convention. And it would also help to level the playing field for the benefit of U.S. companies.

This is a fourth point: ratification would be good for U.S. business. And it would be a pretty straight forward point to make. American companies abide by disability principles in the United States. And the question is, how can their competitive edge be enhanced, given that they have already gone through the exercise of meeting accessibility requirements? Think about this as comparable to environmental rules. Once our companies made the change and internalized the cost of complying with environmental rules, it was very much in their interest to take those rules overseas and imbed them elsewhere. It also is critically important because our businesses excel at innovative exported products and technologies, electronic wheelchairs, mobility devices, accessibility computers, other electronic issues, create jobs, and this stimulates jobs here in the United States. So disability rights is good for business. And as you know, what's good for GM is good for the country.

Fifth, this will drive a race to the top. Ratification would drive a race to the top. Compare the Disabilities Convention with anti-corruption. When the United States Congress and the President signed the Foreign Corrupt Practices Act, U.S. companies had to clean up their act with regard to good governance. Then it became very much in their interest to drive the conduct of other countries and other companies up to their level rather than to recreate a race to the bottom. The fact of the matter is that as you all know, the Disabilities Convention does not require new legislation. If ratified with appropriation reservations, understanding, and declarations, it would be very much in the interest of U.S. companies, businesses and private entities to support ratification of this convention to take the obligations with which they already obey worldwide.

Sixth, ratification of the Disabilities Convention would be an advance in our own Disabilities Rights Movement. In the 40 plus years of domestic disability rights protection, we have accomplished a great deal. This is the next step. There is no "other" clear next step which is a clear advance forward. The Disability Rights Movement has so much momentum, it can move forward only if it is done at international level.

And seventh, ratification will allow the United States to cooperate with other countries on a web of future bilateral and multilateral arrangements to build, promote, and deepen an international regime on disability rights. There was discussion at this conference about why we need better coordination among multilateral and bilateral entities. The treaty contains an article – Article 32 – which discusses international cooperation, and recognizes the importance of state cooperation and national effort to implement accessible development programs, cooperation in research and science, and providing technical and economic assistance. These are just words now. But if we ratify the treaty and join others who do, in the web of international cooperation

on this issue, under the guiding principles of this treaty, we will go a great deal to greatly deepen and strengthen the international regime. Those of us who work in the human rights and rule of law field here at the State Department, everyday engage with the regime of human rights that has developed since the Universal Declaration. This is an obvious and necessary piece of it.

So, in conclusion, let me say this, you have accomplished a great deal in these few days. The State Department is with you, committed to these issues that we believe that disability rights are human rights, and that the human right of persons with disabilities are mainstream. That the concept of different but equal means non-discrimination, it means access, it means inclusion, and it means proactivity that we are determined to push this forward in the next step, which is through the ratification of the Disabilities Convention. That our challenge now is to define for others the seven reasons why ratification is very strongly in our interest. And that our goal should be to build a regime in our lifetime that will really make a difference here.

* * * *

On May 17, 2012, President Obama transmitted to the Senate for advice and consent the Convention on the Rights of Persons with Disabilities. S. Treaty Doc. 112-7. President Obama's transmittal message to the Senate appears below. Daily Comp. Pres. Docs. 2012 No. 00385 (May 17, 2012).

* * * *

I transmit herewith, for advice and consent of the Senate to its ratification, the Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on December 13, 2006, and signed by the United States of America on June 30, 2009 (the "Convention"). I also transmit, for the information of the Senate, the report of the Secretary of State with respect to the Convention.

Anchored in the principles of equality of opportunity, nondiscrimination, respect for dignity and individual autonomy, and inclusion of persons with disabilities, the Convention seeks to promote, protect, and ensure the full and equal enjoyment of all human rights by persons with disabilities. While Americans with disabilities already enjoy these rights at home, U.S. citizens and other individuals with disabilities frequently face barriers when they travel, work, serve, study, and reside in other countries. The rights of Americans with disabilities should not end at our Nation's shores. Ratification of the Disabilities Convention by the United States would position the United States to occupy the global leadership role to which our domestic record already attests. We would thus seek to use the Convention as a tool through which to enhance the rights of Americans with disabilities, including our veterans. Becoming a State Party to the Convention and mobilizing greater international compliance could also level the playing field for American businesses, who already must comply with U.S. disability laws, as well as those whose products and services might find new markets in countries whose disability standards move closer to those of the United States.

Protection of the rights of persons with disabilities has historically been grounded in bipartisan support in the United States, and the principles anchoring the Convention find clear expression in our own domestic law. As described more fully in the accompanying report, the

strong guarantees of nondiscrimination and equality of access and opportunity for persons with disabilities in existing U.S. law are consistent with and sufficient to implement the requirements of the Convention as it would be ratified by the United States.

I recommend that the Senate give prompt and favorable consideration to this Convention and give its advice and consent to its ratification, subject to the reservations, understandings, and declaration set forth in the accompanying report.

* * * *

The transmittal package also included Secretary Clinton's letter of submittal to the President, enclosing an executive summary, article-by-article analysis, and text of the Convention. As stated in Secretary Clinton's letter of submittal, excerpted below, the Convention was submitted with recommended reservations, understandings, and a declaration.

* * * *

I have the honor to submit to you the Convention on the Rights of Persons with Disabilities (the convention), adopted by the United Nations General Assembly on December 13, 2006, and signed by the United States of America on July 30, 2009. I recommend the convention be transmitted to the Senate for its advice and consent to ratification. Ratification of the convention would serve both to underscore our commitment to the rights of persons with disabilities and to enhance our ability to promote those rights internationally.

At its core, the convention seeks to ensure that persons with disabilities enjoy the same rights as everyone else and are able to lead their lives productively as do other individuals, if given the same opportunities. The United States has always been a world leader in ensuring the rights of individuals with disabilities, through legislation and enforcement measures. The United States has made great progress toward the goals of inclusion, equal opportunity, full participation, independent living, and economic self-sufficiency. By becoming a party to the convention, the United States would continue its leadership role and would be in a better position to support, assist, and encourage other states to ratify and implement the convention, thereby contributing to verifiable improvements in guaranteeing to persons with disabilities equality of opportunity, nondiscrimination, accessibility, and reasonable accommodation in foreign countries. In short, ratification would position us as a leader in promoting the rights of approximately 650 million people in the world who have a disability, including the large number of Americans with disabilities who travel, study, do business, and reside abroad. Ultimately, it will be persons with disabilities, both inside and outside the United States, who will benefit from the global acceptance and implementation of the convention.

Equality of treatment and nondiscrimination, precepts anchored in the United States Constitution, are the primary principles permeating the entire treaty. The convention's provisions apply these principles in a number of key areas, such as:

- Participation in political life and access to justice,
- Freedom from torture and cruel, inhuman, and degrading treatment.
- Accessibility, personal mobility, and reasonable accommodation,

- Health,
- Education,
- Employment,
- Housing, and
- Rehabilitation.

To assist the Senate in its consideration of the convention, I am enclosing a detailed report containing an article-by-article analysis, which addresses U.S. convention implementation. Included in that analysis are three reservations, five understandings, and one declaration that are recommended for inclusion in the Senate's resolution of advice and consent. As further discussed in the enclosed report, if the United States makes the proposed reservations, understandings, and declaration, existing domestic law will serve to implement the convention.

It is my belief that if ratified as outlined above, adoption of the convention would be advantageous to the United States. All relevant U.S. government departments and agencies, including key implementing departments and agencies, participated actively in this review of the convention's provisions with respect to their domestic authorities. In particular, the Departments of Justice and Health and Human Services and the Equal Employment Opportunity Commission join me in recommending that the convention be submitted to the Senate for its early and favorable consideration and advice and consent to ratification, subject to the reservations, understandings, and declaration set forth in the enclosed report.

* * * *

On July 31, 2012, the Senate Committee on Foreign Relations issued its report on the Disabilities Convention, recommending the full Senate give its advice and consent to ratification with the reservations, understandings, and declaration recommended in the transmittal package. S. Exec. Rept. 112-6. The Senate Report includes the testimony of witnesses at the July 12, 2012 committee hearing on the Convention. Excerpts follow from the prepared statement of Judith Heumann, Special Adviser for International Disability Rights at the U.S. Department of State, in support of U.S. ratification.

* * * *

As the Special Adviser for International Disability Rights at the U.S. Department of State, I firmly believe ratification will help us to advance our diplomacy abroad, enabling us to highlight how our advances have helped improve the lives of millions of disabled people and their family members. I grew up at a time when our country was just beginning to realize the value of ensuring the rights of persons with disabilities. Thanks to unstinting leadership from parents and disabled people, and the advocacy of many people, including Members of Congress and disabled veterans, we had begun the process of recognizing that our society should respect and promote the dignity, equality, and contributions of disabled individuals. However, as a child I did not have the benefit of accessible communities, inclusive schools, or accessible transportation. Without even simple curb cuts, I wheeled in the streets amongst oncoming traffic. I could not ride our buses or trains. I was not allowed to go to school until I was 9 years old, and then received poor quality education segregated from the rest of my peers. When I applied for my first job as a teacher, I was initially denied my certification simply because I could not walk.

Today, I am proud to say that such blatant forms of discrimination are no longer permissible in our society. The United States has been a leader in this area. With strong legislation and effective enforcement honed over more than four decades of experience, Americans with disabilities are respected and included in our society to a degree unrivaled in our history. We can live, work, and travel with our fellow citizens, and we see Americans with disabilities serving at the highest levels of government and industry. Unfortunately, the same cannot be said for the majority of the 1 billion disabled people around the world, or Americans with disabilities, including veterans, who live, work, serve, retire, study, travel, and reside abroad. In developing countries it is estimated that 90 percent of children with disabilities do not attend school. Many disabled children are killed at birth simply because of their disability. I know from my own international work that basic physical access for disabled people is still a dream in many countries, and that enduring cultural stigmas force people with disabilities, who yearn to work and contribute to their families and societies, into abject poverty. I have also experienced firsthand the frustration of traveling in places where it is unfathomable that a significantly disabled person like me would ever leave their home, much less wish to board an international flight.

Against this backdrop of exclusion and discrimination is the vision of progress that we have achieved in the United States, made real through the rule of law, which inspired the international community to draft the Disabilities Convention. At its core, the Convention seeks to ensure that persons with disabilities enjoy the same rights as everyone else and lead their lives as do other individuals, if given the same opportunities. As with the comprehensive network of U.S. Federal disability law, the Convention expresses the principles and goals of inclusion, respect for human dignity and individual autonomy, accessibility, and equal enjoyment of rights. Equality of opportunity and nondiscrimination are the primary principles permeating both the Convention and U.S. domestic disability law. They animate the important issues addressed by the Convention, including: political participation; access to justice; respect for home and the family; education; access to health care; employment; freedom of expression; and respect for individual autonomy including the freedom to make decisions about how a person wishes to live their life. By requiring equality of opportunity and reasonable accommodation for persons with disabilities, the Convention is reflective of the principles of U.S. disability law, drawn from such core legislation as the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Individuals with Disabilities Education Act (IDEA). This principle of equality is of course enshrined in the Fifth and Fourteenth Amendments to the United States Constitution.

Given that the Disabilities Convention is animated by the principles underlying U.S. disabilities law, and that it does not create new rights for disabled people, no new legislation would be required to implement the Convention if ratified with the recommended reservations, understandings, and declaration. Significantly, the United States would implement its obligations under existing law; the Convention would not give rise to any new individually enforceable rights. Therefore, you may ask why we should bother to ratify the Convention? Simply put, ratification of the Disabilities Convention will strengthen U.S. interests. It will promote tangible benefits for U.S. business and the approximately 50 million Americans with disabilities, including the 5.5 million American veterans with disabilities, who wish to live, work, serve, retire, study, travel, and reside abroad. By ratifying this Convention we will be putting ourselves in a position to assist our international partners to do as much as we have done domestically to enhance disability rights.

Prior to the adoption of the Convention, fewer than 50 countries around the world had adopted some form of nondiscrimination legislation to protect the rights of persons with disabilities. Ratification of the Convention by over 114 countries has since led to a dramatic increase in international interest in addressing the rights of persons with disabilities. However, overall standards of protection around the world typically remain subpar, as does enforcement of the protections that do exist. Such conditions limit opportunities abroad for Americans with disabilities. U.S. citizens with disabilities frequently face barriers when they travel, conduct business, study, serve, reside, or retire overseas. With our extensive domestic experience in promoting equality and inclusion of persons with disabilities, the United States is uniquely positioned to help interested countries understand how to effectively comply with their obligations under the Convention. Indeed, provision of such technical assistance and knowledge sharing forms an important part of my work with the Department of State. However, the fact that we have yet to ratify the Disabilities Convention is frequently raised by foreign officials, and deflects from what should be center stage: how their own record of promoting disability rights could be improved. Though I take great pride in the U.S. record, it is frankly difficult to make best use of the “bully pulpit” to challenge disability rights violations on behalf of Americans with disabilities and others, when we have not ratified the Convention. Ratification would give the United States legitimacy and a platform from which to push for the adoption and implementation of the Convention’s standards in other countries. This in turn will likely result in concrete improvements (such as fewer architectural barriers and accessible air travel) in those nations that bring their national laws into compliance, thus affording greater protections, opportunities, and benefits to the millions of U.S. citizens with disabilities who currently face barriers abroad.

Our failure to ratify has also undermined our advocacy for persons with disabilities in multilateral and regional fora, where ratification of the Convention has become a de-facto prerequisite for meaningful engagement in discussions on promotion of disability rights. For example, by ratifying we would be able to amplify our voice in the Disabilities Convention’s Conference of States Parties, to which the United States sends delegations of disability rights experts but currently only as an observer. This severely curtails the role that the United States can play in such meetings, particularly as more countries ratify. By joining the 114 other States Parties to the Convention, we could help shape the international disability agenda by taking a more prominent role in future Conferences, shaping and leading Conference meetings and panel discussions and more actively contributing to the international disability rights dialogue. We will be a leading force in the drive to both improve lives and increase understanding and cooperation among States, as well as to impact the development of international standards on accessibility. Disability diplomacy will have a positive effect on overall bilateral and regional diplomacy of the United States, by allowing us to leverage the shared value of disability rights to promote dialogue on other issues of importance to U.S. foreign policy. We have found that inclusion of disability rights in the work of the State Department amplifies our ability to achieve our broader foreign policy objectives. However, this work is unduly hampered by our not having a seat at the table as a State Party.

Ratification would also be good for American business. By encouraging other countries to join and implement the Convention, we would also help level the playing field to the benefit of U.S. companies. It would enhance the competitive edge for our companies whose operations and hiring already meet accessibility requirements. Guiding and encouraging improved disability standards abroad would also afford U.S. businesses increased opportunities to export innovative

products and technologies (such as electronic wheelchairs and other mobility devices, as well as accessible computers and electronics), thereby potentially stimulating job creation at home. As accessibility standards become more harmonized—a business objective that the United States can more credibly support if it becomes a State Party—the competitive edge increases for U.S. companies even further with the opening of markets.

As I travel and meet disabled people from around the world, I am often reminded of how far we have come in the United States over the course of my lifetime, and how far so many countries have yet to go in ensuring that persons with disabilities are full and equal members of their societies. I also meet Americans with disabilities and their family members, who talk of the struggles they have faced abroad to live, work, and study with dignity and respect. Just as the ADA and related laws have become the gold standard for domestic disabilities legislation, U.S. ratification of the Disabilities Convention would represent a paradigm shift in the international treatment of persons with disabilities. The treaty is anchored in the overarching principles of inclusion, equality, and nondiscrimination that Americans already value at home. Ratification would serve both to underscore the enduring U.S. commitment to disability rights and to enhance the ability of the United States to promote these rights overseas. U.S. ratification would better position the United States to exercise its leadership role to guide and encourage other countries to ratify and implement the Convention. Leading by example, in what we do and what we say, is a hallmark of America's principles and policies. Any opportunity that we have to positively influence the practice of other countries in respecting the rights of persons with disabilities helps to create a world in which Americans with disabilities can promote American values by pursuing travel, work and study abroad unhindered by the barriers they currently face. Such opportunities can only be enhanced by our ratification of the Disabilities Convention.

In sum, ratification is good for America and good for Americans. It will provide the United States with a critical platform from which to urge other countries to improve equality of individuals with disabilities, including Americans who travel or live abroad, and including children with disabilities, whose plight is particularly neglected in many parts of the world. The transformation which paved the way in the United States for children with disabilities to grow up with their families, go to school, and live as full participants in society has simply not taken place in much of the rest of the world. To promote the rights of individuals with disabilities overseas more effectively, the United States can use its ratification of the Convention as a vehicle to encourage, guide, pressure, and persuade other States Parties to implement better disability standards and provide greater disability rights protection in their countries, including to Americans. Ratification is a win-win, as protections in the United States would not need to be changed, and joining would not affect U.S. sovereignty. Ratification would open up opportunities for U.S. citizens, organizations, and businesses abroad, including our disabled youth, who rightly expect to be full participants in shaping our world's future.

Ratification of the Disabilities Convention would mark a momentous step toward the protection and advancement of the rights of persons with disabilities wherever they may live. It is a significant step for both its profound impact on our diplomatic leadership and for its tangible benefits to everyday Americans. Finally, in keeping with America's longstanding bipartisan tradition of support for the rights of disabled people, ratification of the Disabilities Convention is the right and just thing to do.

* * * *

The Senate Committee Report recommending ratification also included the testimony and prepared statement of Eve Hill, Senior Counselor to the Assistant Attorney General for Civil Rights at the U.S. Department of Justice. Ms. Hill's prepared statement, supporting U.S. ratification of the Disabilities Convention with the reservations, understanding, and declaration recommended by the executive branch of the U.S. government, is excerpted below.

* * * *

We in the United States are world leaders in the effort to protect the rights of persons with disabilities. Our early initiatives to protect disability rights and the subsequent decades-long effort to enhance disability rights have resulted in a panoply of American laws that protect the rights of persons with disabilities to a greater extent than any other country on the globe. Where many other countries approach disability rights from an aspirational vantage, we match our legislation with concrete, effective enforcement mechanisms that have led to visible, notable changes in our society in our lifetimes. Curb cuts, ramps, accessible parking spaces, American Sign Language interpreters, service animals—these are just a few of the groundbreaking changes that have swept through our society thanks to our vigorous enforcement of disability-rights laws.

While we in the United States too often take the tremendous advances in disability rights for granted, much work remains to be done and the Department of Justice and other Federal agencies are actively addressing discrimination on the basis of disability arising in a variety of arenas. These implementation efforts are driven by domestic law and practice and this approach would not change with the ratification of the Disabilities Convention. The Americans with Disabilities Act (ADA) addresses the disability nondiscrimination obligations of State and local governmental entities, including educational institutions, local government offices, parks, libraries, hospitals, nursing homes, and more, and by private entities, including stores, restaurants, recreational facilities, banks, and other providers of goods and services. The ADA also prohibits disability discrimination by employers with 15 or more employees. Our disability-rights laws affect more than 6 million businesses and nonprofit agencies, 80,000 units of State and local government, and 54 million people with disabilities. In addition, our Federal government has been committed to disability rights in its own programs and services, as well as those it funds, for decades through the Rehabilitation Act of 1973, the Architectural Barriers Act, and many other Federal laws.

Along with the Department of Justice, a panoply of other Federal agencies and entities are engaged in efforts to address discrimination on the basis of disability, including the Department of Housing and Urban Development, the Department of Education, the Department of Veterans Affairs, the Department of Health and Human Services, the Department of Transportation, the Federal Communications Commission, the U.S. Access Board, and the Equal Employment Opportunity Commission (EEOC), each of which takes on significant responsibilities for the enforcement of our domestic disability-rights laws.

The Disabilities Convention is firmly grounded in, and animated by, the principles underlying U.S. disabilities laws, including the Rehabilitation Act of 1973, the ADA, and the Individuals with Disabilities Education Act. Therefore, ratifying the Disabilities Convention will not require new legislation and will not create any new rights, so long as it moves forward with the recommended Reservations, Understandings, and Declaration (or RUDs). The Convention

was finalized in December 2006 after several years of drafting and negotiations, during which a U.S. delegation played an active role and joined in the consensus adoption of the Convention. The influence of U.S. disability law on the Disabilities Convention is apparent in the way the Convention mirrors our robust and well-developed U.S. disability-rights legislation. The Disabilities Convention follows the core principles of U.S. disability-rights laws— equality of treatment and nondiscrimination, with an emphasis throughout the Convention of rights provided “on an equal basis with others.” It incorporates concepts central to U.S. disability-rights law, such as independent living, inclusive education, and reasonable accommodation, limited, as it is in U.S. law, by the qualification that an accommodation need not be made if it entails undue burden or expense.

The administration has proposed that the Senate consider a package of three Reservations, five Understandings, and one Declaration that will allow the United States to be in full compliance with the Convention without any changes to U.S. law. These are detailed in the transmittal package, but I would like to speak to three of them today.

First, the package includes a federalism reservation, similar to the federalism RUDs that were taken with the ratification of the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). This federalism reservation would limit the obligations of the United States in areas covered by State and local government jurisdiction to measures appropriate to the Federal system, maintaining the current allocation of authority between the Federal Government and the 50 States. While we have a significant network of Federal disability laws, some treaty articles would be primarily implemented under State laws, such as Article 12, which addresses guardianship, and Article 14, which addresses civil commitment. In most cases, State and local laws and practices meet or exceed the requirements of Federal law and thus the Convention. In instances governed primarily by State law where some State and local protections may be less robust than the Convention would require, such as regarding Article 12(4), which addresses safeguards in determinations of legal capacity, the federalism reservation would preserve the existing balance of authority between the Federal Government and the States. As we have observed, led by the advances at the Federal level, the dominant trend in State and local disability rights laws has been toward improvement and modernization. Thus, while the adoption of a federalism reservation will allow us to adopt the Disabilities Convention without any new legislation, it in no way will impede us from continuing forward progress in disability rights protection.

