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## Chapter 7

### International Organizations

#### A. UNITED NATIONS

##### 1. UN Reform

###### *a. Security Council*

On April 16, 2012, in remarks in Brasilia, Brazil with Brazilian Foreign Minister Antonio de Aguiar Patriota, U.S. Secretary of State Hillary Rodham Clinton expressed U.S. support for expansion of the Security Council's permanent membership to include Brazil. Secretary Clinton's comments relating to reforming the Security Council appear below and are also available at [www.state.gov/secretary/rm/2012/04/187986.htm](http://www.state.gov/secretary/rm/2012/04/187986.htm).

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Well, first, let me say that the United States absolutely admires Brazil's growing leadership and its aspiration to join the United Nations Security Council as a permanent member. We believe that the long-term viability of the United Nations Security Council depends upon updating it to the 21st century to recognizing that it has to reflect the world that exists today, not the world that existed when it was formed. So for that reason, we are committed to serious, deliberate reform efforts in the UN, not only on the Security Council, but frankly, in a number of areas of UN process and functioning.

And in fact, I think we believe that the United States has shown a greater commitment to real UN reform than many of our counterparts on the Security Council. But we also have learned that until other countries are committed to UN reform, we're not going to make the progress that we need, and I think it would be very hard to imagine a future UN Security Council that wouldn't include a country like Brazil with all of its progress and the great model it represents of a democracy that is progressing and providing opportunity for its people.

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###### *b. Overall reform*

On January 20, 2012, U.S. Ambassador for UN Management and Reform Joseph Torsella addressed the Council on Foreign Relations on the subject of UN reform. On the same day, the U.S. Mission to the UN issued a press release summarizing the agenda of the administration of President Barack Obama for reform at the UN, including achievements to date. The U.S. Mission's press release and Ambassador Torsella's remarks covered the same

four key pillars of the U.S. agenda for reform at the UN: economy, accountability, integrity, and excellence. Both the release and Ambassador Torsella's remarks also noted that the U.S. had led the effort to achieve a 5% reduction in the size of the UN regular budget for 2012-13, only the second budget reduction in 50 years. The press release is available at <http://usun.state.gov/briefing/statements/182296.htm>. Ambassador Torsella's remarks are excerpted below and available at <http://usun.state.gov/briefing/statements/182321.htm>.

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At the most visible political level, the way member states too often align themselves in the General Assembly—with the Non-Aligned Movement (NAM) or the “Group of 77” on one side, and the Western countries on the other—reflects an era that no longer exists. In today's real world, countries from North and South, East and West, bridge regional and traditional divides, build strong bilateral ties, and forge flexible coalitions to promote common interests, particularly in the economic realm. Inter-regional and issues-based groups are the wave of the future, yet the political divides among member states inside the UN is a reflection of the past.

In the UN political bodies, regional rotation schemes, designed initially to give smaller countries an opportunity for leadership in the postwar system, are now one of the biggest blocks to dynamic change. Moreover, when a rotation results—as it did a few months ago—in North Korea assuming the chairmanship of the Disarmament Conference, bringing the inevitable and appropriate public reaction of “you've got to be kidding,” we know we have work to do.

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Finally, the institution needs greater transparency. The UN Secretariat's lead auditing body, OIOS, recently announced—to the UN's great credit—that, come 2012, it would post all their office's audits and reports on the internet for universal public access. The US government has itself been posting all OIOS audits on our own websites for four years, and the sky has not fallen.

But as recently as last month, a small group of member states in New York was still trying to prevent OIOS from carrying out this promise. ...

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Here, today, we're outlining a broad-based reform agenda for the UN with four pillars: economy, accountability, integrity, and excellence. ... In the months ahead, we'll continue to push hard for a United Nations that is leaner, cleaner, respected, and effective.

Our first priority is thrift: getting the UN to adjust to tough times exactly as families and governments in American and around the world have had to—by learning to do more with less.