I would also like to underscore the recommended reservation on private conduct. Similar to a reservation taken in treaties already ratified, such as the ICCPR and CERD, the private-conduct reservation is intended to ensure that regulation of the conduct of private parties under the Convention, including businesses and nongovernmental organizations, is coextensive with such regulation under existing domestic law. United States law extensively governs significant areas of nongovernmental activity, such as disability discrimination by public accommodations, transport carriers, communications networks, and employers. At the same time, the U.S. Constitution and laws recognize a zone of private activity that is not extensively governed by Federal or State government, and, in some cases, expressly enjoys constitutional protection. This important reservation, therefore, would limit the treaty obligations undertaken by the United States respecting regulation of private conduct to be coextensive with such regulation under the Constitution and domestic laws of the United States. As the EEOC has separately confirmed to the committee, with the proposed RUD package, the United States will rely on existing law to fully comply with the Disabilities Convention. ...

Third, I also would like to address the proposed non-self-executing Declaration which would make it clear that the Convention could not be directly enforced by U.S. courts and would not give rise to individually enforceable rights. This is consistent with our treaty practice under the ICCPR, CERD, and the Convention Against Torture. With this Declaration and the other Reservations and Understandings, the United States would be able to implement its obligations under the Disabilities Convention using the existing network of laws and Federal enforcement machinery that afford protection and guarantees of nondiscrimination to persons with disabilities. As such, no new legislation would be required to ratify and implement the Convention.

With the ratification of the Disabilities Convention, we will greatly enhance our capacity to influence other countries to move toward the vigorous, effective standards we have set at home. In turn, as other countries move forward, American veterans, business people, retirees, students, tourists, Active-Duty military, and others will be able to enjoy the same kinds of accessibility and nondiscrimination overseas that they currently enjoy in the United States. Thus, with the ratification of the Disabilities Convention, we will level the playing field for American businesses that are already complying with accessibility standards and provide new opportunities for the export of accessible technology.

Protection of the rights of persons with disabilities has historically been grounded in bipartisan support and the principles anchoring the Convention find clear expression in our own domestic law. We therefore urge that this committee give prompt and favorable consideration to this Convention, and that the full Senate give its advice and consent to its ratification, subject to the administration's proposed reservations, understandings, and declaration.

* * * *

The Senate Committee Report also includes responses by Ms. Heumann and Ms. Hill to the numerous questions submitted by members of the committee. A few of those questions and responses appear below. The complete responses are available in Annex 3 to the Report, beginning at page 129.

* * * *

RESPONSES OF JUDITH HEUMANN TO QUESTIONS SUBMITTED BY SENATOR JOHN F. KERRY

Question. Article 46, paragraph 1 of the Convention states that “[r]eservations incompatible with the object and purpose of the present Convention shall not be permitted.” Does the administration believe that the three reservations it has proposed are compatible with the object and purpose of the Disabilities Convention?

Answer. Yes. The United States has a comprehensive network of existing Federal and State disability laws and enforcement mechanisms. In the majority of cases, existing Federal and State law meet or exceed the requirements of the Convention. The proposed reservations make it clear that, in the narrow circumstances that federalism or private conduct concerns are implicated, the United States has limited its obligations on the international plane to those that can be implemented under existing law appropriate to our Federal structure.

* * * *

RESPONSES OF EVE HILL TO QUESTIONS SUBMITTED BY
SENATOR JOHN F. KERRY

Question. In his written testimony submitted to the Committee, Dr. Michael Farris asserts that if the United States were to become party to the Disabilities Convention, it would “require [] radical changes to American law.” Does the administration agree with this assertion?

Answer. No. With the proposed reservations, understandings, and declaration, the United States would be able to implement its obligations under the Disabilities Convention using the existing laws, regulations, and Federal enforcement mechanisms that afford protection and guarantees of nondiscrimination to persons with disabilities. Therefore, no new legislation, regulation, or enforcement mechanisms would be required to ratify and implement the Disabilities Convention.

Question. In his written testimony submitted to the Committee, Dr. Michael Farris asserts that, “[t]oday, under the IDEA parents get to decide what they think is best for their child—including the right to walk away from government services and provide private or home education. Under the UNCRPD, that right is supplanted with the rule announced by Professor van Buren. Government officials have the authority to substitute their views for the views of parents as well as the views of the child as to what is best. If the parents think that private schools are best for their child, the UNCRPD gives the government the authority and the legal duty to override that judgment and keep the child in the government-approved program that the officials think is best for the child.” Does the administration agree with this interpretation of the Convention?

Answer. No. In light of the federalism and private conduct reservations and the nondiscrimination understanding, no changes to Federal, State or local law regarding the ability of parents in the United States to make decisions about how to raise and educate their children would be required as a result of ratification. Furthermore, the recommended understanding on economic, social, and cultural rights makes clear that in the context of the education of a disabled child, the obligation of the United States under the Convention with regard to consideration of the principle of “best interests” is limited to nondiscrimination.

Question. In his written testimony submitted to the Committee, Dr. Michael Farris asserts that, “[a]ny and all parental rights provisions in state education laws will be void by the direct application of Article 7 of this treaty. Government—not parents—has the authority to decide what is best for children.” Does the administration agree with this assertion?

Answer. No. Parental rights provisions in Federal and State education laws will not be voided by Article 7 of the Disabilities Convention. In light of the federalism and private conduct reservations and the nondiscrimination understanding, no changes to Federal, State or local law regarding the ability of parents in the United States to make decisions about how to raise and educate their children would be required as a result of ratification.

Question. In his written testimony submitted to the Committee, Dr. Michael Farris asserts that, “[e]ven with the presumption of the non-self-executing nature of the treaty, if the Senate ratifies this treaty, Congress will have the duty to revise the IDEA to comply with the provisions of the UNCRPD. Therefore, unless we intend to breach our international legal obligations, Congress will be required to modify the IDEA to ensure that government decisionmakers, and not parents, have the final say as to what they believe is best for a child.” Does the administration agree with this assertion?

Answer. No. Ratification of the Disabilities Convention will not require Congress to modify existing law to provide that government decisionmakers, and not parents, have the final say regarding the best interests of a child. With the proposed package of reservations, understandings, and a declaration, ratification of the Disabilities Convention will not require any revision of the Individuals with Disabilities Education Act or any other U.S. law or regulation. In light of the federalism and private conduct reservations and the nondiscrimination understanding, no changes to Federal, State or local law regarding the ability of parents in the United States to make decisions about how to raise and educate their children would be required as a result of ratification.

In addition, the non-self-executing declaration is not a “presumption” but, as stated in the Secretary’s Report (Treaty Doc. 112–7, pp. 3 and 82), provides that the Convention would not be directly enforceable by U.S. courts or itself give rise to individually enforceable rights. The Supreme Court treated a non-self-executing declaration as dispositive in the case of *Sosa v. Alvarez-Machain*, 542 U.S. 692, 728, 735 (2004).

* * * *

RESPONSES AND SUPPLEMENTAL RESPONSES OF JUDITH HEUMANN AND EVE HILL TO QUESTIONS SUBMITTED BY SENATOR RICHARD G. LUGAR

Question #1. If the United States became party to the Convention, would the Convention’s obligations apply to conduct of the United States that occurs outside the territory of the United States?

Answer. We do not read the Convention’s obligations to apply to U.S. conduct outside the United States, except insofar as the Convention reaffirms such existing extraterritorial obligations as in Article 11. The Convention additionally envisions international cooperation measures under Article 32 (which addresses international cooperation programs intended to assist foreign governments and individuals with disabilities abroad, which the United States has already established through USAID and the State Department). U.S. ratification, moreover, would have positive effects outside the United States. For example, it would give the United States a critical tool in its bilateral and multilateral work to promote the rights of persons with disabilities around the world, and it would enable the United States to use treaty mechanisms (such as the Conference of States Parties) to exchange best practices and to guide other States Parties in their adoption of laws, policies, and practices to implement the Convention.

* * * *

Question #3. Subsection (w) of the convention’s preamble states “Realizing that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights.”

- What is the “International Bill of Human Rights” referred to in this subsection?
- Does the administration believe that States have a legal obligation to recognize the rights contained in the “International Bill of Human Rights?” If so, what is the source of this obligation?
- Does the administration interpret the convention to impose legal obligations on individuals to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights?

• Does the administration interpret any other body of international law, including customary international law, to impose legal obligations on individuals to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights?

Answer. The International Bill of Rights refers to the Universal Declaration of Human Rights (from which the quoted language in Question 3 is drawn in part), which is not a legally binding instrument; the International Covenant on Civil and Political Rights, to which the United States is a party; and the International Covenant on Economic, Social and Cultural Rights, which the United States has signed but not ratified. States Parties to the legally binding instruments have an obligation to recognize the rights contained in such instruments, as ratified by them. Neither the Disabilities Convention nor any other body of international law imposes legal obligations on individuals to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights.

* * * *

Question #5. Article 4 provides that “States parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.” What are the particular “human rights and fundamental freedoms” to which the obligations in this article apply?

Answer. Article 4 imposes an obligation of nondiscrimination on the basis of disability with respect to the human rights and fundamental freedoms set out in human rights treaties ratified by the United States. These include the International Covenant on Civil and Political Rights, the Convention for the Elimination of All Forms of Racial Discrimination, and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

* * * *

On December 4, 2012, the Senate voted 61 in favor and 38 against the resolution of advice and consent to ratification of the Disabilities Convention, falling short of the two-thirds majority needed for ratification of a treaty. 158 Cong. Rec. S7379.

b. Human Rights Council

On March 1, 2012, at the 19th Session of the Human Rights Council, the United States submitted a statement for the record in response to the release of a report by the Office of the High Commissioner for Human Rights (“OHCHR”) on participation in political and public life by persons with disabilities. The U.S. statement, available at <http://geneva.usmission.gov/2012/03/01/u-s-committed-to-ensuring-full-participation-of-persons-with-disabilities-in-public-life/>, expressed the U.S. commitment to ensuring full participation of persons with disabilities in public life and is excerpted below.

* * * *

The United States welcomes the submission of the thematic study by the Office of the High Commissioner for Human Rights, which highlights important issues affecting participation in political and public life by persons with disabilities. The United States is committed to ensuring that persons with disabilities have equal opportunities to participate in political and public affairs, and has a robust legislative framework to support full enjoyment of these rights.

Multiple U.S. laws protect the rights to political participation for persons with disabilities.

From the Voting Accessibility for the Elderly and Handicapped Act of 1984, through the National Voter Registration Act of 1993 (known as the “Motor Voter Act”), the Help America Vote Act (“HAVA”) of 2002, and the foundational antidiscrimination protections offered by Title II of the Americans with Disabilities Act and the Rehabilitation Act of 1973, the U.S. has adopted a comprehensive approach to making political participation accessible.

The U.S. government provides technical assistance to and monitors local governments to ensure the full realization of political rights of persons with disabilities and takes strong enforcement actions when individuals are denied their rights. The federal government also works collaboratively with civil society to provide training and tools so that consumers and advocates can monitor local governmental actions and contribute to ensuring that local governmental entities fully recognize the rights of persons with disabilities.

U.S. laws require the physical accessibility of all venues for civic participation, including polling places. The process of casting ballots also must be accessible.

Our laws require that public entities afford all persons effective communication, so that persons with disabilities can fully participate in public affairs without barriers. U.S. laws further mandate that election officials and other governmental workers should be trained in the electoral process and the rights of persons with disabilities so that they can assist individuals with all types of disabilities, including psycho-social, sensory, developmental, and physical, to participate in the electoral process.

Since 1999, the Justice Department’s Project Civic Access has signed agreements with 193 local governments throughout the country to ensure full access to civic life for over 4 million persons with disabilities.

These agreements, which were pursued after problems with compliance were raised, recognize that non-discriminatory access to public programs and facilities is a civil right, and that individuals with disabilities must have the opportunity to participate in local government programs, services and activities on an equal basis with others.

In conclusion, the United States remains deeply committed to ensuring that all individuals with disabilities have the opportunity for effective and full participation in all aspects of political and public life. We welcome the opportunity to discuss how the international community can better collaborate to assist States in fulfilling their obligations to promote, protect and ensure the rights of persons with disabilities in the arena of political and public life.

* * * *

C. CHILDREN

1. Optional Protocols to the Convention on the Rights of the Child

In December 2012, the United States responded to the Committee on the Rights of the Child's List of issues in advance of the January 2013 appearance by the United States before the Committee to discuss its second periodic reports on the Optional Protocols which were submitted to the Committee in January 2010. The written replies of the United States to the Committee relating to the Optional Protocol on the Involvement of Children in Armed Conflict and to the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography are available at www.state.gov/j/drl/rls/201652.htm and www.state.gov/j/drl/rls/201651.htm, respectively.

2. Children and Armed Conflict

a. Security Council

On September 19, 2012, Ambassador DeLaurentis addressed the Security Council during a debate on children and armed conflict. His remarks, excerpted below and available at <http://usun.state.gov/briefing/statements/197944.htm>, respond to the Secretary General's latest report on the subject of children in armed conflict.

* * * *

In 2011, the SRSG [Special Representative of the Secretary General] signed three Action plans with the Government of Chad and two armed groups in the Central African Republic. Thus far in 2012, the United Nations has signed four Action Plans, including with South Sudan, Burma, and two in Somalia. And the Democratic Republic of the Congo has submitted a draft Action Plan on child soldiering, which is being reviewed by the SRSG's office. These Action Plans are a proven tool for promoting child protection and rehabilitation.

There were other signs of progress as well. The Maoist party in Nepal was delisted from the Secretary-General's report after it ended the recruitment and use of child soldiers and completed its Action Plan commitments to suspend payments, cease providing housing, and encourage disqualified minors to register for reintegration programs. The delisting of the Inya Bharathi faction was a major step in resolving the last elements of child soldiering in Sri Lanka, although more remains to be done. Discussions on Action Plans with armed groups also made progress. In Afghanistan, the Ministries of Interior and Defense undertook initiatives to prevent the recruitment and exploitation of children. These are real and tangible results, and we commend the SRSG's office for its success in significantly improving the situation of children in these countries.

And yet, much of the Secretary-General's report documents many and continuing instances of appalling abuses against children. The Lord's Resistance Army, for example, continued its barbaric operations in several African countries, abducting 101 children in the Central African Republic and carrying out 211 attacks in the Democratic Republic of the Congo.

Many of these attacks used child soldiers, and they resulted in abduction of 124 children in a portion of the DRC's Orientale Province alone. The report documented almost a thousand cases of child recruitment in Somalia, mainly by Al-Shabaab, and noted the registration of 7,800 child casualties of conflict in the three main hospitals in Mogadishu.

The carnage committed by Assad and the clique around him is particularly distressing. As the report states, "Children as young as nine years of age were victims of killing and maiming, arbitrary arrest, detention, torture and ill-treatment, including sexual violence, and use as human shields. Schools have been regularly raided and used as military bases and detention centers." These atrocities, including the torturing of young children, continue with alarming frequency and serve as further evidence that this Council should do more to support humanitarian assistance and political transition in Syria.

As we look to the future of the CAAC process, we should reflect on what more we can do to better protect children in areas of armed conflict. We agree with the Secretary General that we must find a better way to affect the conduct of "persistent perpetrators." Since most government forces have signed Action Plans or given indications that they will do so, our main concern should be with non-state armed groups.

In addressing these armed groups, we must consider two issues. First, because national governments have the primary responsibility to protect children in their territory, the United Nations must work with armed groups only in close cooperation with national authorities. The resolution we adopted a few minutes ago correctly reaffirms this position, which the Council emphasized in its Resolution 1998 last year.

Second, the United States strongly believes that the Security Council should consider a broader range of options to increase pressure on persistent perpetrators of violations and abuses committed against children in situations of armed conflict. At this time, a free-standing CAAC sanctions regime would not seem to address the need for better tools to deal with persistent perpetrators. As the Secretary-General documents, four country-specific sanctions committees with designation criteria on violations and abuses against children already exist. However, we encourage the SRSG to provide a report to the Working Group evaluating the range of possibilities in this area, with a view to facilitating a report by the Working Group to the Council. A thoughtful analysis of different proposals on how to promote accountability would help bring an end to the cycle of violence that plagues children living in conflict-affected areas where persistent perpetrators operate.

Our work to date to remove children from the scourge of armed conflict has seen great progress through the implementation of Action Plans and focused work to educate armed groups. But we must still summon the resolve to hold accountable the most recalcitrant perpetrators and redouble our commitment to end impunity.

* * * *

b. Human Rights Council

On September 10, 2012, at the 21st session of the Human Rights Council, Ambassador Donahoe delivered a statement for the U.S. delegation to an interactive dialogue with the UN Secretary General's special representative on children and armed conflict. The statement, excerpted below and available at <http://geneva.usmission.gov/2012/09/11/successes-of->

[children-and-armed-conflict-process-include-the-freeing-of-over-10000-child-soldiers/](#)
emphasized the successes in addressing the issue of child soldiers.

* * * *

The United States thanks Special Representative Zerrougi for her comments and also wishes to recognize former Special Representative Coomaraswamy for her excellent report and her tireless efforts to protect children from the devastating effects of armed conflict. The United States is deeply committed to protecting children from violence, exploitation, abuse, and the terrible suffering caused by armed conflict.

We greatly appreciate the success achieved by the Children and Armed Conflict process over the last six years under former Special Representative Coomaraswamy, including the signing of numerous Action Plans, the freeing of over 10,000 child soldiers and the abolition of child soldiering by almost all national authorities, and the strengthening and expansion of monitoring and reporting mechanisms.

The SRSB's report notes that the Governments of Afghanistan, Chad, Somalia and South Sudan have now made child protection commitments to stop unlawful recruitment of children and to secure the release of those already unlawfully recruited into their armed forces. We are pleased that the Government of Burma has also signed an action plan to end the recruitment of children into its armed forces. We call on parties that have not signed an action plan to do so as soon as possible.

The United States is concerned about deeply disturbing information the Special Representative has presented regarding the use of explosive weapons by governments and non-state actors, which leads to unlawful killing and maiming of non-combatants and other civilians not directly participating in hostilities. It is also cowardly and unacceptable to use improvised explosive devices attacks on schools and hospitals in situations of armed conflict.

The March judgment of the International Criminal Court convicting Thomas Lubanga of the war crimes of conscripting and enlisting children under the age of 15 into the Congolese Forces and using them to participate actively in hostilities highlighted this issue of paramount international concern. The conviction puts perpetrators and would-be perpetrators of unlawful child soldier recruitment on notice that their crimes will not go unpunished. More, however, needs to be done.

The United States would like to engage with incoming Special Representative Zerrougi and ask for her perspective on how we can improve the situation of children in armed conflict. We would like to solicit her views on how best to seek action against persistent perpetrators of offenses and abuses against children in armed conflict. Ambassador de La Sablière, the former French Permanent Representative, noted in his report on the Children and Armed Conflict process that this is the next important issue for those working in this area. We look forward to working with SRSB Zerrougi and all who are committed to this process to address the issue more effectively.

* * * *

c. *Child Soldiers Prevention Act*

Consistent with the Child Soldiers Prevention Act of 2008 (“CSPA”), Title IV of Public Law 110-457, the State Department’s 2012 Trafficking in Persons report listed the foreign governments that have violated the standards under the CSPA, *i.e.* governments of countries that have been “clearly identified” during the previous year as “having governmental armed forces or government-supported armed groups, including paramilitaries, militias, or civil defense forces, that recruit and use child soldiers,” as defined in the CSPA. Those so identified in the 2012 report are the governments of Burma, Libya, Democratic Republic of the Congo, Somalia, South Sudan, Sudan, and Yemen. The full text of the TIP report is available at www.state.gov/j/tip/rls/tiprpt/2012/. For additional discussion of the TIP report and related issues, see Chapter 3.B.3.

Absent further action by the President, the foreign governments designated in accordance with the CSPA are subject to restrictions applicable to certain security assistance and licenses for direct commercial sales of military equipment. In a memorandum for the Secretary of State dated September 28, 2012, President Obama determined, “that it is in the national interest of the United States to waive the application of the prohibition in section 404(a) of the CSPA with respect to Libya, South Sudan, and Yemen,” and that, with respect to the Democratic Republic of the Congo, it is in the national interest that the prohibition should be waived in part, “to allow for continued provision of International Military Education and Training and non-lethal Excess Defense Articles, and issuance of licenses for direct commercial sales of military equipment.” 77 Fed. Reg. 61,509 (Oct. 10, 2012).

3. Resolutions on Rights of the Child

a. *Human Rights Council*

On March 23, 2012, at the 19th session of the HRC, the United States joined consensus on the resolution on the rights of the child. U.N. Doc. A/HRC/RES/19/37. The U.S. explanation of position appears below.

* * * *

The United States is extremely pleased to join consensus on the Rights of the Child resolution today. We are committed to advance the well-being and the protection of all children around the world, including through foreign assistance programs. This omnibus resolution highlights the important issue of respecting and protecting children in almost every aspect of life, and calls on States to ensure that a child’s human rights are safeguarded, including children with disabilities, migrant children, and children affected by armed conflict. We note with regard to children in armed conflict the importance of the Optional Protocol to the Convention on the Rights of the Child on the subject. While some States have endorsed the non-binding Paris Principles regarding children affected by armed conflict, we note that this set of principles does not

necessarily reflect consensus and is not a UN document. Respecting the child who is abducted, we believe that it is in the child's best interest to be safely returned to the country that was his or her habitual residence prior to the abduction.

We would like to state that we join consensus on this resolution today with the express understanding that it does not imply that States must become parties to instruments to which they are not a party or implement obligations under human rights instruments to which they are not a party, and we do not recognize any change in the current state of treaty or customary international law. Further we understand the resolution's reaffirmation of prior documents to apply to those who affirmed them initially. Further, the resolution also calls upon States to ensure that life imprisonment without the possibility of release is not imposed on individuals under the age of 18. This requirement is not an obligation that customary international law imposes on states; rather, it reflects treaty obligations that the United States has not undertaken.

The United States looks forward to continued engagement and discussion with the co-sponsors and other delegations this year.

* * * *

b. General Assembly

On October 18, 2012, the United States participated in a UN Third Committee discussion on the rights of the child. Kelly L. Razzouk, U.S. Advisor to the UN, delivered remarks, excerpted below, and available at <http://usun.state.gov/briefing/statements/199336.htm>.

* * * *

...All children around the world deserve to grow up in an environment where their dignity and human rights are respected. We thank the many UN bodies and independent experts who contribute to the promotion of the rights of the child. Yet despite these efforts, all over the world, children still face serious threats to their human rights. Though we have made some gains, still in 2012, children need protection from violence, abuse, and exploitation.

Our thoughts go out today to 14-year-old Malala Yousufzai, who spoke out for the right of all Pakistanis, especially girls, to an education. In response to her bravery in standing up for the rights of herself and others, she was brutally shot by extremist thugs who believe girls do not have the right to an education. This violent attack reminds us of the challenges that girls are confronted with every day, ranging from lack of opportunities for an education, to lack of basic health care, food, and, nutrition, to discrimination and violence—all solely due to their gender.

Girls also need protection from child marriage, and we believe that equal access to education is one part of the solution. Experience shows us that elevating the status of girls is critical to achieving prosperity, stability, and security. Doing so is not only the right thing to do—it is the smart thing to do. An estimated 10 million girls are married every year before they reach the age of 18, many at ages even younger. Early marriage threatens girls' health and education, and robs them of the opportunity to reach their full potential. We are concerned, for example, by findings of the Special Rapporteur on Iran documenting marriages of Iranian girls as

young as nine years old. One of the best ways to tackle the practice of early marriage is to enroll and keep adolescent girls in school. And yet, far too many girls in the developing world fail to make the transition from primary to secondary education.

The United States is committed to addressing and preventing early or forced marriage, and we will intensify our diplomacy and development efforts to end this practice, including by promoting girls' education.

A week ago, on October 11, Secretary Clinton joined in celebrating the first-ever United Nations International Day of the Girl Child. There, she announced a new U.S. initiative to address this threat to girls and global development. The State Department will work with the private sector to launch new programs to promote girls education and will also now report on child marriage in its annual country reports on human rights practices. The UN and private foundations are stepping forward in meaningful and powerful ways—The UN Population Fund and the Ford, MasterCard, and MacArthur Foundations have pledged a total of \$94 million to the cause of girls' education and to addressing and preventing child marriage. We urge our international colleagues here today to make a similar commitment.

This year's rights of the child resolution has a special focus on indigenous children. The United States is home to over two million Native Americans, and we would like to thank the Secretary General for his report that addresses indigenous children. We are committed to working with tribes, individuals, and communities to address the many challenges indigenous children face, including in education, health, protection from violence and discrimination, and preservation of their cultural heritage. The United States firmly believes that a strong cultural identity provides indigenous children with a source of stability and strength.

The United States commends the Secretary General's Special Representative on Violence against Children for her tremendous work and the goals she has set for the future. We strongly agree with the Special Representative that reducing violence against children is crucial to supporting economic development. We appreciate the work of the Special Representative in addressing issues across the full life cycle of children, starting with early childhood care and leading to fulfillment of a quality education. We will continue to invest in the protection of vulnerable children in order allow them to achieve their full potential.

Finally, we are compelled to address the tragic situation of the innocent children in Syria. Daily, Syrian children are the victims of killing and maiming, arbitrary arrest, detention, torture and ill-treatment, including sexual violence, and some have even been used as human shields. The increasing frequency of these atrocities over the past 18 months is particularly alarming, and is further evidence that the international community must do more to support humanitarian assistance and political transition in Syria.

The United States has a deep, unwavering commitment to promoting and protecting the rights of children in our own country and around the world. We will continue to work with the international community to ensure that human rights are a reality for all of our children.

* * * *

D. ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

1. Health and Education

On June 19, 2012, at the UN Human Rights Council's 20th Session, the United States delivered a statement as part of a clustered interactive dialogue with the special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the special rapporteur on the right to education. Margaret Wang delivered the statement for the U.S. delegation, which is excerpted below and available at <http://geneva.usmission.gov/2012/06/19/interactive-dialogue-on-the-right-to-physical-and-mental-health-and-education/>.

* * * *

The United States welcomes the focus on occupational health in the latest report from the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health. While we may disagree with some recommendations and numerous references to human rights law in this report, we fully agree with the Special Rapporteur on the importance of occupational health. Since 1970, when our Congress enacted the Occupational Health and Safety Act, we have fought for the ability of workers to return home to their families, safe and unharmed, each day.

The primary focus when protecting employees' health and safety should be prevention. We believe that it is the responsibility of employers to find and correct safety and health problems in their facilities. Additionally, they should try to eliminate or reduce hazards by making feasible changes in working conditions such as switching to safer chemicals, enclosing processes to trap harmful fumes, and using ventilation systems to clean the air. When risks remain, employers should provide personal protective equipment such as masks, gloves, or earplugs to their employees free of cost.

When employees are faced with unsafe or harmful working conditions, they should be able to seek assistance from their government without fear of retribution and with the expectation that their claims will be investigated in a timely and transparent manner. When governments confirm that unsafe conditions exist they should take appropriate action in response. Such actions may include issuing citations, levying fines, and ultimately closing habitual offenders.

These ideas have worldwide relevance. Every government can—and should—protect its citizens, including in the workplace.

The United States also welcomes the report of the Special Rapporteur on the Right to Education, which highlights the importance of quality when discussing the right to education and its ability to create a better world.

Today, more than ever, a world-class education is a prerequisite for success. We recognize how important it is that every student graduate from school well-prepared for college and a career. A world-class education is also a moral imperative—the key to securing a more equal, fair, and just society.

A cornerstone of a quality education is literacy. In the United States, we have a saying: reading is fundamental. An individual's opportunity to master reading skills

impacts their enjoyment of their human rights – from petitioning their government to reading blogs on the Internet, from understanding the side-effects of a pharmaceutical drug, to taking on a contract for work. Human rights education begins with literacy, and we will not remain true to our highest ideals unless we do a far better job of educating each one of our sons and daughters.

We as governments and the international community must reaffirm our commitment to provide quality education to all of our citizens—regardless of socio-economic background, race, religion, physical or mental ability, and gender. As we strive to meet the Millennium Development Goal of universal enrollment in primary education, we must remember that the ultimate goal is not merely attendance but the attainment of knowledge.

We appreciate the report’s praise for the United States as one of the first countries to emphasize quality education. In this context, we wish to clarify that our 2001 law, the No Child Left Behind Act, which the report mentions, does not set national standards or assessments. Rather, No Child Left Behind operates consistently with our federalism, where many decisions concerning education are made at the state and local levels.

* * * *

2. Food

a. UN Convention on Food Assistance

See discussion in Chapter 11.G.3.

b. Human Rights Council resolution

At the 19th session of the Human Rights Council, the United States joined consensus on a resolution on the right to food while expressing concerns about some aspects of the resolution, including its language regarding trade and references to a continuing world food crisis. U.N. Doc. A/HRC/RES/19/7. Excerpts of the U.S. explanation of position on the resolution appear below and the full explanation of position is available at <http://geneva.usmission.gov/2012/03/22/us-joins-consensus-on-hrc-resolution-on-the-right-to-food/>.

* * * *

Improving global food security is a key foreign policy objective of the Obama Administration. The U.S. Government has launched the Feed the Future initiative, and has pledged at least \$3.5 billion over three years to help our partner countries improve the entire agriculture value chain—from fields to markets to homes. And that is the central pillar of our commitment to sustainable solutions to hunger.

The United States is committed to accelerating progress towards the Millennium Development Goals, including by investing in country plans to boost agricultural development as

a means for achieving the hunger and poverty-related MDG—reducing by half the proportion of people who suffer from hunger and who live in extreme poverty by 2015.

With respect to this resolution's statements regarding trade and trade negotiations, the United States reiterates that trade negotiations are beyond both the subject-matter and the expertise of the Human Rights Council and, hence, that such statements are inappropriate for the Council. The United States is committed to international trade liberalization and to achieving an ambitious and balanced conclusion to the World Trade Organization's (WTO) Doha Round negotiations. By joining consensus on this resolution, we highlight that opening markets through international trade agreements and attaining the goal of the Doha Round to establish a market-oriented trading system, which is also noted in the FAO's Voluntary Right to Food GUIDELINE 19, can play a major role in the promotion of economic development, and the alleviation of poverty and improving food security at the national level. At the same time, we wish to clarify that this resolution will in no way undermine or modify the commitments of the United States or any other government to existing trade agreements or the mandates of on-going trade negotiations.

Similarly, the United States wishes to reiterate its view that the implementation of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) supports comprehensive approaches to food security by encouraging policies that will enable countries to use tools and incentives, including biotechnology, that increase agricultural productivity. By joining consensus on this resolution, we support countries' continued implementation of the TRIPS Agreement, which provides for patent and plant variety protection systems that generate many benefits for researchers, producers, consumers, and society, in the drive to promote global food security.

This resolution reiterates previous language on a continuing world food crisis. Whereas we are experiencing a period of food and commodity price volatility in some parts of the world, we, along with many other members of the world community, do not believe we are currently in a world food crisis. This has been reinforced by such UN bodies as the Food and Agricultural Organization (FAO), which have issued warnings about high food prices and price volatility but have made clear that the current situation is not a world food crisis. Furthermore, while the resolution as drafted identifies a number of factors that contribute to food insecurity, it omits the very significant and undisputed role of conflict and lack of governance in causing regional food insecurity.

We support the right of everyone to an adequate standard of living, including food, as recognized in the Universal Declaration of Human Rights. The United States is not a party to the International Covenant on Economic, Social and Cultural Rights, and joining consensus on this resolution does not recognize any change in the current state of conventional or customary international law regarding rights related to food. It is our objective to achieve a world where everyone has adequate access to food, but we do not treat the right to food as an enforceable obligation. We interpret this resolution's references to the right to food, with respect to States Parties to the aforementioned Covenant, in light of its Article 2(1), in which they undertake to take steps with a view to achieving progressively the full realization of economic, social, and cultural rights. We interpret this resolution's references to member States' obligations regarding the right to food as applicable to the extent they have assumed such obligations.

Furthermore, while we take note of the work of the Advisory Committee, including its work on the human rights of urban poor people, we believe that its work is duplicative and wasteful of other UN entities. Instead, we should be taking into account relevant authoritative

UN outcome documents, such as the FAO's State of Food and Agriculture and State of Food Insecurity reports, and the Comprehensive Framework for Action of the Secretary General's High Level Task Force.

And while the United States has for the last decade been the world's largest food aid donor, we do not concur with any reading of this resolution that would suggest that states have particular extraterritorial obligations arising from a right to food. While we join this resolution's welcoming the work of the Committee on Economic, Social and Cultural Rights, including its General Comment No. 12, we note significant disagreements with some portions of its work and that General Comment. We interpret this resolution's reaffirmation of previous documents as applicable to the extent countries affirmed those documents in the first place.

We also reiterate our concern about unattributed statements of a technical or scientific nature in this resolution. The United States does not necessarily agree with such unattributed statements.

With all of these concerns in mind, the United States will not block consensus, given our support and leading role on the broader goal of food security worldwide.

* * * *

3. Water and Sanitation

a. Human Rights Council resolution

The United States joined consensus on the UN Human Rights Council resolution on "the human right to safe drinking water and sanitation" on September 27, 2012. U.N. Doc. A/HRC/RES/21/2. The U.S. explanation of position is excerpted below and available at <http://geneva.usmission.gov/2012/09/27/explanation-of-position-water-and-sanitation/>.

* * * *

The United States is pleased to join consensus today on the resolution, "The human right to safe drinking water and sanitation." We thank the co-sponsors for working with us to reach agreed language.

This resolution highlights the important global issue of ensuring access to safe drinking water and sanitation on a non-discriminatory basis. The United States takes domestic and international water and sanitation issues seriously, and strongly supports the goal of universal access to both of these resources. We likewise recognize the importance of meeting basic water needs to support physical and mental health, economic development, and peace and security.

The United States has a long standing commitment to international development and has put substantial resources behind that commitment. In a March 2012 speech on World Water Day, Secretary Clinton announced the implementation of the U.S. Water Partnership, which aims to improve water security around the world by utilizing U.S.-based knowledge, expertise, and resources. She noted that, "We believe this Water Partnership will help map out our route to a more water secure world: a world where no one dies from water-related diseases; where water does not impede social or economic development; and where no war is ever fought over water."

We would like to state that we join consensus on this resolution today and read this resolution's references to the right to safe drinking water and sanitation in accordance with our July 27, 2011 statement in New York at the UNGA plenary meeting and our September 29, 2011 and September 30, 2010 statements here in Geneva on safe drinking water and sanitation. Overall, while OP 11 calls on states to promote various laudable goals, the drafting of some parts of this paragraph remain too specific, while others too broad.

The United States believes this resolution should be read to provide the greatest possible flexibility to governments as they try to address the critical challenges involved in providing safe drinking water and sanitation to their citizens and attempt to implement the progressive realization of this right.

* * * *

b. Secretary Clinton's remarks on World Water Day

On March 22, 2012, Secretary Clinton delivered remarks at the State Department in honor of World Water Day. Her remarks, excerpted below and available at www.state.gov/secretary/rm/2012/03/186640.htm, highlight various efforts the U.S. has undertaken to ensure a safe water supply for people around the world, including new initiatives such as the U.S. Water Partnership ("USWP") and the U.S. Intelligence Community Assessment on Global Water Security.

* * * *

We are all here because we know ensuring that everyone has the clean water they need to live and thrive has to be a high priority for all of us. When I spoke on World Water Day two years ago, I talked about how water is clearly integral to many of our foreign policy goals. When nearly 2 million people die each year from preventable waterborne disease, clean water is critical if we're going to be talking about achieving our global health goals. Something as simple as better access to water and sanitation can improve the quality of life and reduce the disease burden for billions of people. When women and girls don't have to spend 200 million hours a day...seeking water, maybe they can go to school, maybe they can have more opportunities to help bring income in to the family. Reliable access to water is essential for feeding the hungry, running the industries that promote jobs, generating the energy that fuels national growth, and certainly, it is central when we think about how climate change will affect future generations.

* * * *

Since I signed our government-wide agreement with the World Bank last year, we have identified 30 activities where various U.S. agencies can work more closely with the World Bank and with each other to improve our individual efforts on water security. USAID and NASA are working together using earth science and satellite technology to analyze water security and other water-related challenges in the Middle East, North Africa, and South Asia. We're working with the international community on the Sanitation and Water for All Partnership, which is designed

to help countries where access to water remains a critical barrier to growth, to build political commitment and capacity to begin solving their own problems.

And USAID recently launched ...the WASH for Life partnership with the Gates Foundation. It's a very fitting acronym – Water, Sanitation and Hygiene, or WASH. This project will identify, test, and scale up evidence-based approaches for delivering these services to people in some of the poorest regions of the world.

* * * *

...Last week, the UN announced that we met the Millennium Development Goal to cut in half the proportion of people living without access to safe drinking water, and we reached it almost four years ahead of schedule. There aren't many of the MDG's that we've actually achieved, so the fact that we've achieved this one is, I think, not only good in and of itself, but should serve as a spur on others as well. We know it not only translates into better lives, but it proves the international community, when focused and working together, can actually achieve goals that are set.

But with the news of this accomplishment, we're reminded about how much more we have yet to do. At this rate, nearly 700 million people will lack access to safe drinking water in 2015. And many countries still are not making enough progress reaching their most vulnerable populations, and those conditions will only deteriorate as populations grow and crowd into already overcrowded cities without adequate infrastructure.

Last year, I called on the intelligence community to conduct a global assessment of the impact water could have and was having on our national security. Today, the National Intelligence Council released the unclassified version of its report on Global Water Security. You can go online, read it for yourself, see how imperative clean water and access to water is to future peace, security, and prosperity, globally. I think it's fair to say the intelligence community's findings are sobering.

* * * *

Well, today, we are launching a new public-private partnership to help answer that call for leadership and to expand the impact of America's work on water. The U.S. Water Partnership exemplifies the unity of effort and expertise we will need to address these challenges over the coming years, and it advances our work in three critical ways.

First, it brings together a diverse range of partners from the private sector, the philanthropic community, the NGOs, academics, experts, and government. This approach will help catalyze new opportunities for cooperation. ...

* * * *

Now, of course, while water is a global problem, solutions happen at the local level. So the second goal of the U.S. Water Partnership is to make all this American knowledge and expertise accessible. The U.S. Water Web Portal will provide a single entry point to our data, best practices, and training to help empower people taking on these problems in their own communities. And it will help build international support for American approaches, technologies, companies, government agencies, our whole universe of experts standing ready to assist.

Finally, because this is a public-private venture, the U.S. Water Partnership will not depend on any one government agency or any one private organization to keep it going. The State Department is proud to be a founding partner, but we also hope that the partnership will spawn many new projects that may or may not involve us. The Water Partnership has built-in flexibility to address the world's changing water needs and to continue our work to find sustainable solutions.

* * * *

4. Housing

The United States provided an explanation of position at the 19th Session of the HRC on a resolution on adequate housing as a component of the right to an adequate standard of living in the context of disaster settings. The U.S. explanation of position is excerpted below and available at <http://geneva.usmission.gov/2012/03/22/housing/>.

* * * *

The United States is pleased to join consensus on this resolution that addresses housing in the context of disaster settings.

We welcome the focus on adequate housing in the context of disasters, and note that this is a challenge that affects all countries, including the United States. As Secretary of Housing and Urban Development Shaun Donovan said in May 2011 in New Orleans, “the storm may have been a natural disaster — but these disasters were very much man-made, depriving countless families of housing choices that... the law recognizes are the right of every American.”

The United States has also responded to shelter needs generated by crises and disasters worldwide for nearly 50 years. During this period, millions of people around the world have received shelter from the U.S. Government as part of multi-sectoral humanitarian assistance programs. Increasingly, these programs have included initiatives to reduce disaster risk, reaffirm housing and land tenure rights, and accelerate the transition to recovery and reconstruction.

We join consensus on this resolution with the express understanding that it does not imply that States must become party to or implement obligations under human rights instruments that they are not party to. We interpret this resolution's reaffirmation of previous documents as applicable to the extent countries affirmed those documents in the first place. We consider the resolution's phrase “the right to adequate housing” to be synonymous with the longer phrase in its title, and with similar language in Article 25 of the Universal Declaration of Human Rights.

In the spirit of our shared policy objective, to ensure that adequate housing is available to all of our people, we are pleased to join consensus on this resolution today.

* * * *

E. OTHER ECONOMIC, SOCIAL, AND CULTURAL ISSUES

1. Hazardous waste

The United States provided an explanation of position on the resolution on the “Mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and waste,” on September 28, 2012. The explanation of the U.S. position, disassociating from consensus, is excerpted below and available in full at <http://geneva.usmission.gov/2012/09/28/u-s-explanation-of-position-hazardous-wastes/>.

* * * *

The United States recognizes the serious effects that improper management and disposal of hazardous substances and wastes may have on the effective enjoyment of human rights. We are committed to the proper management of such hazardous substances and wastes. However, a number of concerns arose during this negotiation that have not been satisfactorily addressed. We are disassociating from consensus on this resolution for the following reason.

We believe these critical issues are comprehensively addressed in other relevant conventions, bodies, and positions within the United Nations.

We are concerned particularly with some language in the resolution that implies an increase in the general scope of the mandate, already treated as broad. We reaffirm that, notwithstanding the unclear text, the mandate is strictly limited to the human rights implications that may be involved in the management and disposal of hazardous waste, which is the intent of the Human Rights Council, and we would stress the importance of avoiding overlap with the competence of expert, non-human rights instruments and entities. For example, one of the possible topics the resolution suggests the Special Rapporteur may report on—the possibility of ambiguities in international instruments and gaps in effectiveness of international regulatory mechanisms—goes beyond the Special Rapporteur’s mandate, which should focus solely on human rights issues.

Finally, we continue to question this resolution’s substantial budgetary implications. This resolution imposes significant costs that we believe merit careful review and scrutiny given the large demands already placed on OHCHR, and the limited ability of member states to provide increasing amounts of resources to enable OHCHR to perform the substantial amount of work that we have given it. For this reason, we request OHCHR and the relevant offices to conduct a review of the costs associated this mandate at the earliest opportunity and before next year in any event. We also would like to consult with others about the appropriate level of resources needed to support this mandate.

* * * *

2. Development

a. Human Rights Council

On September 28, 2012, at the 21st session of the Human Rights Council, the United States provided an explanation of its vote against the right to development resolution, which was adopted by the Council. U.N. Doc. A/HRC/RES/21/32. The U.S. explanation of vote is excerpted below and available at <http://geneva.usmission.gov/2012/09/28/u-s-explanation-of-vote-right-to-development-resolution/>.

* * * *

The United States' commitment to international development as a mainstay of our foreign policy is clear. Nevertheless, we have long-standing questions regarding the right to development. The United States was pleased to engage actively with the Working Group on the Right to Development at its thirteenth session in an effort to foster better implementation of development goals and to harmonize the various interpretations of the right to development. Unfortunately, the divisive resolution before us seeks to add additional meeting time to upcoming and potentially ongoing expert and governmental sessions—without any effort to reach agreement on how to make progress in those discussions. We therefore request a vote and will vote NO.