Until very recently, the UN budget has been disconnected from global financial realities. The UN's regular budget, though a small piece of the whole puzzle, is the system's epicenter and illustrates some big trends. In 2000-2001 the regular, two-year budget—not counting special political missions, such as those in Iraq and Afghanistan—was \$2.4 billion. In 2010-2011, it was \$4.2 billion. That is a 75 percent increase, over a period that included a major post-9/11 economic contraction and a global recession.

Some of that increase comes from UN initiatives the U.S. strongly supported, like new counter-terrorism efforts. And as the GAO and others have shown, smart investments in the UN can actually save us money. But the good spending doesn't excuse the bad. Too much of the growth in spending has happened on a kind of autopilot.

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The first is personnel costs, where there's been too little attempt to comprehensively manage—instead of administer—those costs. ...

So we're calling for a comprehensive study comparing UN salaries and benefits to US civil-service scales. We're pressing for a pay freeze for UN employees to fix the anachronisms in the International Civil Service System. And we're calling for the UN to take a new look at how it provides everything from employee health care to annual leave to pensions, to give UN employees the benefits they deserve at a price we can afford.

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...There are literally thousands of executives in the world, north and south, who have already solved the management problems burdening the UN: the UN should invite them in. We're calling on the UN to make an intense, systematic effort to adopt the best practices of the best-run firms, NGOs and entrepreneurial governments.

We're also promoting comprehensive reform of the UN's broken budget process, a process that emphasizes micromanagement over accountability, and gives us mountains of information but very little useful data.

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Finally, we're urging rationalization of redundancies that have resulted from the topsy-turvy growth of a fragmented system in the last sixty years. One telling example: I've seen one internal study that says the UN could save \$40 million annually just by consolidating its auto purchasing power, now spread among 40 different purchasing entities. Eliminating that kind of redundancy could add up to big savings and better service.

The second task in our reform agenda is to promote greater public accountability at the UN, as befits what is now a global public institution.

First, the UN needs more external watchdogs. There are many NGOs and journalists who monitor the policy side of the UN's work. There are too few who monitor the mechanics. We need reinforcements, from all political perspectives and from many capitals. We need to create a kind of global accountability community that would be the equivalent of a national civil society, monitoring the UN and its delegations.

Within the UN, we have made important progress on accountability. But we still need to nail down those gains by getting OIOS, the UN's internal oversight office, fully staffed, fully resourced, and fully protected from interference. We also need to fend off efforts to prevent OIOS from exercising its authority to audit and evaluate most UN bodies outside the Secretariat unless "invited" and funded to do so by the entity to be investigated.

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In the months ahead, we're going further. We're going to urge UN funds and programs to post audits on the web, as UNICEF and UNDP recently pledged to do. Websites like the US Government's *recovery.gov*, the UK's *dfid.gov*, and Kentucky's *opendoor.gov* make unprecedented amounts of information—about salaries, contracts, and budgets—easily available to the public. We're going to ask the UN system to do the same. And we will lead by example, making it much simpler for Americans who visit the USUN website to see what their money is being spent on at the UN.

Our third reform priority is the UN's reputation and integrity: preventing, where we can, misguided efforts by member-states and the self-inflicted wounds that too often make headlines and damage public support for the UN.

When I tell people my job is UN reform, they almost never ask what we're doing about, say, logistics management. But they do ask about the relentless and unfair targeting of Israel by many member states in UN bodies. Or, the number one question, how on Earth can the General Assembly elect a country like Cuba to the UN's Human Rights Council?

For three years now, the Obama administration has been working overtime to keep the worst offenders off UN bodies. We led the successful efforts to keep Iran off the board of UN Women, and Syria off the Human Rights Council.

We'll continue these efforts. But the time has come to go further and to chip away at the outmoded idea that uncontested slates and strict regional rotations are more important than the UN's credibility and effectiveness. Full disclosure: the U.S. hasn't always practiced what we're preaching. But our reform leadership at the UN, like our international leadership throughout our history, is stronger when we hold ourselves to the same standards we urge on others.