First, as we said in the Working Group, it will be important to consider not only the criteria and sub-criteria, but also the indicators elaborated by the High Level Task Force. Only when we are able to evaluate and understand the criteria in light of the sub-criteria and indicators, and vice versa, will we be able to assess and consider revisions to the work of the Task Force. In the thirteenth session of the Working Group, there was broad agreement that indicators could be discussed, although there were differing views on exactly how that might occur. We are therefore disappointed that the proponents of this resolution have consistently refused to consider proposals to incorporate discussion of indicators.

Second, discussion of the right to development needs to focus on aspects of development that relate to human rights, universal rights that are held and enjoyed by individuals. These include civil and political rights as well as economic, social, and cultural rights. Further, the focus should be on the obligations States owe to their citizens in this regard, not the asserted obligations of institutions. We are therefore also disappointed at the continued focus on institutions in this text. In addition, we are concerned that the resolution dictates how the UN's specialized agencies, and funds and programs should incorporate the topic of the right to development in their activities. It also inappropriately singles out the World Trade Organization, which is not even a development organization, for negative treatment.

Third, we are also concerned about the additional costs associated with the two-day seminar the resolution establishes. The sponsors have worked to negotiate down from a PBI which was initially some 1.5 million dollars, but the costs are still too high. The United States and other major contributors to OHCHR have said that they cannot support additional increases in the regular budget this year or next. Therefore, the United States must express concern about the availability of resources needed to implement the provisions of the resolution.

Lastly, as previously noted, we are not prepared to join consensus on the possibility of negotiating a binding international agreement on this topic.

While we would like to engage constructively in the next session of the Working Group and any intersessional meeting, our overall concern is that this resolution seeks to press forward at all speed while disregarding the need for States to discuss and agree on how to take the work forward in an objective and constructive fashion.

* * * *

b. General Assembly

On November 28, 2012, U.S. Deputy Representative to ECOSOC Teri Robl provided the U.S. explanation of its “no” vote on the resolution on “The Right to Development” in the Third Committee of the General Assembly. That explanation of vote is excerpted below and available in full at <http://usun.state.gov/briefing/statements/201739.htm>. The UN General Assembly adopted the resolution on the right to development on December 20, 2012 by a vote of 128 in favor, 54 against, with 4 abstentions. U.N. Doc. A/RES/67/171.

* * * *

Fostering development continues to be a cornerstone of U.S. international engagement, and we are the largest bilateral donor of overseas development assistance. The United States strongly supports achievement of the [Millennial Development Goals or] MDGs and has adopted and is implementing a U.S. Global Development Policy that guides our overall development efforts.

That policy, which places a premium on broad-based economic growth, democratic governance, game-changing innovations, and enduring systems for meeting basic human needs, recognizes that development is a long-term proposition, and progress depends importantly on the choices of political leaders and the quality of institutions in developing countries. Where leaders govern responsibly, set in place good policies, and make investments conducive to development, positive outcomes can be achieved. Where those conditions are absent, it is difficult to engineer sustained progress, no matter how good our intentions or the extent of our engagement.

Achievement of development goals will be fostered by the promotion and protection of the human rights set out in the Universal Declaration of Human Rights. The United States agrees that economic development goals and objectives must be pursued in such a way that the development and environmental needs of present and future generations are taken into account.

These objectives align closely with the broader thrust of this resolution on the right to development. My delegation requested a vote and will vote no, because we do not believe the current text of the resolution reflects consensus on the best way to achieve these goals.

We have noted that discussions and resolutions on the right to development should not include unrelated material on controversial topics, particularly topics that are being addressed elsewhere.

We have stated very clearly that we are not prepared to join consensus on the possibility of negotiating a binding international agreement on this topic. We therefore cannot accept language in this resolution that contemplates an international legal standard of a binding nature.

As we have repeatedly stated, discussion of the right to development needs to focus on aspects of development that relate to human rights, universal rights that are held and enjoyed by individuals, and which every individual may demand from his or her own government. These

include civil and political rights as well as economic, social, and cultural rights. These fundamental concerns have not been adequately addressed in this resolution.

In addition, as we said in the Working Group and reiterated during discussions at the HRC, it will be important to consider not only the criteria and sub-criteria, but also the indicators elaborated by the High Level Task Force. Only when we are able to evaluate and understand the criteria in light of the sub-criteria and indicators will we be able to assess and consider revisions to the work of the Task Force.

For all these reasons, this resolution did not address our core concerns. Nonetheless, we will engage constructively with the Open-Ended Working Group on the Right to Development in an effort to move forward on this important topic.

* * * *

F. INDIGENOUS ISSUES

1. UN Permanent Forum on Indigenous Issues (“PFII”)

On January 18, 2012, Tricia A. Tingle of the U.S. Department of the Interior delivered the U.S. Statement to the UN Permanent Forum on Indigenous Issues (“PFII”). Excerpts from the statement appear below. The full text is available at www.un.org/esa/socdev/unpfii/documents/EGM12_US_statement.pdf.

* * * *

With particular regard to Theme 4, Issues of Jurisdiction and Policing, and Theme 5, Anti-Violence Strategies in the U.S. legal system, the Department of Justice has a unique responsibility to pursue justice against those who perpetrate violence in tribal communities. Likewise, the Department of the Interior is tasked with assisting tribes, either by providing direct assistance or funding to the tribal communities and technical assistance to the tribes, in the pursuit of justice against those who perpetrate domestic violence in tribal lands in the United States.

* * * *

The United States is proud of our efforts to improve the federal response to crimes of violence against women in tribal communities, but we recognize that tribal governments —tribal police, tribal prosecutors, and tribal courts —are essential parts of the response to these crimes and key to the success. They often lack the authority and resources to address them.

As previously noted, the United States has consulted extensively with tribal officials about these issues. The consensus that emerged from these consultations is the need for greater tribal jurisdiction over domestic-violence cases. The Executive Branch of our government continues to work with the U.S. Congress to address these jurisdictional limitations and strengthen the ability of tribal authorities to confront violence against indigenous women.

Tribal leaders have noted a tremendous need for additional resources at the tribal level. Justice has streamlined the process for tribes to access grants for public safety, awarding nearly

\$120 million to tribes over the past two years; set up a national clearinghouse for training and technical assistance concerning sexual assault of Native American women; and is funding a project to collect and preserve sexual assault evidence in geographically isolated tribal communities. Interior has provided one time funding to help tribes hire domestic violence prosecutors, and is enlarging its Victim Witness Program to assist victims in many new places. Department of the Interior will work with HHS, specifically the Indian Health Service to coordinate the sexual assault protocol with law enforcement throughout tribal U.S. lands.

With regard to Theme 2, Contextualizing Violence: the Economic Survival of Women and Girls, we believe that advancements in Indian education will off-set some of the negative social factors that contribute to violence and will give rise to community environments where tribal economies will not only survive, but flourish. President Obama's Executive Order 13592 of December 2, 2011, on "Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities," marks an important milestone in the effort.

* * * *

2. UN World Conference on Indigenous Peoples

In September 2012, the United States participated in planning for the UN General Assembly's World Conference on Indigenous Peoples to be held in September 2014. On September 17, 2012, Terri L. Robl, U.S. Minister Counselor for ECOSOC, delivered the U.S. explanation of position on the resolution setting plans for the conference. U.N. Doc. A/RES/66/296. The U.S. explanation of position is excerpted below and available at <http://usun.state.gov/briefing/statements/197956.htm>.

* * * *

There are more than 370 million indigenous peoples who live in some 90 countries around the world. We honor their immeasurable contributions to society, and call upon all States to work together with indigenous communities to meet our common challenges.

Throughout negotiations on this document, we have underscored the important role indigenous peoples and civil society organizations should play through their participation in this Conference. The process of admission for civil society organizations, including non-governmental organizations, to participate in this Conference must be completely transparent.

Operative paragraph 3(h) states that indigenous peoples' organizations and institutions "should be invited to submit applications to the Secretariat through an open and transparent accreditation procedure, in accordance with established practice," but we are not aware of a set practice in this regard. The procedures of the Permanent Forum on Indigenous Issues and the Expert Mechanism on Indigenous Peoples differ from each other. This resolution does not define a process by which indigenous groups will be accredited to the high-level meeting and therefore, this issue will require further consideration by Member States, in consultation with indigenous people and other stakeholders.

We understand operative paragraph 3(j) to mean that the list of NGOs and other potential participants will be sent to the General Assembly for its consideration, where Member States will evaluate any possible objections made by other States.

Operative paragraph 9 concerns the World Conference outcome document. As the World Conference is a high-level meeting of the General Assembly, Member States have the responsibility to negotiate the outcome document and consider it for adoption. However, Indigenous peoples' input from the preparatory process and the World Conference itself will be taken into account during the negotiations. These concepts are contained in operative paragraph 9, which refers to "an inclusive and open informal process of consultations ... in order to provide input for sufficient consideration by Member States and agreement by the General Assembly prior to formal action at the high-level meeting."

We are also concerned with operative paragraph 12, which "requests the President of the General Assembly in consultation with Member States, as well as representatives of Indigenous Peoples, to finalize the organizational arrangements of the World Conference." All decisions about the World Conference that are not delegated in this paragraph should remain with the Member States.

* * * *

Also on September 18, 2012, Eric N. Richardson of the Office of the Legal Adviser delivered the statement for the U.S. delegation at a clustered interactive dialogue with Special Rapporteur James Anaya and the Chair of the Expert Mechanism on the Rights of Indigenous Peoples ("EMRIP") during the 21st session of the HRC. Mr. Richardson's statement on the World Conference on Indigenous Peoples at the dialogue is excerpted below and available at <http://geneva.usmission.gov/2012/09/18/u-s-hopes-to-see-an-action-oriented-outcome-from-the-world-conference-on-indigenous-peoples/>.

* * * *

The United States has spoken in support of broad and meaningful participation in the World Conference for indigenous peoples' representatives, and there are ample opportunities for that. Firstly, indigenous peoples will be involved in the preparatory process, for which there are several options. One option is to have preparatory commissions in the five UN regions, with the regional economic commissions holding meetings. Another option is to hold prepcoms in the seven indigenous regions—Africa, Arctic, Asia, Latin America, North America, Pacific, and Russian-speaking—so that indigenous representatives can caucus with each other, and exchange views with Member State governments, in those locations. A third option is to hold prepcoms in Geneva or New York. The modalities resolution adopted yesterday in New York requests the President of the General Assembly to organize, no later than June 2014, an informal interactive hearing during which indigenous peoples' representatives would provide input to the preparatory process. In addition, other regional coordination meetings will take place before 2014.

Secondly, the United States supports inclusive input to the World Conference, both before and during the meeting, from stakeholders who cannot be present in person. A mechanism for gathering input—either in written, electronic, pre-recorded, telephonic, or other format from indigenous peoples and others—would be useful, as some indigenous

representatives may not be able to afford traveling to New York.

Thirdly, we support concurrent roundtables at the World Conference, with indigenous representatives sitting at the table alongside member state representatives. Roundtable themes need not be limited to the Declaration. Possible topics include Tribal self-determination and governance; Lands, resources, the environment, and economic development; Cultures of indigenous peoples, including education; Consultation with and participation from indigenous peoples on issues affecting them; and Business and its impacts on indigenous peoples. All roundtables should include a discussion of current best practices.

The United States thinks there could be two documents that come out of this Conference. The first would be a concise, action-oriented outcome document containing targeted, concrete proposals on protecting the collective rights of indigenous peoples and human rights of indigenous individuals. As the World Conference is a high-level meeting, and the outcome document is one that ministers will agree to, it is the role of member states to negotiate and adopt the outcome document. The negotiations, however, would take into consideration the indigenous peoples' input from the preparatory process and the World conference itself; the written and electronic input; and the roundtables. The second document would consist of the summaries of the roundtable and panel discussions presented at the closing plenary session. The presentations of representatives of indigenous groups will be included in those summaries.

* * * *

3. U.S. Statements on Indigenous Peoples at HRC 21

On September 28, 2012, the United States made a general comment on human rights and indigenous peoples at the 21st session of the HRC where it co-sponsored a resolution on the subject. U.N. Doc. A/HRC/21/24. The U.S. comment is excerpted below and available at <http://geneva.usmission.gov/2012/10/10/u-s-general-comment-human-rights-and-indigenous-peoples/>.

* * * *

The United States is pleased to co-sponsor the Resolution on Human Rights and Indigenous Peoples. Indigenous peoples around the world face grave challenges, and the United States is committed to addressing these challenges both at home and abroad. During Special Rapporteur Anaya's April-May 2012 visit to the United States, we discussed the wide range of U.S. programs, policies, and legislation devoted to improving the lives of indigenous peoples.

The resolution welcomes the fifth anniversary of the UN Declaration on the Rights of Indigenous Peoples [UN DRIP], and encourages states that have not done so to respond to EMRIP's survey on best practices regarding possible appropriate measures and implementation strategies in order to attain the goals of the UN DRIP. The United States has responded to this survey, and looks forward to EMRIP's final summary of responses.

The United States also echoes the resolution's commendation of the efforts of the Special Rapporteur on the Rights of Indigenous Peoples and the Expert Mechanism on the Rights of Indigenous Peoples [EMRIP].

In order to further improve the situation of indigenous peoples, the United States believes that we must focus on the promotion and protection of both the human rights of indigenous individuals and the collective rights of indigenous peoples and is pleased the resolution covers both of these topics in various ways. For example, operative paragraph 12 highlights the role of treaty bodies in promoting human rights. In this regard, we commend the resolution for highlighting the importance of protecting the human rights of indigenous women and children, and indigenous persons with disabilities.

* * * *

Also at the 21st session of the HRC, the United States participated in a panel on indigenous peoples and access to justice. A/HRC/RES/18/8. The U.S. statement, delivered by Sarah M. Brooks on September 18, 2012 is excerpted below and available at <http://geneva.usmission.gov/2012/09/18/u-s-statement-at-panel-on-indigenous-peoples-and-access-to-justice/>.

* * * *

The United States appreciates the opportunity to discuss access to justice, which we agree is an important topic. Under the U.S. Constitution, indigenous individuals enjoy the same rights to due process and equal protection under the laws as other individuals against actions of the federal, state, and local governments. Pursuant to the Indian Civil Rights Act, they also enjoy nearly identical statutory protections against actions of tribal governments to those they enjoy against actions of federal, state, and local governments.

The United States has pursued initiatives concerning access to justice. We hope the concrete details we will provide today about the U.S. experience will be of interest, including with regard to the ability and authority of tribes to enforce the law.

First, President Obama signed the Tribal Law and Order Act into law in July 2010. The Act gives tribes greater sentencing authority in criminal trials; strengthens defendants' rights; establishes new guidelines and training for officers handling domestic violence and sex crimes; improves services to victims. It also helps combat alcohol and drug abuse; assists at-risk youth; expands recruitment and retention of Bureau of Indian Affairs and tribal officers; and gives tribes improved access to criminal databases. The scope of interagency coordination in implementing this Act is quite broad.

Second, the U.S. government has settled many significant and longstanding Native American legal claims against the United States. These include cases involving access to U.S. Department of Agriculture loan programs; the government's trust management and accounting of individual American Indian trust accounts; and four water settlements benefitting seven tribes in Arizona, Montana, and New Mexico.

Third, we work to obtain justice for Native American women and girls who have survived violence, which we agree is a pressing issue. First, we ensure that the federal government enforces the law and promotes public safety where there is federal criminal jurisdiction. Second, we support the efforts of tribal governments and communities to prevent and respond to violence against women. To build on the Tribal Law and Order Act, in July 2011

the Department of Justice proposed legislation to the United States Congress that would recognize certain tribes' power to exercise concurrent criminal authority over domestic-violence cases, whether or not the defendant is Indian.

* * * *

4. Response to report of Special Rapporteur Anaya

At the 21st session of the HRC, the United States delivered a statement in response to the report of the special rapporteur on indigenous peoples, James Anaya. The U.S. statement, delivered on September 18, 2012 is excerpted below and available at <http://geneva.usmission.gov/2012/09/18/u-s-country-response-to-the-report-of-the-special-rapporteur-on-indigenous-peoples/>.

* * * *

Thank you, Madame President. The United States was pleased to welcome Special Rapporteur Anaya for an April-May 2012 visit, during which he consulted many key Administration and indigenous representatives. We appreciate that the report outlining the findings of his visit contains positive assessments of the U.S. programs, policies, and legislation devoted to improving the lives of indigenous peoples. We would like to comment today on the challenges facing indigenous communities that the report highlights.

Native Americans in the United States experience high rates of poverty, illness, substance abuse, suicide, and incarceration, as well as relatively low levels of education. The United States is taking steps to alleviate these problems. President Obama's proposed fiscal year 2013 budget allocates \$19.4 billion for programs benefitting indigenous communities in education, transportation, and access to justice. The request represents a three percent increase from the amount requested for fiscal year 2012.

The 2009 American Recovery and Reinvestment Act provided over \$3 billion to help tribal communities renovate schools on reservations; encourage job creation; improve housing and energy efficiency; and support health facilities and policing services. This appropriation included \$510 million allocated to the Department of Housing and Urban Development for the Native American Housing Block Grant program.

Next, the Affordable Care Act includes permanent authorization of the Indian Health Care Improvement Act, which is the cornerstone legal authority for the provision of health care to American Indians and Native Americans. The Affordable Care Act also enhances the quality of health care and makes it more affordable for all Americans, including American Indians and Alaska Natives. The Act permanently authorizes new and expanded programs and services available to those who rely upon the Indian Health Service (IHS). If funded, that would amount to a nearly 29 percent increase to IHS budgets since 2009.

Another important action was the passage in June 2010 of the Tribal Law and Order Act. This Act gives tribes greater sentencing authority in criminal trials; strengthens criminal defendants' rights; establishes new guidelines and training for officers handling domestic

violence and sex crimes; improves services to victims; helps combat alcohol and drug abuse; and helps at-risk youth. It also expands recruitment and retention of Bureau of Indian Affairs and tribal officers and gives them better access to criminal databases.

Indigenous women suffer disproportionate rates of violence, and the U.S. government is working with tribes to address this. The Department of Justice has streamlined the process for tribes to apply for grants for public safety, awarding nearly \$120 million to tribes over the past two years. It has set up a national clearinghouse for training and technical assistance concerning sexual assault of Native American women. And it is funding a project to collect and preserve sexual assault evidence in geographically isolated tribal communities. The Indian Health Service (IHS) of the Department of Health and Human Services has recently promulgated its first sexual assault policy and protocol for use in its U.S. health facilities, and the Department of the Interior is working with IHS to coordinate this protocol with law enforcement throughout Indian country in the United States.

* * * *

G. PROTECTION OF INTERNALLY DISPLACED PERSONS

On March 6, 2012, the United States participated in a clustered interactive dialogue at the 19th session of the Human Rights Council on the human rights of internally displaced persons (“IDPs”) and the working group on arbitrary detentions. Excerpted below is the section of the statement of the U.S. delegation, delivered by Jyl Kuczynski, responding to the report of the special rapporteur on the human rights of IDPs. The remainder of the U.S. statement, relating to arbitrary detentions, is excerpted in section I.3., *infra*. The statement in its entirety is available at <http://geneva.usmission.gov/2012/03/07/addressing-the-human-rights-of-idps-is-both-a-humanitarian-and-a-development-imperative/>.

* * * *

The United States Government would like to thank the Special Rapporteur on the Human Rights of Internally Displaced Persons, Chaloka Beyani, for his report. We support the Special Rapporteur’s efforts to advance the Guiding Principles on Internal Displacement and his work on mainstreaming the human rights of internally displaced persons (IDPs).

As the world continues to experience rapid urbanization, there are increasingly more IDPs living in cities. While some IDPs who live among the urban poor have similar needs, many IDPs also face specific protection problems related to their status as displaced persons and require interventions specifically targeted to address their needs.

We further agree that an IDP protection and assistance approach that considers the needs of host families and communities will help lay the groundwork for longer term peace and reconciliation efforts. One important way to minimize conflict between these groups is to ensure that IDPs have access to existing services to reduce the need for parallel assistance programs.

Finally, we agree that humanitarian and development actors need to engage with one another more systematically to pursue long-term solutions to internal displacement. Addressing

the human rights of IDPs is both a humanitarian and a development imperative. The United States encourages the Special Rapporteur to work closely with the United Nations High Commissioner for Refugees, which recently released a policy on refugee protection and solutions in urban areas. We would welcome the Special Rapporteur's views on where incorporating IDP protection strategies into development programs has worked well and how donors can better support these initiatives.

* * * *

H. TORTURE AND OTHER CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT

The United States co-sponsored and joined consensus on the resolution on torture and other cruel, inhuman, or degrading treatment adopted by the UN General Assembly at its 67th session. U.N. Doc. A/RES/67/161.

I. JUDICIAL PROCEDURE, PENALTIES, AND RELATED ISSUES

1. Death Penalty

At the UN General Assembly's 67th session, Special Rapporteur Juan Mendez presented an interim report on torture and other cruel, inhuman or degrading treatment or punishment which focused on the death penalty. U.N. Doc. A/67/279. The United States delivered a statement on the special rapporteur's report, which follows.

* * * *

The United States thanks Special Rapporteur Mendez for his interim report which furthers discussion of issues of importance within and among governments. As the Special Rapporteur recognizes, “[u]nder international law, the death penalty can only be carried out pursuant to a final judgment of a competent court and only applied to the most serious crimes.”

In the United States, the judicial system, at both the federal and state levels, provides an exhaustive system of protections to ensure that implementation of the death penalty is undertaken with procedural safeguards, after multiple layers of judicial review, for only the most serious crimes, in conformity with U.S. constitutional guarantees and U.S. obligations under the ICCPR.

As the Special Rapporteur also notes, taken together, Article 6 of the ICCPR and article 1 of the Convention Against Torture mean that the death penalty cannot be considered per se a violation of the prohibition of torture and cruel, inhuman or degrading treatment or punishment.

The Special Rapporteur does, however, take the position that a number of practices associated with the exercise of the death penalty may constitute torture or cruel, inhuman or degrading treatment. The United States does not agree with his assessment on a number of practices, including lethal injection and solitary confinement.

The Special Rapporteur's report includes a number of recommendations directed to retentionist states. Some of these pertain to compliance with those states' obligations under international law, whereas others do not reflect what is required under international law.

We strongly disagree, for example, with his formulation of the obligation under article 3 of the Convention against Torture as set forth in his last recommendation.

We recognize that there is intense public discussion and debate on the issue of the death penalty both within and among nations and we respect the views shared by persons who seek to abolish capital punishment.

We do not share the Special Rapporteur's views regarding the emergence of a customary norm prohibiting the use of the death penalty under all circumstances and urge that more attention be focused on addressing and preventing existing human rights violations that result from the improper imposition and application of capital punishment.

Thank you, Special Rapporteur Mendez.

* * * *

2. Extrajudicial, Summary or Arbitrary Executions

On June 19, 2012, the United States provided a statement on the report of the special rapporteur on extrajudicial, summary or arbitrary executions at the 20th session of the Human Rights Council. The statement is excerpted below and available at <http://geneva.usmission.gov/2012/06/19/statement-on-the-report-of-special-rapporteur-on-extrajudicial-summary-or-arbitrary-executions/>.

* * * *

The United States thanks Special Rapporteur Christof Heyns for his work as the Extrajudicial, Summary or Arbitrary Executions mandate holder. We appreciate efforts by the Special Rapporteur and his predecessor to follow up on country visits, and recommend that other mandate holders also consider this practice.

In May 2011, the United States submitted a detailed response addressing the issues and recommendations contained in the Special Rapporteur's country visit report. That submission provided a number of updates on the status of U.S. policy in those subject areas. ...

While broader than the issues in the purview of this Council, questions about the U.S. legal and policy framework for use of force against al-Qaeda and associated forces have been addressed by senior U.S. officials in a number of recent public statements. These include the recent remarks by Assistant to the President John O. Brennan at Harvard Law School on September 16, 2011 and at the Woodrow Wilson International Center for Scholars on April 30, 2012; by Attorney General Eric Holder at Northwestern University School of Law on March 5, 2012; and by Department of Defense General Counsel Jeh Johnson at Yale Law School on February 22, 2012. These public statements reflect the unequivocal U.S. commitment to conducting such operations with extraordinary care and in accordance with all applicable law, including the law of war. They also reflect our continuing commitment to greater transparency and a sincere effort to address some of the important questions that have been raised.

Since our Nation's founding, we have committed ourselves to pursuing the highest standards of justice and due process to protect the inalienable rights of all people as reflected in

the U.S. Constitution, other U.S. law, and our international legal obligations. We continue to work hard to ensure that our policies and our actions meet those standards and abide by all applicable domestic and international law.

* * * *

On November 20, 2012, Ambassador Cousens presented the explanation of vote on the U.S. abstention from the UN General Assembly’s resolution on extrajudicial, summary, and arbitrary executions. Ambassador Cousens’ statement, excerpted below and available at <http://usun.state.gov/briefing/statements/200947.htm>, explained U.S. concerns that the resolution did not adequately account for both of the governing bodies of international law in the area, humanitarian law and human rights law.

* * * *

We wish to join the co-sponsors of this resolution in condemning extrajudicial, summary or arbitrary executions against all persons, irrespective of their status. We agree that all States have obligations to protect human rights and fundamental freedoms and should take effective action to combat all extrajudicial killings and punish the perpetrators. We agree that countries such as ours, which have capital punishment, should abide by their international obligations, including those related to due process, fair trial, and use of such punishment for only the most serious of crimes. We strongly agree with the language condemning extrajudicial killing that targets vulnerable groups, particularly those targeted on account of their sexual orientation or gender identity. Indeed, we agree with much of the text of this resolution.

We nonetheless have concerns about the language of the resolution in a few areas and, therefore, abstain on the resolution. Much as we deeply agree with the goals and sponsors of the resolution, we are not in a position to vote for a text that obscures that there are not one, but two bodies of law that regulate unlawful killings of individuals by governments—international human rights law and international humanitarian law. These two bodies of law are complementary and mutually reinforce one other. We also recognize that determining what international law rules apply to any particular government action during an armed conflict is highly fact-specific. However, the applicable rules for the protection of individuals and conduct of hostilities in armed conflict are primarily found in international humanitarian law.

The resolution as worded contributes to legal uncertainty about how these two important bodies of law apply to an array of factual circumstances.

* * * *

3. Arbitrary Detentions

On March 6, 2012, the United States participated in a clustered interactive dialogue at the 19th session of the Human Rights Council on the human rights of internally displaced persons (“IDPs”) and the working group on arbitrary detentions. Excerpted below is the section of the statement of the U.S. delegation relating to arbitrary detentions. The portion relating to IDPs is excerpted in section G, *supra*. The statement in its entirety is available at

<http://geneva.usmission.gov/2012/03/07/addressing-the-human-rights-of-idps-is-both-a-humanitarian-and-a-development-imperative/>.

* * * *

The United States thanks the Working Group on Arbitrary Detentions for your report. We commend your efforts in conducting country visits and highlighting cases within your mandate and appreciate the success you have had when focusing on specific cases.

The United States respectfully disagrees with the Working Group's proposed summary of ICCPR Article 9(3), which deviates from the language agreed by States parties, in particular by suggesting the view that "any detention must be exceptional and of short duration" or would otherwise be considered arbitrary or unjustified. Article 9(3) is expressly limited to those detained on criminal charges. The second sentence of Article 9(3) strikes a more nuanced and neutral balance between detention and other alternatives to guarantee appearance at trial. Article 9(3) must be understood by reading both sentences together.

The need for an abridged summary of Article 9(3) is unclear, and the United States is concerned that widespread adoption of such a summary would be problematic. The United States encourages the Working Group to use the clear language of Article 9(3) in its work. The United States agrees that anyone held in criminal detention has a right to prompt judicial review of their detention. However, we respectfully disagree with the Working Group's conclusion that the absence of a remedy of habeas corpus would per se result in denial of protection from arbitrary detention.

Moreover, in many respects, the minimum requirements concerning habeas corpus that the Working Group has articulated go beyond what human rights law requires. The United States encourages the Working Group to concentrate on specific cases and circumstances of arbitrary detention rather than on attempting to summarize or restate the related legal obligations of States.

* * * *

J. PROMOTION OF TRUTH, JUSTICE, REPARATION

In 2011, the Human Rights Council establishing the first-ever special rapporteur "on the promotion of truth, justice, reparation and guarantees of non-recurrence." *Digest 2011* at 220. On September 11, 2012, at the 21st session of the Human Rights Council, the United States participated in a clustered interactive dialogue on the report of the special rapporteur on truth, justice, reparation, and non-recurrence, along with the report of the working group on the use of mercenaries. The statement of the U.S. delegation relating to transitional justice, delivered by Arsalan Suleman, is excerpted below. See the discussion in section M, *infra*, relating to U.S. cooperation with the efforts of the working group on mercenaries. The statement of the U.S. delegation is available in full at <http://geneva.usmission.gov/2012/09/11/hrc-mandate-on-transitional-justice-sends-strong-signal-that-victims-have-rights/>.

* * * *

The United States welcomes the report of the Special Rapporteur on the promotion of truth, justice, reparation and non-recurrence. The decision of the Human Rights Council to adopt a special mandate on transitional justice sends a strong signal that impunity for serious human rights violations will not be tolerated and that victims have rights. This imperative is all the more timely given events in Syria and elsewhere.

We support the SR's integrated and comprehensive approach to the four elements of his mandate, incorporating the full range of judicial and non-judicial measures including prosecutions; truth-seeking; reparations; lustration (or barring former officials from office), memorialization; and institutional reform.

We support his recognition of the distinctive characteristics of some recent transitions and the need for a comprehensive process of national consultation, particularly with those most affected by human rights abuses and violations in contributing to a holistic transitional justice strategy. We also agree with his proposed focus on the linkage between these four elements and broader issues such as development, security, and the rule of law, and appreciate his commitment to integrating a gender perspective that takes account of the different needs and opportunities of men, women, and children.

In light of these conclusions, we call upon the members, the international community, and regional organizations to assist countries in implementing a holistic transitional justice program, to ensure the promotion and protection of human rights, and to incorporate best practices into the development and implementation of transitional justice mechanisms. We look forward to learning more from the work of the Special Rapporteur.

* * * *

K. RULE OF LAW AND DEMOCRACY PROMOTION

1. U.S. Pledges at UN General Assembly High-Level Event on Rule of Law

The UN General Assembly convened a High-Level Meeting on the Rule of Law on September 24, 2012 in accordance with a resolution passed in 2011. U.N. Doc. A/RES/66/102. The United States pledged its commitment to the principles of the rule of law, including, inter alia: its support for UN efforts on the international level; its domestic efforts to improve women's access to justice and access to legal aid; and its support for other Member States' rule of law programs. The U.S. submission containing its pledges is available at www.state.gov/s/l/c8183.htm. U.S. Attorney General Eric Holder represented the United States at the High-Level Meeting. His September 24, 2012 statement, available at www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1209242.html, is excerpted below.

* * * *

History has proven that the establishment and enforcement of the rule of law is essential—in protecting the security and civil liberties of our citizens; in combating violent crime, public corruption, and terrorist threats; and in strengthening civil society. In recent days, we have been reminded—in the most painful and tragic of ways—of just how vital the rule of law is to ensuring freedom, opportunity, justice, and peace.

I am here not only to pledge the United States' commitment to these principles—but also our support for the United Nations' robust efforts to strengthen the rule of law worldwide. And I want to assure each of you that my colleagues and I are determined to stand with any nation that strives to ensure integrity, foster innovation, and create opportunities for prosperity and progress. We will also stand with those governments that cherish the benefits of a free, fair, and open society; and that seek to eradicate the corrupt and abusive activities that can weaken political institutions, threaten the democratic process, undermine the strength and promise of civil society, and diminish the quality of life for countless individuals, families, and communities. We must all truly serve the people we are privileged to represent.

From our national systems, to the UN's work in advancing the goals of international peace and security; of human rights for all people—including women, LGBT individuals, and persons with disabilities—and of economic development and job creation—we've seen, time and again, that there is a strong link between fostering democratic values and supporting the rule of law. Particularly in recent years, our commitment to the rule of law has helped to inform, augment, and re-energize our work in confronting a range of challenges—from fighting crime, corruption, and terrorism, to promoting global security, good governance, and ensuring equality and fair opportunity for all. Today's meeting underscores the fact that this work must remain at the center of how our nations approach development, especially in conflict-affected or fragile states. And it reaffirms—as the World Bank's recent Global Development Report highlighted—that, in today's world, the greatest threat to development and recovery is a weak rule of law.

That's why the promise we've gathered to fulfill—and the pledges we're here to make—are, and must continue to be, a top priority. It's also why, at the international level, I am proud to say that the United States will continue to support UN-led efforts to expand access to legal aid, to more effectively combat drug trafficking and organized crime alongside our international partners, and to build on UN initiatives in the rule of law sector that are focused on conflict and post-conflict situations.

Within our own borders—particularly as we approach the 50th anniversary of the United States Supreme Court decision guaranteeing the right to counsel for indigent criminal defendants—the United States also pledges to take steps to improve access to justice for those who cannot afford representation. Additionally, we are focused on launching a new domestic violence prevention initiative, strengthening safety net programs that help increase the availability of legal aid, and enhancing our focus on protecting the essential rights of women and girls.

In these and our other efforts to strengthen the rule of law and encourage cooperation on an international scale—from our work together under the landmark UN conventions against crime, terrorism and corruption; to our capacity-building, prosecutorial training, and regional assistance efforts—the Department that I am privileged to lead, and the nation that I am honored to serve, are proud to stand with the leaders in this room. Like you, we approach the challenges before us with resolve, humility, and an eagerness to reinforce old friendships and forge new

ones. And we are eager to join with you- as true and equal partners—in driving this critical work into the future.

* * * *

2. Transparency and Accountability

On March 9, 2012, Ambassador Donahoe addressed the 19th session of the Human Rights Council on the demand of people around the world for greater transparency, accountability, and participation in governance. She delivered a statement on behalf of the United States and the other founders of the Open Government Partnership (“OGP”): Brazil, Indonesia, Mexico, Norway, South Africa, and the United Kingdom. That statement appears below and is also available at <http://geneva.usmission.gov/2012/03/09/donahoe-people-around-the-globe-are-demanding-more-transparency-accountability-and-participation-in-governance/>. For background on the founding of the OGP, see *Digest 2011* at 223-25.

* * * *

The United States and the above mentioned countries are extraordinarily proud to have joined together with civil society groups, in September 2011 in founding the OGP, which is an unprecedented global initiative bringing together more than 50 countries and international civil society organizations. In joining the OGP, participating governments commit to four core principles elaborated in the OGP declaration: transparency, civic participation, professional integrity, and technology and innovation. OGP countries further commit to developing an action plan to put these principles into practice. More than 40 countries from all regions are working to finalize action plans drawn from their open government priorities. The upcoming April OGP High Level Conference, in Brasilia, Brazil, will serve as the forum for the exchange of best practices as countries present these action plans.

We are convinced that the application of these principles to all aspects of governance will directly contribute to a greater enjoyment of the entire spectrum of civil and political and economic, social and cultural rights that this Council addresses. This is because open government is about combating corruption, improving public services, strengthening government transparency, promoting economic development and giving people the information tools they need to hold governments accountable and to improve their lives. It is also about harnessing new technology and innovations to improve governance, and spurring enterprise and creative problem-solving by our societies.

Already during this Council session, ongoing discussions on issues such as freedoms of expression, association and assembly on the Internet, the rights of the child, freedom of religion and belief, food, and adequate housing have underscored the importance of the continued need for governments to pay attention to the practical application of the principles laid out in the OGP declaration, as well as the need for us to learn from one another.

Moreover and equally important, recent events around the globe, most vividly demonstrated by those that continue to unfold in the Arab world, illustrate that as people everywhere strive to fully exercise their human rights, they are also demanding from their governments more transparency, accountability, and increased participation in governance.

Indeed, as the Open Government Declaration, which was endorsed by OGP founding governments in September 2011, makes clear, “public engagement, including the full participation of women, increases the effectiveness of governments, which benefit from people’s knowledge, ideas and ability to provide oversight.” Civil society actors are using modern communications tools, even as some governments attempt to impose undue restrictions upon them, in order to expand networks, share information, muster support, and generally enhance their efficiency and effectiveness in advocating for protection of their human rights and holding governments accountable when they fail their people.

We are optimistic about the potential for the Open Government Partnership to reinforce the work of the Human Rights Council in practical and concrete ways. OGP participants have already committed to focus on particular issues such as improved public services, better management of public resources and foreign assistance, and creating safer communities.

As participants implement their country action plans, we are confident that the OGP will generate significant additional expertise and examples of best practices that the international community can draw on as we all look for ways to improve human rights conditions.

* * * *

3. Open Government Partnership

In April 2012, the OGP held its first annual high level meeting in Brasilia, Brazil. A State Department fact sheet about the meeting explained the development of the OGP in the intervening months since its launch and its first high level meeting: “Through concrete commitments announced via OGP action plans, over fifty governments are taking important steps towards greater transparency, accountability and participation that will ultimately improve the lives of people around the world.” April 17, 2012 fact sheet, available at www.state.gov/r/pa/prs/ps/2012/04/187989.htm. Representatives from more than 60 countries and over 200 civil society organizations participated in the Brasilia meeting. Secretary Clinton delivered remarks at the opening session of the Brasilia meeting on April 17, 2012, available at www.state.gov/secretary/rm/2012/04/188008.htm. For more information on OGP, see www.opengovpartnership.org.

4. Civil Society

At the 19th session of the Human Rights Council, the United States delegation provided a general statement, delivered by Charles O. Blaha, on the crucial role of civil society in protecting democracy and human rights around the globe. The U.S. statement delivered on March 20, 2012, excerpted below, is available at <http://geneva.usmission.gov/2012/03/19/item8/>.

* * * *

The Vienna Declaration and Program of Action states, “Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural

systems and their full participation in all aspects of their lives.”

The United States believes that an essential way to support democracies is to support civil society. I want to focus my remarks today on emerging threats to civil society around the world and the need for all of us to address them.

Civil society is crucial to the protection and promotion of democracy and human rights around the globe. It gives voice to those segments of the population that might otherwise be marginalized, ignored, or violated.

And it illustrates the need for pluralism—that no single leader, government entity, or state can fully understand and resolve all of the problems that a country faces, particularly in this complex world.

This is certainly true for the United States. As Secretary Clinton stated in Krakow in 2010, “We were a people before we were a nation. And civil society not only helped create our nation, it helped sustain and power our nation into the future. It has also played an essential role in identifying and eradicating the injustices that have, throughout our history, separated our nation from the principles on which it was founded.”

Civil society’s “essential role,” however, is under threat around the world. We see governments trying to silence the voices of civil society by making it harder for these groups to register and operate within their country. Others make it more difficult for these groups to get funding. Worse still, some governments use intimidation, persecution, and even violence to try to bully these groups into submission.

We call upon all governments to protect their civil society organizations from attacks, and to uphold their commitments to promote and protect the human rights of their citizens, including the rights enshrined in the Universal Declaration of Human Rights: the right to life, liberty and security of person, freedoms of expression, association and peaceful assembly, and protection against torture and arbitrary arrest or detention.

The United States joined this body in order to address urgent and pivotal human rights situations, including continued attacks on civil society. We urge the Human Rights Council to uphold the principles enshrined in the rights to Freedom of Peaceful Assembly and of Association Resolution that this body passed in 2010 and the general principles governing this Council by responding to these attacks and supporting our civil society colleagues.

* * * *

At the 21st session of the Human Rights Council, the United States delegation again provided a statement on the crucial role of civil society in advancing human rights, focusing on the role of activists, human rights defenders, and media. The U.S. statement delivered by Ambassador Donahoe on September 14, 2012, excerpted below, is available at <http://geneva.usmission.gov/2012/09/14/civil-society-activists-human-rights-defenders-and-media-play-crucial-role-in-advancing-human-rights/>.

* * * *

During this session the United States is working together with the Czech Republic, Indonesia, Lithuania, Maldives, Mexico, and Nigeria to highlight the importance of the rights to freedom of peaceful assembly and of association for civil society. These freedoms provide a basis for civil society organizations to play an essential role in the lives of many. Civil society groups can

support the work of our governments by filling gaps in education, health, and provision of many public services. They provide for interreligious dialogue, academic and cultural exchanges; they promote economic development and strengthen access for the most vulnerable and least empowered people; and they work to keep our governments on track by pushing us to remain transparent and accountable. As Secretary Clinton says, “Societies move forward when the citizens that make up these groups are empowered to transform common interests into common actions that serve the common good.” But in order for civil society to serve the common good—to accelerate social, cultural, economic and political development—governments must respect and uphold the freedoms of peaceful assembly and of association.

As yesterday’s panel and the Secretary General’s report on the issues of intimidation and reprisals against human rights defenders and others cooperating with UN human rights mechanisms highlighted “it is the responsibility of States to protect civil society.” Civil society activists, human rights defenders and journalists all play a crucial role on behalf of others in society to advance human rights. While their rights are no more or less important than the rights of other individuals, the fact that they work on behalf of others means that intimidation and reprisals against them has a multiplier effect. When their rights are not protected, it is to the detriment of the society at large. Secretary Clinton underscored this point at the 2012 Civil Society Summit: “Each time a reporter is silenced, or an activist is threatened, it doesn’t strengthen a government, it weakens a nation.” Members of civil society, human rights defenders and journalists are less effective in conveying information and representing the interests of the common good in a climate of fear. We support the Secretary General’s call for States to prevent acts of intimidation and reprisals, and when this is not possible, to ensure there is no impunity for perpetrators. It is also essential that the international community support States in these efforts.

To conclude, we appeal to all States to recognize the important role that civil society plays, and to do their utmost to promote and protect the rights of members of civil society—be they human rights activists, organizations, congregations, or journalists—who are working through peaceful means to improve situations in their countries.

* * * *

L. FREEDOM OF EXPRESSION

1. Media Freedom

On June 19, 2012, at the 20th session of the Human Rights Council, the United States participated in the clustered dialogue with the special rapporteur on freedom of opinion and the special rapporteur on extrajudicial, summary, or arbitrary executions. Ambassador Donahue delivered the statement of the United States emphasizing the important role of a free press in creating sustainable democracies and prosperous societies. Ambassador Donahoe’s statement is excerpted below and is available at <http://geneva.usmission.gov/2012/06/19/donahoe-u-s-honors-the-role-of-a-free-press-in-creating-sustainable-democracies-prosperous-societies/>.

* * * *

We agree with Special Rapporteur Heyns that unlawful attacks on journalists represent an assault on all human rights. That is why our response to such injustices must be clear, unequivocal, and uncompromising. Impunity for purposeful attacks on journalists and media freedom must be brought to an end. To this end, we agree with Special Rapporteur La Rue that the rule of law must be strengthened, and domestic legal frameworks and institutions must protect the right to freedom of expression and allow for the development of free and independent media.

Both Special Rapporteurs correctly observe that there are no gaps in international law on this issue—the challenge lies in implementation.

We applaud Special Rapporteur La Rue for focusing specifically on the perils of criminal defamation laws. In recent years, we have seen an increase in prosecutions under such laws. Journalists, bloggers, artists, activists, ordinary citizens—people of all backgrounds and opinions who peacefully exercised their right to freedom of expression—have been unjustly caught up in criminal defamation cases.