In the case of membership on the Human Rights Council, the U.S. will work to forge a new coalition at the UN in New York, a kind of "credibility caucus" to promote truly competitive elections, rigorous application of membership criteria, and other reforms aimed at keeping the worst offenders on the sidelines. It is time for all UN member states committed to human rights to come together to do themselves what the General Assembly as a whole failed to do in its review: hold Human Rights Council members to the same standard of truly "free and fair" elections that the UN promotes around the world, and insist on the highest standards of integrity for the Council and all its members.

More broadly, we're going to assert a common-sense principle across the UN: if a member state is under Security Council sanction for weapons proliferation or massive human-rights abuses, it should be barred, plain and simple, from leadership roles like chairmanships in UN bodies. Abusers of international law or norms should not be the public face of the UN.

With these and other reforms, we are fighting, quite simply, to ensure that member states' actions at the UN match up to the UN's founding principles and values.

Finally, it's not enough to ask the UN to spend wisely, disclose publicly, and lead with integrity. The UN should be a pacesetter. So the fourth and final pillar of our reform plan is an agenda for excellence.

That means, above all, shifting the UN's focus from outputs to outcomes. That means moving to much more aggressively unify service delivery at the country level. It means an overhaul of the human resource system to give the UN the flexibility to get rid of underperformers while better rewarding high achievers. It means deploying the right staff sooner to humanitarian or security crises and reforming and diversifying the Resident Coordinator

system. And it means more rigorous evaluation of program effectiveness and a focus on real world outcomes.

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## 2. Accountability of UN Experts on Missions

On October 10, 2012, Ted Dintersmith, Public Delegate-Designate for the U.S. Mission to the UN, addressed the General Assembly's Sixth Committee (Legal) on criminal accountability of UN officials and experts on missions. Mr. Dintersmith's remarks are excerpted below and available at <http://usun.state.gov/briefing/statements/198916.htm>. See *Digest 2010* at 327-38 for an earlier U.S. statement on the same topic.

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The United States believes it is important for the General Assembly to remain seized of this issue. It is absolutely critical that UN officials and experts on mission should be held accountable if they commit crimes. While we appreciate the progress made in this regard, we look forward to working with Member States and the United Nations to continue to build on those efforts.

In this regard, we welcome the Secretary-General's report on Criminal Accountability of United Nations officials and experts on mission, which is especially useful in two ways. First, it includes information provided by some governments on the extent to which they have domestic jurisdiction over crimes of a serious nature committed by their nationals while serving as UN officials or experts on mission. Second, it includes information submitted by certain governments concerning their cooperation with the United Nations in the exchange of information and the facilitation of investigations and prosecutions of such individuals, as well as the information provided concerning activities within the Secretariat in relation to General Assembly resolutions on this topic.

We acknowledge the UN's efforts to refer credible allegations against UN officials to the State of the alleged offender's nationality during the July 1, 2011 to June 30, 2012 reporting period. We note that there were seventeen referrals during this period; an increase from the six reported last year. This suggests that the UN's efforts to take practical measures to strengthen existing training on United Nations standards of conduct, including through pre-deployment and in-mission training, may be having an effect in increasing awareness of, and the need to report, violations.

But it is the actions of Member States that are the key to curbing abuses by their nationals serving in a UN peacekeeping or other capacity. All UN Member States stand to benefit from the culture of accountability to which the Secretariat's reporting on efforts taken by States to investigate and prosecute referred cases contributes. We therefore urge Member States to take appropriate action with regard to those individuals and report to the United Nations on the disposition of the cases.

This year, the Sixth Committee will be considering the report of the Group of Legal Experts, which recommended a multilateral convention as a way of addressing this issue. We are not convinced that such a convention would present the most efficient or effective means through

which to ensure accountability, particularly when it is unclear whether lack of jurisdiction over crimes is the principal reason for any current difficulties that may exist in carrying out prosecutions. A convention that merely closes theoretical gaps in jurisdiction would not make a significant contribution to ensuring the prosecution of these crimes if impediments to accountability lie elsewhere. Examples of other potential impediments include lack of political will, resources, or expertise to prosecute cases effectively and local laws that do not address the age of consent adequately. One possibility this Committee might consider is asking the Secretary-General to examine and report on what obstacles may have blocked effective prosecutions in the past.

Finally, we urge States to redouble their efforts to develop practical ways to address the need for accountability. Ultimately, the burden is on States to act. And this is a responsibility States must take seriously. We would support efforts to provide Member States with assistance to close any gaps in their laws or legal systems relating to accountability.

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### 3. Charter Committee

On October 12, 2012, Steven Hill, Counselor for the U.S. Mission to the UN, addressed the UN General Assembly's Sixth Committee concerning the most recent report on the work of the UN Charter Committee. Mr. Hill's statement, excerpted below, is available in full at <http://usun.state.gov/briefing/statements/199101.htm>.

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We believe the report reflects some positive movement in the work of the Charter Committee.

First, a good part of the Committee's time during its last session was spent discussing a worthy proposal on which a wide range of delegations seriously engaged—that of the Philippines aimed at commemorating the thirtieth anniversary of the Manila Declaration that deals with the peaceful settlement of disputes. The U.S. joined other delegations in supporting the draft resolution ultimately arrived at, including its recommendation that it be considered by the General Assembly with a view to its adoption in connection with the November 15, 2012 anniversary date.

Second, there were positive developments in the areas of Special Committee efficiency and working methods.

A key aspect of Committee efficiency is the fact that the Charter Committee has a number of longstanding proposals before it. We believe—as we have stated many times before—that many of the issues these proposals consider have been taken up and addressed elsewhere in the United Nations. There is also a considerable degree of overlap in these proposals. These are reasons why the Committee has shown little enthusiasm for acting on or discussing these proposals in depth.

During the 2012 Charter Committee session, two such longstanding proposals were withdrawn or set aside by their sponsors on the grounds that they were, in fact, outdated and had been overtaken by events elsewhere in the Organization. This was a welcome step toward the much-needed rationalization of the work of the Special Committee.

Another welcome step was the Special Committee's decision to delete from its annual report a section on "Recommendations" that had come to contain rote, rollover provisions that had little connection to the current work of the Special Committee, or were redundant.

These developments—in terms of both what was discussed in the Committee's meeting, *i.e.*, the Manila Declaration commemoration, and what was not—were, in our view, quite healthy for the Special Committee as it goes forward. We urge that the Committee continue to remain focused on ways to improve its efficiency and productivity throughout its session, including by giving serious consideration to such steps as biennial meetings and/or shortened sessions.

With regard to items on the Committee's agenda concerning international peace and security, the United States continues to believe that the Committee should not pursue activities in this area that would be duplicative or inconsistent with the roles of the principal organs of the United Nations as set forth in the Charter. This includes consideration of a further revised working paper calling for a new, open-ended working group "to study the proper implementation of the Charter...with respect to the functional relationship of its organs." It also includes consideration of another revised, longstanding working paper that similarly calls *inter alia* for a Charter Committee legal study of General Assembly functions and powers.

In the area of sanctions, we note that positive developments have occurred elsewhere in the United Nations that are designed to ensure that the UN system of targeted sanctions remains a robust tool for combating threats to international peace and security. With respect to the matter of third States affected by the application of sanctions, as stated in the Secretary-General's report A/67/190, "...the need to explore practical and effective measures of assistance to affected third States has been reduced considerably because the shift from comprehensive to targeted sanctions has led to significant reductions in unintended adverse impacts on non-targeted countries. In fact, no official appeals by third States have been conveyed to the Department of Economic and Social Affairs to monitor or evaluate since June 2003."

Such being the case, we believe that this is another prime example of an issue that the Special Committee—with an eye both on the current reality of the situation and the need to stay current in terms of the matters it considers—should decide no longer merits discussion in the Committee. We join others who have urged that course.

On the question of requesting an opinion from the International Court of Justice, we have consistently stated that the United States does not support the proposal that the General Assembly request an advisory opinion on the use of force.