Special Rapporteur La Rue aptly described in his report the chilling effect on the right to freedom of expression such laws create, noting further that “criminal prosecution for defamation inevitably becomes a mechanism of political censorship, which contradicts freedom of expression and of the press.” Such laws can also undermine national stability and security, driving a wedge between social groups and creating an environment of fear and distrust. The U.S. government strongly believes that the decriminalization of defamation is good policy and urges all States to work toward the complete decriminalization of defamation.

Over the past year and half, we have witnessed the promise that media freedom holds for promoting freedom and democracy. As Secretary Clinton has noted, “A free media is essential to democracy and it fosters transparency and accountability, both of which are prerequisites for sustained economic development.” The free flow of information and ideas is a powerful force for progress—we must meet our obligations to protect that freedom.

* * * *

On September 27, 2012, at the 21st session of the Human Rights Council, the United States provided an explanation of its support for a resolution on the protection of journalists. U.N. Doc. A/HRC/RES/21/12. The resolution was adopted without a vote. The U.S. explanation of vote is excerpted below and available at <http://geneva.usmission.gov/2012/09/27/explanation-of-vote-protection-of-journalists/>.

* * * *

We thank the Austrian government for taking the lead on authoring this resolution, which is emblematic of its continued efforts to ensure freedom of expression and the safety of journalists worldwide.

The free flow of information, including news, helps build productive economies and dynamic societies and provides vital information that citizens can use to hold their governments accountable. However, a broad range of threats confront the media, and journalists' safety is often in danger in many parts of the world. These include the misuse of terrorism laws to prosecute journalists; the closure of websites and social media sites that criticize governments; physical attacks on, assassinations of, and disappearances of reporters; and the inability or unwillingness of governments to take appropriate steps to protect reporters or prosecute those responsible for attacks on journalists.

These and many other cases underscore the urgent need for today's resolution. We are especially appreciative that the resolution recognizes the importance of bringing to justice perpetrators of violence against journalists. Its call for accountability articulates this important goal of the international community. We also appreciate that the resolution recognizes that journalists are far too often the victims of violence due to their work and, in particular, that the resolution condemns both violations of the right to free expression by governments and impairment of the enjoyment of that right by non-state actors of all kinds.

In regard to OP6, we note that under the doctrine of *lex specialis*, the applicable rules for the protection of individuals, including journalists, and conduct of hostilities in armed conflict are typically found in international humanitarian law. Although complex issues arise with respect to the relevant body of law that determines whether a State's actions in the actual conduct of an armed conflict comport with international law, in this context, it is important to bear in mind that international human rights law and the law of armed conflict contain many similar protections and are in many respects complementary and mutually reinforcing. Determining the international law rule that applies to a particular action taken by a government in the context of an armed conflict is necessarily a fact-specific determination and cannot easily be generalized.

The United States recognizes the vital role of a free press to an open and just society, and will continue to urge all governments to take the steps necessary to ensure that journalists have the freedom to operate independently and without fear.

* * * *

2. Internet Freedom

On July 5, 2012, the Human Rights Council adopted by consensus a resolution on the promotion, protection, and enjoyment of human rights on the internet. U.N. Doc. A/HRC/RES/20/8. Secretary Clinton's press statement on the resolution appears below and is available at www.state.gov/secretary/rm/2012/07/194610.htm. Ambassador Donahoe also addressed representatives of the press on the resolution. Her comments are available at <http://geneva.usmission.gov/2012/07/05/resolution-on-human-rights-on-the-internet-a-momentous-outcome-at-the-hrc/>.

* * * *

Today, the UN Human Rights Council adopted by consensus a resolution with the message that there can be no division or double standard regarding human rights online. The landmark resolution makes clear that all individuals are entitled to the same human rights and fundamental

freedoms online as they are offline, and all governments must protect those rights regardless of the medium.

The free flow of news and information is under threat in countries around the world. We are witnessing an alarming surge in the number of cases involving government censorship and persecution of individuals for their actions online—sometimes for just a single tweet or text message.

This resolution is a welcome addition in the fight for the promotion and protection of human rights and fundamental freedoms online, in particular the freedom of expression, as well as the freedoms of religion or belief, assembly and association, and the right to be free of arbitrary interference with privacy.

The United States was proud to work with the main sponsor, Sweden, and over 80 co-sponsors, including Brazil, Turkey, Nigeria, and Tunisia, to help pass this resolution. We will continue to stand with our partners to address challenges to online freedom, and to ensure that human rights are protected in the public square of the 21st century.

* * * *

At the 19th session of the Human Rights Council, on February 29, 2012, Ambassador Donahoe delivered the U.S. statement at a panel on freedom of expression on the internet. Her statement, excerpted below, is available in full at <http://geneva.usmission.gov/2012/02/29/internet-panel-statement/>.

* * * *

We are here to affirm the very simple and uncontroversial proposition that the fundamental freedoms of expression, assembly and association are the birthright of every person. These rights apply to persons and their activity on the Internet and mobile technologies just as they do to persons and their activity offline. We believe very deeply that the sharing and exchange of information and ideas online and offline strengthens societies and empowers individuals.

As Special Rapporteur LaRue and others have noted, we do not need to reinvent international human rights law, or our enduring principles, to account for the Internet. These fundamental rights, and the narrow set of permissible limitations on them, are well established. They do not need further elaboration or updating. No deed is more noble—or more evil—when it is committed online rather than offline.

Governments that are confident in their popular support do not feel threatened by what people say or the opinions they express. Rather than focusing on so-called “abuses” of freedom of expression, we believe this body should focus urgently on protecting the ability of individuals to exercise their right to freedom of expression.

The United States is concerned that some States are using filtering and blocking to unduly limit freedom of expression. Some States conduct illicit monitoring of their citizens’ online activity in order to suppress political dissent. Others are attempting to redefine their “security” in ways that would legitimize suppression of human rights.

We are also concerned about an emerging trend in which some governments attempt to suppress dissent online by requiring private Internet companies to block political content deemed “subversive,” and by requiring Internet service providers and other companies to track or

monitor online activities of their citizens in order to target or punish them for political or other dissent.

We encourage governments to uphold the strong protections for freedom of expression that are embodied in international human rights instruments, including when they seek to address security concerns and we encourage them not to require private companies to become complicit in suppressing dissent. As governments, we must protect the fundamental freedoms of our citizens online so that information technologies support progress instead of facilitate repression.

* * * *

3. Religion

a. Freedom of religion

(1) Designations under the International Religious Freedom Act

On March 30, 2012, Secretary Clinton redesignated Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, and Uzbekistan, respectively, as countries “of particular concern” under § 402(b) of the International Religious Freedom Act of 1998 (Pub. L. No. 105–292), as amended. The eight states were so designated “for having engaged in or tolerated particularly severe violations of religious freedom.” 77 Fed. Reg. 20,687 (Apr. 5, 2012). The presidential actions designated for each of those countries by the Secretary are listed in the Federal Register notice.

(2) Annual Report on International Religious Freedom

On July 30, 2012, the Department of State released and transmitted to Congress the 2011 Report on International Religious Freedom pursuant to § 102(b) of the International Religious Freedom Act of 1998 (Pub. L. No. 105-292), as amended, 22 U.S.C. § 6412(b). The report is available at www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm. The State Department updated the format and online user interface for the 2011 report. See July 30, 2012 media note, available at www.state.gov/r/pa/prs/ps/2012/07/195762.htm. Secretary Clinton’s remarks at the Carnegie Endowment for International Peace in Washington, D.C. on the release of the report are available at www.state.gov/secretary/rm/2012/07/195782.htm.

(3) U.S. Statement at the Human Rights Council

On March 6, 2012, the United States delegation provided a statement during a dialogue with the working group on disappearances and the special rapporteur on freedom of religion or belief during the 19th session of the Human Rights Council. The statement, delivered by Charles O. Blaha, emphasized that freedom of religion is the birthright of all people. The statement is excerpted below and available in full at <http://geneva.usmission.gov/2012/03/06/right-to-freedom-of-religion-or-belief-is-the-birthright-of-all-people/>.

* * * *

The right to freedom of religion or belief is the birthright of all people, regardless of their faith or lack thereof. It includes the right to profess, practice, and teach one's beliefs. This right must be respected and protected by all governments. Societies that do are more stable, secure, and prosperous than those that do not. The United States is committed to promoting and protecting this fundamental freedom at home and abroad, and we continue to work with the international community toward that goal.

We would also like to take this opportunity to express our regret for the unintentional mishandling of religious texts at Bagram Airbase. These actions do not represent the views of the United States. We honor and respect the religious practices of the Afghan people.

We will collaborate with Afghan authorities and carefully examine the facts and circumstances of this unfortunate incident. While we understand the deep emotions such an incident can cause, we appreciate the efforts of the Afghan government, including President Karzai, in appealing for calm while allowing peaceful protests to occur. We also note with appreciation the statement by OIC Secretary General Ihsanoglu calling for calm and restraint.

We thank the Special Rapporteur for his most recent report, which discusses recognition, registration, and personality status issues. We share the Special Rapporteur's deep concern that some States make certain rights dependent on affiliation with particular religions and place limitations on access to official documents like identity cards.

Also, cumbersome registration requirements are being used to restrict the freedom of religion of members of various groups, especially minority faith groups. States must relinquish these pernicious practices.

The United States appreciates the Special Rapporteur's engagement on a number of other issues, including the freedom to profess one's religion or belief. We thank the Special Rapporteur for his recent participation in the first Istanbul process meeting to implement HRC Resolution 16/18. It is critical that we continue to focus on implementation of positive, action-oriented measures to combat religious discrimination and intolerance rather than legal restrictions that are counter to human rights.

* * * *

b. Combating discrimination based on religion

On March 23, 2012, one year after the Human Rights Council adopted by consensus its landmark resolution 16/18 on combatting religious intolerance and discrimination, the Council adopted another resolution on the subject. U.N. Doc. A/RES/HRC/RES/19/25. Set forth below is the United States' explanation of position on resolution 19/25, delivered by Ambassador Donahoe, and available at <http://geneva.usmission.gov/2012/03/23/combating-intolerance/>.

* * * *

The United States welcomes the consensus adoption of the resolution on combating intolerance, discrimination, and violence against persons based upon religion or belief. This marks the one-year anniversary of this resolution, which represents a significant step forward in the global dialogue on this pressing issue. We appreciate the spirit of collaboration shown by the sponsors of this resolution.

The United States strongly supports today's resolution, which like its predecessor rejects broad prohibitions on speech, and supports actions that do not limit freedom of expression or infringe on the freedom of religion. This resolution demonstrates a desire to move the debate on shared challenges in a constructive and affirmative direction to ensure that all individuals enjoy their human rights and fundamental freedoms.

Adoption of this resolution must be followed by sustained commitment. At a time when violence and discrimination against members of religious minorities is all too common, we urge the international community to take action and implement the steps called for in this resolution. We note the productive experts meeting held last December in Washington, DC on the topic of implementation, and we look forward to continuing to work with all interested parties on this important endeavor.

* * * *

On September 24, 2012, Ambassador Donahoe delivered the statement of the U.S. delegation at a discussion at the 21st session of the Human Rights Council on freedom of expression and freedom of religion. Her statement appears below and is available at <http://geneva.usmission.gov/2012/09/24/freedom-of-expression-and-freedom-of-religion-are-inseparable/>.

* * * *

Sometimes it is useful to step back from our daily work and remember what the human rights we are charged to defend actually mean for societies in practice. The inseparable freedoms of expression and religion are important not for abstract reasons. When they are allowed to flourish, we see religious harmony, economic prosperity, societal innovation and progress, and citizens who feel their dignity is respected. When these freedoms are restricted, we see violence, poverty, stagnation, and feelings of frustration and even humiliation. These are not mere assertions but demonstrable facts.

A recent Pew research poll shows that social hostilities involving religion were lowest among countries where governments do not harass or intimidate religious groups, and national laws and policies protect religious freedom. This poll is available on our Mission website. <http://www.pewforum.org/Government/Rising-Tide-of-Restrictions-on-Religion-findings.aspx>

The poll results track with our own experience as a nation. The US had blasphemy laws we inherited from our colonial past and we had laws that prohibited criticism of high officials and of the institution of slavery. These laws did not bring harmony or prosperity to our society; they impeded our progress until we ceased to apply them.

Free expression is instrumental in allowing us to manifest our religious beliefs as we see fit, even when our beliefs may be disagreeable or offensive to others. It allows us to wear religious clothing in public places and to display religious symbols. Our religious dignity comes from how we conduct ourselves and how we profess our faiths, not from the approval of government or others.

This same freedom is instrumental in allowing us to press political views that may not be popular and thus could change the nature of our governance. It allows us to publish scientific findings that challenge established beliefs or challenge established economic models or entrenched interests.

Some of this expression may indeed offend others. Those who criticize a political leader or a social tradition or an economic model will offend those who believe in them. But the potential unlawful reaction of an offended listener should not get a veto over the right of the speaker to express his or her beliefs. This is not because we are insensitive to the feelings of the listener, but because we know from experience that the price of restricting expression is too high. We believe that offensive ideas will fall of their own weight when countered by other arguments in a vibrant marketplace of ideas.

The Human Rights Council found the right formula for combating discrimination and intolerance while upholding the freedoms of religion and expression in Resolution 16/18. By implementing the measures laid out in Resolution 16/18, we bring harmony, peace, prosperity and dignity to our citizens and our societies. We look forward to intensifying that effort in the months ahead.

* * * *

4. Expressions of Racism

a. U.S. submission to the Committee for the Elimination of Racial Discrimination

On August 20, 2012, the United States submitted comments to the Committee for the Elimination of Racial Discrimination (“CERD”) for consideration in connection with the Committee’s August 28 thematic discussion on racist hate speech. The U.S. comments are excerpted below and are available in full at

<http://geneva.usmission.gov/2012/08/27/curtailing-freedom-of-expression-is-not-the-way-to-combat-hateful-speech/>.

* * * *

...The United States of America is a State Party to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and is profoundly committed to combating racial discrimination. The United States has struggled to eliminate racial discrimination throughout our history, from abolition of slavery to our civil rights movement. We are not at the end of the road toward equal justice but our nation is a far better and fairer place than it was in the past. The progress we have made, we have accomplished without

banning speech or restricting freedom of expression. In light of this framework, the United States has long made clear its concerns over resorting to restrictions on freedom of expression, association, and assembly in order to promote tolerance and respect. This concern includes the restrictions contained in Article 4 of the CERD to the extent that they might be interpreted as allowing or requiring restrictions on forms of expression that do not constitute incitement to imminent violence or acts of intimidation. Indeed, these concerns were so fundamental that the United States took a reservation, when it became a Party to the CERD, noting it would not accept any obligation that could limit the extensive protections for such fundamental freedoms guaranteed in the U.S. Constitution.²

Banning and punishing offensive and hateful speech is neither an effective approach to combating such intolerance, nor an appropriate role for government in seeking to promote respect for diversity. As President Obama stated in a speech delivered in Cairo, Egypt in June 2009, suppressing ideas never succeeds in making them go away. In fact to do so can be counterproductive and even raise the profile of such ideas. We believe the best antidote to offensive and hateful speech is constructive dialogue that counters and responds to such speech by refuting it through principled arguments, causing the hateful speech to fall under its own weight. In addition, we believe government should speak out against such offensive speech, and employ tools to address intolerance that include a combination of robust legal protections against discrimination and hate crimes, proactive government outreach, education, and the vigorous defense of human rights and fundamental freedoms, including freedom of expression. Accordingly, the United States has a strong interest in the subject of this hearing and shares the following views in the hopes that they will help shed light on the need to promote respect for broad protections for freedoms of expression in the ongoing global struggle to combat racial discrimination.

Historical and Legal Framework Regarding Hate Speech within the United States

Our own history has taught us that curtailing freedom of expression by banning offensive and hateful speech is both a misguided and dangerous enterprise. ...Shortly after the birth of our nation, the United States Congress passed the Sedition Act, which made it a crime to publish “false, scandalous, and malicious writing” against the government with the intent to “excite against them ... the hatred” of the people. The Sedition Act was used as a political tool to prosecute Americans for speaking out against their government. The Act quickly became

² Other governments also have noted their concern about the protection of freedom of expression in the CERD. Some States Parties took explicit reservations while others have relied on the “due regard” provision of Article 4 and its reference to rights enshrined in the UN Declaration of Human Rights and in Article 5(d), including the rights to freedom of opinion and expression and the right to freedom of peaceful assembly and association, in order to protect broad protections for such fundamental freedoms. For example, the French reservation states: “With regard to article 4, France wishes to make it clear that it interprets the reference made therein to the principles of the Universal Declaration of Human Rights and to the rights set forth in article 5 of the Convention as releasing the States Parties from the obligation to enact anti-discrimination legislation which is incompatible with the freedoms of opinion and expression and of peaceful assembly and association guaranteed by those texts.” The reservation by the Bahamas, Fiji, and other states notes that they interpret Article 4 as requiring a party to the Convention to adopt further legislative measures in the fields covered by subparagraphs (a), (b), and (c) of that article only in so far as it may consider *with due regard* to the principles embodied in the Universal Declaration set out in Article 5 of the Convention (in particular to freedom of opinion and expression and the right of freedom of peaceful assembly and association). Some 20 States Parties have taken similar reservations to the CERD which address protection of rights to freedom of expression. Available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en#21.

unpopular and eventually expired, as we recognized that our young democracy needed dissent, not dictates, in order to survive.

In the first half of the nineteenth century, many states within the United States passed laws that made it illegal to criticize slavery. Those who spoke out against slavery in public or in their writing were punished as criminals, often severely. It was only through the efforts of abolitionists who courageously spread their message—and a bloody civil war—that we ended the horror of American slavery. In so doing, we reaffirmed our commitment to freedom of expression and the right to speak out against injustice. In the past 100 years, our Supreme Court has debated and adopted the notion that competition in ideas is a more appropriate way to address hateful speech than is government action to restrict expression. In 1974, the Court summarized this history, holding that “[h]owever pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.”³

Following in this vein, U.S. courts have upheld the rights of Neo-Nazis, Holocaust deniers, and members of white supremacist groups to march in public, distribute literature, and attempt to rally others to their cause. ... We protect freedom of expression not only because it is enshrined in our Constitution as the law of the land, but also because our democracy depends on the free exchange of ideas and the ability to dissent. And we protect freedom of expression because the cost of stripping away individual rights is far greater than the cost of tolerating hateful words. We also have grave concerns about empowering governments to ban offensive speech and how such power could easily be misused to undermine democratic principles.

Alternatives to Restricting Freedom of Expression

In addressing the problems posed by hate speech, the United States believes that robust implementation of obligations to combat racial discrimination, while simultaneously protecting freedom of expression is essential. The CERD contains a number of fundamental and far-reaching obligations—particularly under Articles 2, 3, 5 and 6—which, if fully implemented, serve as effective tools to comprehensively root out racial discrimination and promote tolerance. For example, Article 2 requires States Parties to “undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.” Article 3 requires States Parties to “prevent, prohibit and eradicate” racial segregation and apartheid and other practices of that nature. Article 5 requires States to guarantee equality before the law with respect to a broad range of civil, political, economic, social, and cultural rights. Article 6 requires the provision of effective protection and remedies. By contrast, restricting freedom of expression uniformly fails to achieve these goals. Given the consensus that surrounds such provisions in combating racial discrimination and their proven effectiveness, we would encourage the Committee to focus squarely on how rigorous implementation by States Parties of these non-controversial core obligations can effectively combat racist hate speech without resorting to inherently ineffective restrictions on freedom of expression.

In the United States, we believe the best way to combat intolerance and discrimination is to have a strong legal regime to deal with acts of discrimination and hate crimes, to proactively engage in outreach to affected communities, to speak out against intolerance, and to promote broad protections for freedom of expression. Our network of civil rights laws—forged through our own painful civil rights struggle—deters and punishes those who would undermine the ability of others to live free from discrimination and violence. Several federal statutes punish

³ U.S. Supreme Court opinion in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

acts of violence or hostile acts motivated by racial, ethnic, or other hatred and intended to interfere with the participation of individuals in certain activities such as employment, housing, public accommodation, and use of public facilities. The U.S. Supreme Court has determined that bias-inspired criminal conduct may be singled out for especially severe punishment. The prosecution of hate crimes is only one element in a broader effort of community engagement and empowerment. The United States Government works with state and local entities to educate our young people through anti-bullying curricula and other educational programs aimed to eliminate hate among our nation's youth. Through these kinds of actions, the United States encourages communities and schools to address bigotry before it becomes fuel for violence. We also have active outreach programs in our communities, where federal, state, and local law enforcement officers work to build trust among different ethnic and racial groups, to understand sensitivities and break down stereotypes, and to increase dialogue. Finally, political leaders from the President down to state and local officials speak out about intolerance and condemn such acts when they do occur. Discrimination, bigotry, and hate have no place in our nation in 2012. We are committed not only to combating these problems, but also to working with communities to prevent them from occurring in the first place.

* * * *

The Committee's Focus Should Be on Effective Measures

We question whether it is the best use of this Committee's resources to embark on an in-depth process for addressing the topic of racist hate speech. We would encourage the Committee to consider focusing its efforts and sharing its expertise on effective measures States can take to combat and redress racial discrimination under the CERD rather than resorting to counterproductive restrictions on fundamental freedoms. ...Moreover, we would encourage the Committee to avoid directing scarce resources to commencing a new debate on this issue when other bodies are actively seized of these same issues. For example, in Human Rights Council Resolution 16/18 (which has been endorsed by the UN General Assembly), UN Member States have decided to explore better ways to implement a large number of measures for addressing and combating intolerance and hate speech that do not involve broad bans on fundamental freedoms. Member States are meeting even outside of the UN system to pursue this dialogue and are reporting back the results to the Office of the High Commissioner for Human Rights (OHCHR). This approach should be given a chance to develop before the CERD Committee places more of its focus on the topic of hate speech. In addition, the OHCHR has conducted regional conferences on Article 20 of the International Covenant on Civil and Political Rights. The CERD Committee should allow that process to reach completion and for States to react to it before moving forward on more work relating to hate speech. An extensive CERD process in this area could be duplicative of other work at the UN and should be avoided.