With respect to proposals regarding new subjects that might warrant consideration by the Special Committee, we continue to be cautious about adding new items to the Committee's agenda. While the United States is not opposed in principle to exploring new items, it is our position that they should be practical, non-political, and not duplicate efforts elsewhere in the UN system. The Committee's past consideration of work in the area of dispute prevention and settlement mechanisms comes to mind.

Finally, we welcome the Secretary-General's report A/67/189, regarding the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council. We commend the Secretary-General's ongoing efforts to reduce the backlog in preparing these works. Both publications provide a useful resource on the practice of United Nations organs, and we much appreciate the Secretariat's hard work on them.

#### 4. UN Women

On May 29, 2012, Paula Schriefer, U.S. Deputy Assistant Secretary of State for International Organization Affairs and member of the UN Women Executive Board, addressed a session of the Board on the work of UN Women, which was established in 2010. See *Digest 2010* at 323-24. Ms. Schriefer's remarks are excerpted below and available at <http://usun.state.gov/briefing/statements/191583.htm>.

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The United States endorses UN Women's major goals, in particular UN Women's commitment to promoting women's economic and political empowerment. 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 in girls." To meet this challenge, we are working to identify new steps the United States will take both domestically and internationally.

UN Women's report on the implementation of its strategic plan in 2011 highlights measurable achievements in several key areas. UN Women has significantly exceeded its targets in several indicators relating to women's leadership and political participation and ending violence against women and girls, and we applaud this success. We encourage UN Women to continue to ensure that its policies and programs are designed to protect women who are targeted with violence, and we particularly encourage UN Women to include those who are targeted because of their sexual orientation and/or gender identity. Further, the growing problem of so-called corrective rape is an issue that demands attention and UN Women could make a significant difference by including a focus on this problem in its work on gender-based violence. We also welcome UN Women's progress in the area of women, peace, and security and its deepened focus on women's economic empowerment.

Going forward, we encourage UN Women to continue to build its capacity to coordinate the UN system's efforts on behalf of women and girls. UN Women's efforts to leverage the synergies between normative and operational issues are crucial in this context. The 30 new memoranda of understanding UN Women has negotiated with UN agencies are a positive step, and working effectively within the UN Country Teams and with the Resident and Humanitarian Coordinators will be critical to UN Women's success. As UN Women moves forward with its Regional Architecture reforms, we would like to see priority placed on putting strong leaders in the field who are willing and able to coordinate well with UN and other relevant actors.

We note that progress against the Strategic Plan targets varies widely, although we are also mindful that predicting results, especially at this stage, will not be an exact science. To have the greatest impact, we encourage UN Women to adjust its strategies, as needed, to take into account unexpected developments on the ground and the experience UN Women gains through its programs and other activities.

As the report illustrates, UN Women is taking important steps to ensure it is a well-managed and effective organization. We appreciate UN Women's proposed amendments to its financial rules and regulations to implement the international financial standards (IPSAS). We look forward to the Board's consideration of the proposed regulatory amendments this week.

Transparency and accountability across the UN system remain top priorities for the United States. We encourage UN Women to follow the example of other UN entities, including the United Nations Development Programme and UNICEF, which are the leaders among UN agencies in striving for greater transparency and accountability. We appreciate the leadership UNICEF and UNDP senior management has provided to their organizations on the disclosure of their internal audit reports to member states and the public and, in particular, their commitment to achieve this goal by the end of 2012. We hope the Board will adopt a decision at its next meeting to simplify member states' access to internal audit reports, as well as to provide similar access to key partners.

U.S. support for UN Women remains strong. We expect to increase our contribution to UN Women's core budget this year. Last November in Busan, Secretary Clinton announced a new data-collection initiative called EDGE, or Evidence and Data for Gender Equality, to improve the availability and use of statistics that capture gender gaps in economic activity. The United States is pleased to be supporting EDGE, along with Canada and Australia, which UN Women and the UN Statistics Division are managing in close cooperation with international organizations and government statistical agencies. In the area of women's leadership and political participation, the United States, through USAID, is supporting UN Women's work with civil society organizations in Egypt to promote women's leadership and political participation.