* * * *

b. Third Committee resolution

On November 27, 2012, U.S. Deputy Representative to ECOSOC Teri Robl delivered the U.S. explanation of vote on a draft resolution presented in the Third Committee of the UN General Assembly on "Glorification of Nazism: Inadmissibility of certain practices that

contribute to fueling contemporary forms of racism, xenophobia.” The United States was one of three members to vote against the resolution; 120 voted in favor and 59 abstained. The resolution was subsequently adopted by the General Assembly by a vote of 129 in favor to three opposed, with 54 abstaining. U.N. Doc. A/RES/67/154. The U.S. explanation of vote in the Third Committee is excerpted below and available in full at <http://usun.state.gov/briefing/statements/201100.htm>.

* * * *

The United States supports many elements of this resolution. We join other members of the Third Committee in expressing revulsion at any attempt to glorify or otherwise promote Nazi ideology. The United States has a deep commitment to honoring the memory of the millions of lives lost in the Holocaust, and has been a strong supporter of the UN’s efforts to remember the Holocaust. We also condemn without reservation all forms of religious intolerance or hatred.

The United States shares the concern expressed in this resolution regarding the frequency of racist views expressed in any medium or forum, including on the Internet. We remain concerned, however, as in previous years, that the resolution fails to distinguish between offensive expression, which should be protected, and actions, such as discrimination and violence motivated by bias, which should always be prohibited.

We do not consider curtailing expression to be an appropriate or effective means of combating racism and related intolerance. Rather, it is our firm conviction, as reflected in the U.S. Constitution and laws of the United States, that individual freedoms of expression and association should be robustly protected, even when the ideas represented by such expression are offensive or hateful. We encourage States to refrain from invoking Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 20 of the ICCPR to limit freedom of expression or as an excuse for failing to take effective measures to combat racism or intolerance. In a free society, hateful ideas will fail due to their own intrinsic lack of merit. The best antidote to intolerance is not criminalizing offensive speech, but rather a combination of robust legal protections against discrimination and hate crimes, proactive government outreach to minority religious groups, and the vigorous defense of both freedom of religion and freedom of expression.

* * * *

M. PROMOTION OF HUMAN RIGHTS IN THE CONTEXT OF PRIVATE MILITARY AND SECURITY COMPANIES (“PMSCs”)*

In 2010, the Human Rights Council established an open-ended intergovernmental working group on the activities of private military and security companies. Although the United States voted against the resolution establishing the working group due to its stated purpose

* Editor’s note: The United States uses the term “PMSCs” because the HRC uses that term. However, as discussed in the statements excerpted *infra*, the United States has conveyed the view that private security contractors (“PSCs”) need to be distinguished from private military companies (“PMCs”).

of elaborating a legally binding international instrument (see *Digest 2010* at 738-40 for the U.S. explanation of vote), it has cooperated with and participated in the working group since its founding. The United States has also cooperated with the work of a separate working group on the use of mercenaries.

1. U.S. Submissions to the Working Group on the Use of Mercenaries

a. *Legal status and accountability of PSCs*

In 2012, the United States provided responses to questions from Ms. Faiza Patel, the chair-rapporteur of the working group on the use of mercenaries, regarding the legal status and accountability of U.S. private security contractors (“PSCs”) in Iraq and elsewhere. The letter from Ambassador Donahoe to Ms. Patel, dated June 1, 2012, is excerpted below and available in full at [https://spdb.ohchr.org/hrdb/21st/USA_01.06.12_\(22.2011\).pdf](https://spdb.ohchr.org/hrdb/21st/USA_01.06.12_(22.2011).pdf).

* * * *

The Civilian Extraterritorial Jurisdiction Act (CEJA) was introduced in the Senate this year as Senate Bill 1145 and is currently pending. The Bill has been reported by the Senate Judiciary Committee and placed on the Senate Legislative Calendar where it awaits further action by Congress.

The U.S. Government is fully committed to ensuring that U.S. contractors who are accused of committing serious crimes abroad are investigated and, when warranted, fully prosecuted. The Administration strongly supports swift passage of CEJA to expand and clarify extraterritorial jurisdiction over U.S. Government contractors, and is working on an ongoing basis with Congress to encourage passage of the Bill.

Though CEJA does contain a limited carve-out for certain intelligence activities of the United States, the carve-out, as it appears in the Bill, applies only to activities authorized in a manner consistent with applicable U.S. law. Moreover, pre-existing bases for extraterritorial jurisdiction will continue to exist, including 18 U.S.C. paragraph 3261 (Military Extraterritorial Jurisdiction Act), 18 U.S.C. paragraph 2441 (war crimes), 18 U.S.C. paragraph 2340A (torture), 18 U.S.C. paragraph 1596 (trafficking in persons), 10 U.S.C. paragraph 802 (application of the Uniform Code of Military Justice to contractors that serve with or accompany an armed force in the field during declared war or a contingency operation), and 18 U.S.C. paragraph 7 (crimes committed in the special maritime and territorial jurisdiction of the United States).

* * * *

The U.S. Government is fully committed to ensuring that PSCs respect international law and are held accountable when they engage in misconduct. This commitment is evidenced by many of the steps laid out in this response.

The United States Government also has taken a number of steps to improve contractor oversight. E.g., National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181,

para 841, 122 Stat. 230 (establishing independent “Commission on Wartime Contracting” to study contracting in Iraq and Afghanistan); reports and hearing documents available at the wartime contracting website (<http://www.wartimecontracting.gov>); Congressional Research Service, DoD Contractors in Afghanistan & Iraq: Background & Analysis 18-19 (Mar. 29, 2011) (noting steps DoD has taken to improve management of contractors in Iraq and Afghanistan). Significantly, moreover, Congress has now expressly barred civilian contractors from performing interrogation functions, and has required private translators involved in interrogation operations to undergo substantial training and to be subject to substantial oversight. National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, para 1038, 123 Stat. 2451; 75 Fed. Reg. 67,632 (2010).

The U.S. Government is working toward expanding and clarifying extraterritorial criminal jurisdiction by encouraging Congress to pass CEJA. In the meantime, the U.S. Government continues to pursue criminal prosecutions involving PSC misconduct, including the prosecution of several individuals involved in the Nissour Square incident in 2007. The earlier dismissal of that case was reversed on appeal, and the prosecution remains active.

The U.S. Government is also working to promote appropriate remedies for victims of misconduct. We have filed briefs in the course of litigation to influence the development of the law in a manner that recognizes that one of the government's interests is providing an appropriate remedy to victims. ... In addition, through participation in the ICoC [International Code of Conduct] initiative, we are pursuing innovative means of facilitating dispute resolution under circumstances where traditional legal processes may be difficult to access.

* * * *

b. National laws and regulations relating to PMCs and PSCs

In 2012, the United States also cooperated with the working group on the use of mercenaries in its efforts to collect information about national laws and regulations relating to private military companies and private security companies. Excerpted below is the July 2, 2012 letter from Ambassador Donahoe to Ms. Patel, identifying U.S. laws and regulations applicable to PMSCs. The letter is also available at www.ohchr.org/Documents/Issues/Mercenaries/WG/Law/USA/CoverLetter.pdf.

* * * *

Thank you for your letter dated May 9, 2012 regarding national regulatory frameworks relevant to private military companies and private security companies. In response to your request, we have provided copies of the following statutes and regulations.

Laws and Regulations Specifically Tailored to the Provision of Private Security Services

- Public Law (Pub. L.) 110-181, § 861, 862, 864 (National Defense Authorization Act (NDAA) 2008, Contracts in Iraq and Afghanistan), amended by:
 - Pub. L. 110-417, § 853-854 (NDAA 2009, Contracts in Iraq and Afghanistan)
 - Pub. L. 111-84, § 813 (NDAA 2010, Contracts in Iraq and Afghanistan)

- Pub. L. 111-383, § 831-832 (NDAA 2011, Contracts in Iraq and Afghanistan)
- Pub. L. 111-84, § 1038 (NDAA 2010, Contractor Interrogations)
- Pub. L. 111-117, § 7006 (Local Guard Contracts – Department of State)
- Pub. L. 111-383, § 833 (NDAA 2011, Standards and Certification for Private Security Contractors)
- 32 C.F.R. § 159 (Private Security Contractors Operating in Contingency Operations)
- Defense Federal Acquisition Regulation Supplement (DFARS) 225.370 (Contractors Performing Private Security Functions)
 - DFARS 252.225-7038 (contract provision)
- Department of Defense Instruction (DODI) 3020.50 (Private Security Contractors Operating in Contingency Operations, Humanitarian or Peace Operations, or Other Military Operations or Exercises)

Generally Applicable Laws and Regulations with Implications for Private Security Companies and their Employees

- 10 U.S.C. § 802 (Application of the Uniform Code of Military Justice to Contractors)
 - 15 U.S.C. § 78dd-1, et seq. (Foreign Corrupt Practices Act)
 - 18 U.S.C. § 7 (Special Maritime and Territorial Jurisdiction)
 - 18 U.S.C. Chapter 50A (Genocide)
 - 18 U.S.C. Chapter 77 (Trafficking in Persons)
 - 18 U.S.C. Chapter 113C (Torture)
 - 18 U.S.C. § 2441 (War Crimes)
 - 18 U.S.C. § 2442 (Child Soldiers)
 - 18 U.S.C. § 3261-3267 (Military Extraterritorial Jurisdiction Act)
 - 22 U.S.C. Chapter 39 (Arms Export Control Act)
 - 28 U.S.C. § 1350 (Alien Tort Statute)
 - 28 U.S.C. § 1350 *note* (Torture Victim Protection Act)
 - 31 U.S.C. § 3729-3733 (False Claims Act)
 - 42 U.S.C. § 1651-654 (Defense Base Act)
 - 22 C.F.R. § 120-130 (International Traffic in Arms Regulations)
 - Federal Acquisition Regulation (FAR) 7.5 (Inherently Governmental Functions)
 - FAR 22.17 (Combating Trafficking in Persons)
 - FAR 52.222-50 (contract provision)
 - FAR 25.3 (Contracts Performed Outside of the United States)
 - FAR 52.225-19 (contract provision)
 - 76 Fed. Reg. 56,227 (Office of Management and Budget Policy Letter – Performance of Inherently Governmental and Critical Functions)
 - Department of Defense Directive (DODD) 5210.56 (Carrying Firearms and the Use of Force by Department of Defense Personnel Engaged in Security, Law and Order, or Counterintelligence Activities)
 - DODI 3020.41 (Operational Contract Support)
- We hope you find this information helpful in your work.

2. Second Session of the Working Group on PMSCs

The United States also actively participated in the second session of the open-ended intergovernmental working group on private military and security companies held in Geneva from August 13 to 17, 2012. Excerpted below is the opening statement of the U.S. delegation. The full statement is available at <http://geneva.usmission.gov/2012/08/31/pmcs-igwg-%E2%80%93-u-s-opening-statement/>. The opening statement reiterates U.S. support for the Montreux Document and the International Code of Conduct, discussed in *Digest 2010* at 740-42.

* * * *

United States policy with regard to private security companies and private military companies is informed by two critical objectives: (1) to promote accountability, transparency and respect for human rights, and (2) to ensure governments and other non-state clients are able to continue to utilize private companies in areas where they are necessary for important operations, including those related to stabilization, humanitarian assistance, diplomacy, and development.

The United States takes very seriously that first objective and recognizes legitimate concerns that have been expressed about the operations of PSCs and PMCs; and we firmly support both international and domestic efforts to ensure accountability for human rights related abuses committed by PSCs or PMCs—as well to establish and strengthen policies that can help prevent misconduct before it occurs.

At the international level, as I expect we will discuss in more detail tomorrow, we have supported both the Montreux Document on Pertinent International Legal Obligations and Good Practices for States related to Operations of Private Military and Security Companies During Armed Conflict and the International Code of Conduct for Private Security Service Providers. We believe that these efforts are complementary and can be used to support efforts by states to craft appropriate legal and regulatory approaches to these industries. Recognizing that the relationship with and impact of these industries varies from state-to-state, it is our view that national-level regulation, based on informed consideration and open deliberation, is the most appropriate and effective way to ensure respect by these industries for human rights.

At the national level, we have taken steps both (1) to mitigate the potentially negative human rights related impact of PSC and PMC activities and (2) to ensure accountability for any misconduct that occurs. With regard to the former, U.S. Government contracts have incorporated robust standards of conduct, training requirements, and specifications for the selection and vetting of personnel. Furthermore, many activities of PSCs and PMCs are subject to licensing requirements under U.S. law. The export of defense articles or defense services, for instance, is regulated under the Arms Export Control Act.

We have also established procedures for reporting and investigating instances of alleged misconduct by private security contractors operating in connection with contingency operations. And we have supported passage of the Civilian Extraterritorial Jurisdiction Act (CEJA), which would expand and clarify extraterritorial jurisdiction over U.S. Government contractors who are not already covered by the Military Extraterritorial Jurisdiction Act (MEJA), the Special Maritime and Territorial Jurisdiction Act (SMTJ), or the Uniform Code of Military Justice (UCMJ).

With this update in mind, and recognizing we'll have an opportunity to speak more about the U.S. experience in subsequent sessions, we'd like to briefly set out three principles that we think we should all bear in mind this week.

We should seek consensus on this issue. As you know, the United States voted against the resolution establishing this Working Group and continues to believe that pursuit of a legally-binding instrument is not an appropriate or useful goal for this body. We nevertheless engaged at the first session of this Working Group and hope at this session that we can reach consensus on possible recommendations to present to the Human Rights Council. An approach that divides us is unlikely to bear fruit. Consider, for instance, the limitations of the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries. But an approach that brings together host states, territorial states, and contracting states to make progress in step-by-step fashion on promoting and protecting human rights in the context of activities of PSCs and PMCs would be well worth pursuing. The United States very much supports measures that can reduce the risk of, and ensure accountability for, any misconduct by PSCs and PMCs; and we hope we can reach common ground on how to take the next step in achieving those goals.

A consensus approach should recognize and distinguish between the national and international dimensions to this issue. As we have said before, much of what is needed in this area is better implementation of existing international law, as well as improvements in law, regulation and policy at the national level. Indeed, it bears reiterating that a domestic focus is appropriate since, when operating outside of armed conflict, PSCs and PMCs are primarily regulated by domestic law, which may or may not adequately reflect human rights concerns. That said, we remain open to considering the international element as well—and in particular how we as states can draw on each other's experiences to help each other address human rights related impacts of PSC and PMC activities.

To make progress at the international level, we should have a focused discussion of what the problems are and what strategies are working to address them. In this regard, we welcome the study on national legislation that the Working Group on Mercenaries is undertaking. We also look forward to hearing the presentations on Thursday from states with national legislation on how they have addressed issues arising from PSC and PMC activity. It would be valuable to use these discussions to identify possible topics for further discussion among states—such as the best approaches different states have taken to licensing and export, and any challenges they have faced, or approaches different states have taken to accountability, including whether they have pursued civil, criminal, or administrative remedies.

* * * *

The U.S. delegation provided several significant statements at the working group's August 2012 session. Excerpted below is the U.S. statement on the definition and scope of the PMSC industry, emphasizing the important distinctions between private security companies, private military companies, and mercenaries and the correspondingly different standards that should apply to these groups. The full statement is available at <http://geneva.usmission.gov/2012/08/31/pmcs-iqwq-%E2%80%93-u-s-statement-on-definitions/>.

* * * *

From the U.S. delegation’s perspective, it is important to distinguish three terms—Private Security Companies (PSCs), Private Military Companies (PMCs), and mercenaries. PSCs perform functions such as guarding personnel, facilities, designated sites, or property; this can include operations in complex emergencies and similar environments as well as operations with which we are all probably more familiar, such as guarding hotels in stable environments. PMCs, by contrast, perform functions in support of the military such as logistical support unique to armed forces, maintenance and operation of weapons systems, or military training. Another distinct category that further complicates this field is that of mercenaries, which are defined in Article 47 of Additional Protocol I. While some legal regimes have taken a prohibitory approach to mercenaries, IHL [international humanitarian law] has long recognized the legitimate role of civilians, like PMCs and PSCs, authorized to accompany armed forces.

It is also important to distinguish between situations of armed conflict—to which IHL applies—other situations where violence and/or instability have led to the use of commercial security providers, and other environments.

The reason these distinctions are important is because the same rules plainly are not appropriate for an individual guarding a hotel in a state with robust and effective domestic laws, an individual guarding a consular or diplomatic post in a high-risk environment, a contractor who trains a police force, and someone taking direct part in hostilities for hire.

This diversity is one of the reasons why we oppose a convention. Different elements of the PSC and PMC industry present different challenges. Attempting to negotiate a one-size-fits-all legally binding instrument is not a recipe for success.

We also think it is important to recognize what is described on the programme of work as “challenges with regard to the extraterritorial activities of PMSCs.” One such challenge is that although territorial states typically have laws on the books regarding PSC activities, their ability to enforce the law may be limited, both by capacity and by the fact that the PSC may be operating in a remote or high-threat location. (In fact, the reasons why clients often need to contract with PSCs is because the rule of law has been undermined in their area of operations). This is an issue we very much support addressing—whether through domestic legislation, such as our own effort to broaden the scope of extraterritorial jurisdiction, or through international measures such as law enforcement cooperation or capacity building.

* * * *

In its engagement with the working group, the United States has consistently explained its opposition to the drafting of a legally binding international instrument. The statement of the U.S. delegation to the August session of the working group on the issue of elaborating a legally binding instrument is excerpted below and is available in full at <http://geneva.usmission.gov/2012/08/31/pmscs-igwg-%E2%80%93-u-s-statement-on-the-option-of-a-legally-binding-instrument/>.

* * * *

...[W]e are open to “consider[ing] the possibility of elaborating an international regulatory framework”—and, indeed, through the Montreux Document and the Code are working in this line. But we are not prepared to support “the option of elaborating a legally binding instrument.”

First, the case has not been made that we need a convention. There has been far too little discussion of the scope and nature of the problems states need to address for us to leap to conclude that a convention is the only way to address them. We have not had sufficient opportunity to discuss the various and constantly evolving facets of and activities undertaken by PSC and PMCs. Nor have we had informed discussions about the approaches states have already taken to licensing, or vetting of PSCs or PMCs before contracting with them or supervision of or accountability for their activities under contracts concluded with them. We believe that those conversations are the most effective way to help inform and guide state approaches to regulation.

Second and relatedly, it is premature to consider a possible convention. The groundwork has not been laid. We need more time to see how initiatives such as the Code and various performance standards translate in practice and how national legal regimes develop to address these varied concerns. Hastily drafting a convention can only result in an instrument that fails to attract a significant number of ratifications, which would result in the same patchwork approach that convention advocates point to as the reason why a convention is needed in the first place. Worse, it would also divert attention and resources from other possible efforts to help prevent human rights related abuses by employees of PSCs and PMCs and ensure accountability for such abuses if they occur. There is much that can and should be done to promote best-practices and coordination among states, and between states and other stakeholders, if we can focus on issues that we all agree require further attention.

Finally and most fundamentally, a one-size-fits-all approach is not appropriate. We would ask—Do states really all have the same concerns? Are the concerns the same with each sector of the industry? Does it matter whether what is contemplated is connected to an ongoing armed conflict or not?

As we have seen with the earlier draft convention prepared by the Working Group on Mercenaries, there could be unintended consequences to an unnuanced approach. For instance, to give just two examples, the draft convention proposed by the Working Group would have burdened a range of actors who do not need international regulation, such as private security guards at hotels and cybersecurity consultants. The draft convention would also have seriously threatened assistance programs—not only military assistance programs, including to UN peacekeeping operations, but also humanitarian and health programs staffed by contractors—as the draft convention would have prohibited private companies from participating in “knowledge transfer” with military, security or police application. These sorts of overbreadth problems not only characterize the existing draft convention, but would also likely characterize other possible binding instruments. While we agree with the Working Group on Mercenaries that there is room for further discussion and clarification related to when, where, how, and what states can do to ensure better regulation and accountability with regard to these industries, we remain convinced that any attempt to craft rigid answers to these questions and cram them all together in a single, uniform instrument will not succeed.

* * * *

In the excerpt below from the U.S. statement on existing initiatives, the United States repeated its support for the Montreux Document and the International Code of Conduct (“ICoC”). The full statement is available at <http://geneva.usmission.gov/2012/08/31/pmscs-igwg-u-s-statement-on-existing-initiatives/>.

* * * *

We are pleased that the Montreux Document continues to attract support. Our hope is that states will use this Document to help ensure compliance with their international law obligations, and in particular IHL. The good practices—while not constituting a checklist against which states will be judged—do provide helpful and practical guidance to States that contract with private security companies, to States on whose soil they operate, and to States in which they are based or incorporated.

Likewise, we are supportive of the Code and the follow-up processes now underway. Indeed, the Code not only reflects the important substantive commitments of companies that sign up to it, but also calls for the establishment of (1) industry standards that can be measured and verified by external auditors, and (2) an oversight and governance mechanism that will manage the Code and ensure that companies are implementing their commitments effectively. The first quality management system for PSC operations was approved by the American National Standards Institute in April of this year. This standard provides measurable and auditable criteria to implement the recommendations of the Montreux Document and the principles of the ICoC in both company operations and enforceable contract provisions. Conformance with this standard is now required in all U.S. Defense Department contracts for private security functions. The standard is the product of subject matter experts from 24 nations, with assistance from UN DSS [Department of Safety and Security] and the ICRC. It is moving towards international approval and is under review by national standards bodies from several other nations and the European Union. In the coming months, ANSI will submit the standard to ISO for international recognition. With regard to the oversight mechanism, the temporary steering committee is continuing to engage in an open and transparent effort to revise the draft Charter for the mechanism. Earlier this year, extensive comments were received on the functions and governance of an oversight mechanism, and we appreciate the time and effort that went into preparing those comment. Additional outreach to and deliberation with interested stakeholders will take place at meetings to be held in September and October to consider and work toward consensus on remaining issues associated with drafting the Charter. This will include resolving exactly how the main functions of the oversight mechanism will operate, including certification of company policies, monitoring of company practices, and mechanisms for receiving complaints.