Mr. President, I would like to conclude by reaffirming the United States' commitment to working with the other members of the Board and UN Women on efforts to advance women's economic and political empowerment worldwide, and improve their protection from violence. The United States looks forward to contributing to a successful Board session.

## **5. WIPO Assistance to Countries Subject to UN Sanctions**

On September 11, 2012, the World Intellectual Property Organization ("WIPO") released an independent, external report it had commissioned after it became publicly known that WIPO had provided technical assistance (including information technology hardware such as computers) to countries sanctioned by the United Nations, particularly Iran and the Democratic People's Republic of Korea ("DPRK"), without the specific knowledge of WIPO member states. The report, available at [www.wipo.int/about-wipo/en/oversight/pdf/wipo\\_external\\_review\\_2012.pdf](http://www.wipo.int/about-wipo/en/oversight/pdf/wipo_external_review_2012.pdf), deferred to the UN sanctions committees for a determination of whether the provision of technical assistance to the DPRK and Iran violated UN sanctions. While acknowledging important reforms at WIPO in response to the controversy, the report made further recommendations.

On the same day WIPO released the report on WIPO assistance to countries subject to UN sanctions, U.S. Deputy Permanent Representative to the UN in Geneva Peter Mulrean addressed the WIPO Program and Budget Committee and provided U.S. views on the issue, set forth below. Mr. Mulrean's statement is available in full at <http://geneva.usmission.gov/2012/09/12/statement-by-peter-mulrean-u-s-deputy-permanent-representative-to-the-united-nations-in-geneva-at-the-wipo-program-and-budget-committee/>.

The challenges of protecting intellectual property require a strong partnership with international organizations whose comparative advantages lie in their global reach and inclusiveness. That is why the United States wants to ensure that WIPO remains a viable organization that continues to promote the protection of intellectual property throughout the world, not only for U.S. companies and U.S. individuals, but for all those whose creativity produces intellectual property of one kind or another.

But part of remaining a viable partner is ensuring that the resources provided by Member States and fees collected from the businesses, institutions, and individuals of Member States have an appropriate level of oversight, accountability, and transparency.

This is why the U.S. is very concerned that WIPO conducted technical assistance projects and transferred U.S.-developed technology to countries subject to UN Security Council sanctions without the knowledge of the United States, other Member States, or the appropriate UN Security Council sanctions committees. The United States is primarily concerned with three questions: what happened, how to correct it, and how to prevent it in the future.

We believe that WIPO and Member States need to consider very seriously ways to improve oversight, transparency and accountability mechanisms, and to put in place safeguards that ensure Member States and the relevant UN Security Council sanction committees are properly consulted in the future before projects in countries subject to UN Security Council sanctions are approved.

The United States welcomes that WIPO has made available on line the recently completed Independent External Review Report on Technical Assistance Provided to Countries Subject to United Nations Sanctions. We are studying the report and its recommendations. We look forward to hearing how the organization plans to implement the recommendations in a timely and meaningful manner, as well as any other steps it plans to address the serious issues raised in the report.

In our own review of the situation, we believe that WIPO needs to put in place new comprehensive and durable safeguards that:

- Require the WIPO Internal Audit and Oversight Division to conduct a monthly review of projects or other assistance intended for States subject to Security Council sanctions, and the External Auditors Office follow up with a quarterly review and an annual report to all Member States at the WIPO Assembly.
- Follow through with the commitment to verify the end-use of the equipment already shipped to certain countries subject to U.N. Security Council resolutions.

This issue has also made apparent the importance of sound whistleblower protection policies. The U.S. position has been very clear across all UN organizations. Whistleblowers should be able to report in good faith concerning suspected fraud and/or corruption without fear of reprisal. When reprisals are taken or threatened, whistleblowers should have an effective recourse mechanism. The United States would like to commend the Secretariat on the work done so far on the new Whistleblower Protection Policy, and we look forward to its approval and implementation at the October meeting of the Coordination Committee. However, in the meantime, it is vitally important for the Director General to provide assurances, in writing, to all WIPO employees that they may discuss these transfers now being reviewed without fear of reprisal of any kind.

The U.S. is committed to working directly with the Director General and Secretariat to ensure that the Organization is transparent and accountable, responsive to Member States, and

abides by established international rules and regulations, particularly when there are questionable transactions involving countries subject to UN Security Council sanctions.

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The UN 1718 (DPRK) and 1737 (Iran) sanctions committees on September 20 and 21, 2012, respectively, determined that the transfers did not violate UN sanctions but encouraged WIPO to provide information on a regular basis about its activities in these countries. See committees' reports, available at [www.wipo.int/export/sites/www/aboutwipo/en/oversight/pdf/sanctions\\_committee\\_dprk.pdf](http://www.wipo.int/export/sites/www/aboutwipo/en/oversight/pdf/sanctions_committee_dprk.pdf); and [www.wipo.int/export/sites/www/aboutwipo/en/oversight/pdf/sanctions\\_committee\\_iran.pdf](http://www.wipo.int/export/sites/www/aboutwipo/en/oversight/pdf/sanctions_committee_iran.pdf).

On October 1, 2012, in the U.S. opening statement at the WIPO General Assembly, U.S. Ambassador to the UN in Geneva Betty King repeated the U.S. recommendations that WIPO implement whistleblower protections and improve oversight so that transfers to sanctioned countries receive advance scrutiny. Her remarks are excerpted below and available in full at <http://geneva.usmission.gov/2012/10/01/u-s-opening-statement-at-the-wipo-general-assembly/>.

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Mr. Chairman, the United States position on whistleblower protection is well known throughout the UN system. Whistleblowers at any organization, including WIPO, should be able to report fraud, corruption, and misconduct without fear of reprisal. When reprisals are taken or threatened, whistleblowers should have an effective recourse mechanism.

The United States calls upon WIPO to implement comprehensive whistleblower protections without further delay and make a concerted effort to create a culture for reporting misconduct or cooperating with an audit or investigation without fear of reprisal

The JIU [the UN's Joint Inspection Unit] guidelines are a helpful starting point, but at a minimum, a comprehensive whistleblower policy must:

- Cover all individuals working for the organization.
- Clearly affirm the duty of these individuals to report misconduct and malfeasance and to cooperate with audits and investigations.
- Allow reporting of retaliation at any time.
- Grant interim relief to anyone who has claimed protection from retaliation through reassignment, suspension of the adverse action, or leave without pay pending the outcome of the case.

Mr. Chairman, I also want to address the issue of technical assistance projects in countries subject to UN Security Council sanctions.

For almost 6 months now, the United States has continually expressed its concern about WIPO conducting technical assistance projects and transferring U.S.-developed technology to countries subject to UN Security Council sanctions without the knowledge of Member States or the appropriate UN Security Council sanctions committees.

While the United States notes that both the Independent External Review and the relevant UN Security Council sanctions committees, as well as our own internal review, have concluded that WIPO did not violate UN Security Council sanctions, the fact is that no one knew that before or during the process of approval and implementation. It has only been after the fact that we have been able to make that determination, and there are still many questions that have not been answered, including whether various Member States' domestic export control laws were violated.

This is obviously contrary to the ideals of transparency and Member State oversight that ought to be the hallmarks of international organizations. The United States believes that WIPO and Member States need to seriously consider ways to improve oversight, transparency and accountability mechanisms, and to put in place safeguards that ensure Member States and the relevant UN Security Council sanction committees are properly consulted in the future before projects in countries subject to UN Security Council sanctions are approved.

We appreciate the work that the Director General and Secretariat have taken to address these issues, but based on the report of Independent External Review, our own review, and the fact that many questions still remain unanswered, we believe that WIPO should take the following steps to ensure that this failure of oversight and accountability does not happen again:

- In particular, we would like to see an analysis of the role of contractors in these projects, and whether or not they violated Member States' export control laws, and how they bypassed UNDP safeguards put in place in 2007 to prevent exactly this type of situation. This analysis should be part of a follow-on independent, external review that is charged primarily with identifying how these projects have been approved and implemented without the knowledge of Member States. The follow-on review should work independently, have unfettered access to WIPO documents and employees, and report directly to this Assembly at its next session.
- The Director General should provide a report to Member States on the steps being taken to address the concerns and recommendations raised by the external review and various Member States. Particularly, the report should address how Member States will be notified of projects in countries subject to UN Security Council sanctions before they are approved.