Once the standard and oversight mechanism are in place, we will be in a better position to assess the effectiveness of the Code; but we think the Code has real potential to improve performance across the industry and limit the risk of human rights related abuses.

Although work is ongoing on the mechanisms that will ultimately determine the success of the ICoC initiative, I would like to respond to some of the comments we often hear.

At the outset, it is important to emphasize that the ICoC is not designed to be a substitute for state regulation. We strongly believe that national regulation of PSCs and PMCs in accordance with the Montreux Document is critical for promoting good practices and ensuring

accountability in cases of misconduct. The ICoC is designed to complement state regulation by encouraging PSCs to adopt practices which support State regulation and by improving oversight and promoting accountability in places where traditional legal regimes face challenges. With that in mind, here are some of the comments we have heard expressed.

First, we sometimes hear that the Code is voluntary and therefore ineffective. This criticism discounts the role that market pressure can play. The PSC and PMC industry grew because there was a market for these services. By the same token, market pressure will give companies an incentive to alter their practices—to sign up to the Code and to ensure that they are deemed compliant by the oversight mechanism—as clients, states, media, and the public in general will be handed an effective tool for distinguishing between companies.

Another criticism is that the Code is non-binding or not effectively enforceable. While the Code is voluntary, it is important to note that the Code contemplates the existence of an oversight mechanism, which is currently being designed, that will help ensure compliance on the part of those companies who choose to sign-up to the Code. This criticism also ignores the ability of states and other clients to enforce the Code. The standards derived from the Code can be integrated into contracts and clients can then use contractual remedies to ensure compliance. In other circumstances, a company's agreement to the Code could be a condition of eligibility for a license to operate. For commercial clients of PSC services, certification by the oversight mechanism could be made a pre-condition for submitting a bid or contract award.

Indeed, given some of the challenges posed by extraterritorial activities of PSCs, leveraging a state's power as client, and the power of the market to influence decisions by private parties, may be one of the most effective ways of making an impact on the ground.

All this said, we are not arguing that the Montreux Document and the Code are the only initiatives we can discuss. Again, the Code may help complement State regulation, but we fully recognize that it is not and cannot be a substitute for effective accountability under the law. The Montreux Document is a very good starting point for improving national regulation, but we recognize that, here too, there is more work to be done.

Indeed, we think there remains room to discuss additional measures that could be taken to reduce the risk of, or ensure accountability for, human rights related impacts of PSC or PMC activity, including under the auspices of the Human Rights Council. But any such discussion should complement the Montreux Document and the Code. It should also focus on human rights, rather than IHL, consistent with the mandate of the Council. And any such discussion should take account of the careful way in which the Montreux Document and the Code were elaborated, listening to all viewpoints and developing best practices upon which states can draw—as this has been a critical part of the success of the Montreux Document and the Code. A hasty, take-it-or-leave-it approach simply will not work.

* * * *

The excerpt below is from the U.S. statement on accountability for human rights violations or abuses by PMSCs under U.S. domestic law and regulation. The full statement is available at <http://geneva.usmission.gov/2012/08/31/pmcs-iqwq-u-s-statement-on-domestic-legislation/>. As discussed in section M.1., *supra*, the United States also provided a list and copies of relevant U.S. laws and regulations to the rapporteur for the working group on mercenaries to aid its study of national legislation.

* * * *

...I'd like to provide a brief overview of some of the relevant U.S. laws and regulations. Like many other governments and international organizations, we have expanded our use of contract personnel in recent years. And we have learned important lessons as a result.

The U.S. does not have a single law respecting PSCs and PMCs—rather, we have a web of interlocking provisions that address different issues related to this industry.

One category of measures is those regarding procurement and export of PSC or PMC services, where the United States may be either or both a contracting or home state. In our capacity as contracting state, extensive requirements have been incorporated into U.S. Government contracts regarding selection and vetting of personnel, training, and standards of conduct. For example, the Worldwide Protective Services contract used to protect U.S. diplomats in high threat environments includes mandatory country-specific cultural awareness training for all security contractors prior to deployment. The Worldwide Protective Services contract also offers an example of improved oversight of security contractor personnel. State Department employees are embedded with contractors to provide direct operational oversight of all protective motorcades, and video recording systems and tracking systems are installed in vehicles to enhance oversight and contractor accountability. Furthermore, U.S. law prohibits the government from contracting for the performance of inherently governmental functions, and our Office of Management and Budget has recently published guidance establishing government-wide policy addressing this issue. It identifies examples of inherently governmental functions, including the circumstances under which security functions are considered to be inherently governmental. In our capacity as home state, under the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) the United States controls the export of defense articles and defense services by PSCs and PMCs by requiring that companies obtain a license or other authorization before exporting such defense articles or defense services. These terms cover a range of activities, such as military training of foreign units and forces.

A second category of measures relates to accountability. Here, the United States can and has itself taken a range of actions, from criminal prosecution to contract measures, and it is also possible for private parties to bring suit under certain circumstances. It is important to note that while there have been circumstances where immunity from the jurisdiction of the host government has been granted for the activities of PSCs working for the United States government abroad, those have been the exception rather than the rule and have been tailored in coordination and with the approval of those governments in whose territory the contractors are operating. On the criminal side, the United States has exercised jurisdiction under the Military Extraterritorial Jurisdiction Act (MEJA) and the Uniform Code of Military Justice (UCMJ) to hold contractors accountable for violations of our laws. In addition, we support broadening and clarifying the scope of extraterritorial criminal jurisdiction. The Civilian Extraterritorial Jurisdiction Act (CEJA), for instance, was introduced in the Senate last year as Senate Bill 1145 and is currently pending. On the contract side, familiar contract mechanisms exist under U.S. law for holding accountable contractors that fail to meet contractual requirements. They include performance-based deductions, non-extension of option contracts, negative performance evaluations, termination for default, and suspension/debarment. The False Claims Act also provides a mechanism for whistleblowers to hold accountable contractors that engage in fraud on

a U.S. Government contract. Finally, private parties may bring suit under state common law or under federal statutes. In briefs the United States has filed in such suits, we have made clear that accountability is one of several interests that must be taken into account.

* * * *

Further information, including documents, relating to the second session of the working group on PMSCs, held in Geneva in August 2012, is available at www.ohchr.org/EN/HRBodies/HRC/WGMilitary/Pages/OEIWGMilitarySession2.aspx. The closing statement of the U.S. delegation is available at <http://geneva.usmission.gov/2012/08/31/pmscs-iqwq-%E2%80%93-u-s-closing-statement/>.

N. FREEDOM OF ASSEMBLY AND ASSOCIATION

In September 2012, at the 21st session of the Human Rights Council, the United States introduced a resolution on the rights to freedom of peaceful assembly and association. The resolution was adopted by consensus on September 27, 2012. U.N. Doc. A/HRC/RES/21/16. Ambassador Donahoe delivered a statement for the United States, excerpted below and available at <http://geneva.usmission.gov/2012/09/27/resolution-on-freedom-of-peaceable-assembly-and-association-adopted-by-consensus/>, in which she introduced the resolution. The United States also delivered a statement at the 20th session of the HRC in response to the report of the special rapporteur on freedom of peaceful assembly and of association (not excerpted herein), available at <http://geneva.usmission.gov/2012/06/21/rights-to-freedom-of-peaceful-assembly-and-association-are-essential-components-of-democracy/>.

* * * *

The United States is pleased to introduce a resolution on “The rights to freedom of peaceful assembly and of association” for consideration and approval by this Council. We want to thank our fellow Core Group members—the Czech Republic, Indonesia, Lithuania, the Maldives, Mexico, and Nigeria—for their leadership and unflagging effort to advance this important and timely resolution. We present this text today on behalf of 62 cosponsors. We have made oral revisions to the tabled version—copies of these changes have been distributed in the room.

Two years ago we joined Council colleagues in supporting the landmark decision to appoint the first-ever Special Rapporteur on the rights to freedom of peaceful assembly and of association to highlight the growing threats to peaceful assembly and association, while developing best practices for the protections of those rights. This important mandate makes the Council more effective in defending human rights on the ground throughout the world.

The rights to freedom of peaceful assembly and of association are essential components of democracy and pillars of a thriving society. While there is no single recipe for improving the human rights situation worldwide, a common ingredient in bringing about positive change in every region of the world is the strong role of civil society. Around the world, civil society—either as individuals or in groups—supports the work of our governments by filling gaps in

education, health, and provision of many public services. They provide for interreligious dialogue, academic and cultural exchanges; they promote economic development and strengthen access for the most vulnerable and least empowered people; and they work to keep our governments on track by pushing us to remain transparent and accountable. Civil society has been at the forefront of promoting and protecting civil, political, economic, social and cultural rights. But in order to fully enable civil society to serve the common good, governments must respect and uphold the freedoms of peaceful assembly and of association. Regrettably, since the 2010 resolution was passed, the threats to civil society have increased, and thus it remains even more critical for the Council to address the issue today

It is in this context, that we bring this resolution before the Council: to reaffirm the importance of the protection of these important rights and to encourage other countries around the world to engage with the rapporteur in his important work in this area. This resolution also encourages the rapporteur in his next report to examine more deeply the role of civil society in relation to these rights and the realization of economic, social and cultural rights.

We look forward to working with other Council members in the upcoming year on the freedoms of peaceful assembly and of association and thank the plenary for considering this important resolution.

* * * *

O. U.S. CONCERNS OVER PUTATIVE RIGHT TO PEACE

In February 2012, the open-ended intergovernmental working group on a draft UN Declaration on the “Right to Peace” held its first session in Geneva. The United States opposed the formation of the working group, but cooperated with its work. Excerpts that follow immediately below are from the U.S. opening statement, delivered on February 18, 2013, which is available in full at <http://geneva.usmission.gov/2013/03/04/working-group-on-a-draft-un-declaration-on-the-right-to-peace-opening-statement/>.

* * * *

We appreciate this opportunity to provide further views both on the establishment and work of this Inter-Governmental Working Group and on its subject, the possibility of elaborating a Declaration on a “right to peace.” As most of you know, the United States voted against the establishment of this working group. I’d like to explain several of the reasons why:

First, we do not recognize the existence of a “right” to peace. The United States is deeply concerned whenever conflict erupts. We work assiduously in our diplomacy at the Security Council and bilaterally to resolve conflicts or prevent them before they can erupt, and we believe human rights and peace are closely related. Indeed, in the words of the UDHR, “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” But the proposed “right” is neither recognized nor defined.

Second, our concern isn’t solely that the “right” to peace is unrecognized right now. Our concern is also with efforts to create such a right. We are worried that such efforts not only

would be unproductive, but could do serious damage. As we will explain in more detail over the coming days, in many cases, the issues that the draft Declaration purports to address are already addressed in other, more appropriate forums, some under the Human Rights Council, and some not. By way of example of issues that are addressed outside the Council, arms control issues are, for instance, already being addressed at the Conference on Disarmament and in the Arms Trade Treaty talks. Peacekeeping is more appropriately addressed at the Security Council. “Peace education” is already addressed by UNESCO. And with respect to issues already under discussion in the Council, we would point out, for instance, that the draft Declaration has a provision on the right to development, which is the subject of its own HRC Working Group. We see a real risk that discussions on a “right” to peace could duplicate if not undermine these different existing processes.

Third, we have a fundamental concern with some of the ideas that have long been connected with discussions on the “right to peace.” Among them, the draft Declaration asserts that the right to peace is held by “peoples,” when the UDHR and other foundational documents accord human rights to individuals, not groups or nations. Further the draft Declaration sometimes appears to suggest that the “right to peace” includes and subsumes a range of existing human rights, some of which are universally recognized and are not subsets of the right to peace and others of which do not exist and add little value to the civil, political, economic, social, and cultural rights that are foundational to the humanity and dignity of each person. By way of example, the draft Declaration includes the “right to live in a world free of weapons of mass destruction,” Article 3(3), “the right to have the resources freed by disarmament allocated to ... the fair redistribution of natural wealth,” Article 3(5), the “the right to the elimination of obstacles to the realization of the right to development such as the servicing of unjust or unsustainable foreign debt burden and their conditionalities, or the maintenance of an unfair international economic order,” Article 9(3). While some of these may be important national objectives, defining them as rights—which an individual may assert against a State and for which he or she may seek a remedy for violations—wholly inconsistent with and may risk eroding the international framework of universal human rights guaranteed to individuals.

Additionally the Declaration appears to envision roles for different UN entities that may be inconsistent with the arrangements set out in the UN Charter.

We would also like to take the opportunity to say a word about this Working Group. While we are participating in the Working Group to explain our views on this issue, and appreciate the Chairperson’s efforts to bring everyone to the table and willingness to listen to all perspectives, our presence here should not be mistaken for agreement to negotiate a Declaration on the Right to Peace. We have listened with interest to what the Chairperson has said on this subject and are pleased that he does not wish the next three days to be a negotiation, either. Indeed, I want to be clear that we are not prepared to engage in such negotiations.

* * * *

...[W]e do agree with those delegations that argue that the promotion and protection of existing human rights can make a profound contribution to peace. For instance, protecting the right to freedom of expression can make a society more stable. As former Secretary of State Clinton has said, “[e]ach time a reporter is silenced, or an activist is threatened, it doesn’t strengthen a government, it weakens a nation.” But we don’t think the right answer here is to draft a new Declaration that seeks to convert peace from a fundamental objective of our country

and of the UN into a new human right. Rather, recognizing the links between the promotion and protection of human rights, on the one hand, and peace, on the other, we should instead all strive to ensure our own respect for our human rights obligations and seek to learn from each other on how to strengthen that link between respecting those obligations and peace.

* * * *

The United States presented several specific issue papers during the first session of the open-ended working group, each of which elaborated on the ways in which the particular issue is already being addressed in other fora and therefore need not be part of a separate declaration or working group. The U.S. paper on development, poverty, and the environment is available at <http://geneva.usmission.gov/2013/02/21/declaration-on-the-right-to-peace-issue-paper-on-development-poverty-and-the-environment/>. The U.S. paper on private security and private military companies is available at <http://geneva.usmission.gov/2013/02/20/declaration-on-the-right-to-peace-issue-paper-on-private-security-and-private-military-companies/>. The U.S. paper on disarmament is available at <http://geneva.usmission.gov/2013/02/20/declaration-on-the-right-to-peace-issue-paper-on-disarmament-and-other-issues/>. The U.S. paper on refugees and migrants is available at <http://geneva.usmission.gov/2013/03/04/declaration-on-the-right-to-peace-issue-paper-on-refugees-and-migrants/>. Excerpts below come from the U.S. closing statement delivered on February 20, 2013, which is available in full at <http://geneva.usmission.gov/2013/02/21/declaration-on-the-right-to-peace-closing-statement/>.

* * * *

...We would like to reiterate, to avoid any possible doubt or confusion, our view that this meeting was to exchange views, not to negotiate the declaration, although of course delegations were free to make textual proposals, as some delegations did; as well as our position that we are not prepared to negotiate a draft Declaration on the right to peace.

Despite our having voted against the establishment of this working group, we have participated constructively and in good faith in this meeting, for the opportunity to exchange views with other states, as well as civil society. Over the last few days, we explained our opinions regarding a few groups of topics that the draft Declaration addresses. These groups of topics include: first, disarmament, peacekeeping, use of force and weapons of mass destruction; second, private military companies and private security companies; third, development, poverty, and the environment; and, fourth, refugees and migration. We have noted that these topics are not appropriately addressed by this working group—and that each of them is already adequately addressed elsewhere. While we have pointed to problems with the draft's treatment of these topics, our identification of certain issues does not mean that we accept other aspects of the draft that we did not mention.

In closing, we have three observations, based on what we have heard this week.

First, a number of delegations have stated that this initiative should only go forward on the basis of consensus. We agree with them. Further, a great number of delegations have asked

to exclude from this draft any concepts that do not enjoy universal consensus. One delegation phrased this idea as, “We cannot accept terms not supported by consensus of the entire international community.” We simply note that the concept of a right to peace, itself, does not enjoy consensus.

Second, we have heard much discussion about the essential nature of the putative “right to peace.” There remains a lack of agreement over that fundamental issue, including who is the holder of any such “right,” in particular, whether such a “right” governs international relations between states, or is a right of “peoples,” or is a right of individuals, or is something else. To the extent that colleagues wish to discuss matters such as the resort to force or disarmament, those issues of relations between and among States do not belong in this Working Group or even in the Human Rights Council. And to the extent that colleagues wish to discuss a right that is held by individuals, or even by groups of individuals, and which might allow remedies from states, we have yet to hear any explanation of the content of this right. These conceptual gaps seem to us insurmountable.

Finally, many colleagues have stated the relationship between peace and human rights. That relationship is a close and important one. However, that relationship has been described in different ways, for example in consensus General Assembly resolutions on a Culture of Peace. We disagree with the proposition that some stated, that peace is a prerequisite to the exercise of human rights. This suggests, in the context of this discussion, an unacceptable hierarchy of rights; further, the lack of peace cannot be an excuse for a government not to comply with its human rights obligations. But others have stated the relationship in a way with which we strongly agree: that the promotion and protection of human rights is conducive to peace. In fact, we think that is the issue we should be discussing, not the creation of a new right—and we would welcome that discussion.

* * * *

At the 20th session of the Human Rights Council in June 2012, the United States called for a vote and voted against a resolution on promotion of the right to peace. U.N. Doc. A/HRC/RES/20/15. The U.S. explanation of vote, delivered on June 29, 2012, is available at <http://geneva.usmission.gov/2012/07/05/20538/> and is excerpted below.

* * * *

Like all peace-loving nations, the United States is deeply concerned whenever conflict erupts and human rights are violated. We also know that any peace is unstable where citizens are denied the right to speak freely or worship as they please, choose their own leaders or assemble without fear.

In this vein, we will continue our work on many of the underlying issues that the supporters of this resolution have argued the creation of a ‘right to peace’ would advance, such as women’s rights, disarmament, and development. We will address each of these issues in the appropriate UN body, utilizing deep reservoirs of subject matter expertise and building on years of diligent and robust efforts.

We appreciate the leadership of several members of this Council to build bridges and focus on issues where there is space for productive engagement. However, the inter-

governmental Working Group created by this resolution takes as its basic premise drafting a declaration that would cover many issues that are, at best, unrelated to the cause of peace and, at worst, divisive and detrimental to efforts to achieve peace. Rather than building on the existing consensus-based paths that have been developed over the years in the UN on a variety of topics related to peace-building, this resolution seeks to sow division and embroil the Council in contentious negotiations.

Regardless of how it has been promoted, studied or framed, past efforts to move forward with a ‘right to peace’ have always ended in endorsements for new concepts on controversial thematic issues, often unrelated to human rights. The result has inevitably been to try and circumvent ongoing dialogue in the Council and across the UN system by using the broad support for the cause of peace to advance other agendas.

This Council can make the greatest contribution to promoting peace by focusing on the implementation of human rights obligations and commitments. Human rights are universal and are held and exercised by individuals. We do not agree with attempts to develop a collective ‘right to peace’ or to position it as an ‘enabling right’ that would in any way modify or stifle the exercise of existing human rights.

No country wants to be cast as ‘voting against peace’. However, this resolution and its Working Group will not contribute to the cause of peace or human rights. A vote against this resolution is not a vote against peace, but rather a vote against continuing an exercise fraught with divisions that makes no meaningful contribution to the protection of human rights on the ground.

We therefore must call a vote and vote against this resolution, and we ask that other countries vote against the establishment of this divisive, time and resource intensive Working Group.

* * * *

Cross References

Nationality, **Chapter 1.A.**

Temporary Protected Status, **Chapter 1.D.**

Extradition of fugitives alleging fear of torture, **Chapter 3.A.4 and 3.A.5.**

Trafficking in persons, **Chapter 3.B.3.**

Corruption, **Chapter 3.B.7.**

International, hybrid, and other tribunals, **Chapter 3.C.**

Rights of U.S. citizens in Puerto Rico under the ICCPR, **Chapter 4.B.3**

Constitutionality of state laws concerning immigration, **Chapter 5.A.**

Alien Tort Statute and Torture Victim Protection Act, **Chapter 5.B.**

UN Women, **Chapter 7.A.4.**

Inter-American Commission on Human Rights, **Chapter 7.E.1.b.**

Unlawful detention, **Chapter 8.C.2.**

Status of Syrian opposition, **Chapter 9.B.1.**

Food Assistance Convention, **Chapter 11.G.3.**

Voluntary Principles on Security and Human Rights, **Chapter 11.G.4.**

Dodd-Frank rules relating to conflict minerals and extraction industry, **Chapter 11.F.2.**

Climate change, **Chapter 13.A.1.**

U.S. sanctions targeting human rights abusers in Iran and Syria, **Chapter 16.A.1.**

U.S. sanctions concerning threats to democratic processes, **Chapter 16.A.6.**

Israeli-Palestinian conflict, **Chapter 17.A.**

Conflict in Syria, **Chapter 17.B.1.**

Conflict in Mali, **Chapter 17.B.5.**

Atrocities prevention, **Chapter 17.C.1.**

Responsibility to protect, **Chapter 17.C.2.**

National Action Plan on Women, Peace, and Security, **Chapter 17.C.3.**

International humanitarian law, **Chapter 18.A.1.c.**

Detainees at Guantanamo and in Afghanistan, **Chapter 18.A.3.**