Mr. Chairman, the United States will continue to work with the Secretariat and other Member States to create a better functioning, more transparent and effective World Intellectual Property Organization to ensure that respect for IPR continues to be the major emphasis of the Organization.

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## **6. UN's Relationship with Regional Organizations (African Union)**

Ambassador Rice addressed the Security Council's open debate on UN-AU cooperation on January 12, 2012, describing the U.S. view of the relationship between the UN and the regional organization. Ambassador Rice's remarks are excerpted below and available at <http://usun.state.gov/briefing/statements/180554.htm>.

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... [T]he relationship between the United Nations and the African Union is important to both bodies and as the AU approaches its 10th anniversary, the time is ripe for considering what we have learned, where we are going, and what needs to be improved.

Collective African efforts at advancing peace and security on the continent have indeed come a long way since the OAU was founded in 1963. Since 2002, in particular, when the African Union succeeded the OAU, African governments have shown that, acting together, they can prevent conflict. The AU marked a new beginning with its doctrine of “non-indifference.” The AU Charter recognizes that it might be necessary to intervene in the affairs of a member state, “in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.” Those are brave and worthy words. The African Union’s first major mission was in Burundi, with initial deployment in April 2003. The African Union then acted responsibly in Darfur when other international actors were still hesitant, and the AU Mission in Sudan, AMIS, was operational in August 2004, before any other force. The AU was also active early on in pressing for peace between Sudan and South Sudan. President Mbeki’s efforts continue to be valuable, and South Africa deserves praise for its leadership and dedication to peace in both Sudan and Burundi. Above all, the African Union has taken on a very tough mission in Somalia, where it has deployed troops to advance peace since 2007. AMISOM and the UN Political Office for Somalia have come a long way in developing their relationship and improving coordination.

All of these missions were undertaken with the collaboration of the international community, notably this Council, and sometimes with subregional organizations such as IGAD. Recognizing the importance of the international community’s engagement with the AU, the United States Mission to the African Union was established in 2006 and has been significantly strengthened since 2009. This is consistent with the Obama administration’s overall policy of intensified engagement with regional organizations, including the OSCE, ASEAN and the Organization of American States. The United Nations has likewise strengthened its ties to regional organizations, notably after the General Assembly established the United Nations Office to the African Union in 2010. Precisely because the relationship between the United Nations and the AU—and between the Security Council and the African Union’s Peace and Security Council—is so important, we must confront the challenges facing this relationship forthrightly and honestly, if we are to make progress. The UN needs a strong African Union, and the African Union needs a strong United Nations. Yet, African Union member states have sometimes indicated that they feel ignored or disregarded by this Council. At the same time, some Security Council members feel African Union member states have not always provided unified or consistent views on key issues and that the African Union has on occasion been slow to act on urgent matters.

But beneath these perceptions and frustrations is a deeper issue, and that is: who is on first? Under the Charter, the Security Council has a unique, universal and primary mandate to maintain international peace and security. The Security Council is not subordinate to other bodies, nor to the schedules or capacities of regional or subregional groups. Nonetheless, the Security Council wants and needs to cooperate closely with regional organizations, as demonstrated by our growing collaboration with the African Union over nearly a decade. But such collaboration needs to be based upon the exigencies of the issue at hand. And this cooperation cannot be on the basis that the regional organization independently decides the

policy and United Nations member states simply bless it and pay for it. There can be no blank check, politically or financially.

The Security Council should and will take into account the views of regional and subregional institutions, while recognizing that sometimes there is disagreement among them. For example, the positions of organizations such as ECOWAS or IGAD on an issue in their sub-region might not be exactly the same as the consensus view of the 54 member states of the African Union.

The United States urges the Security Council to seize this opportunity to define our relations with the African Union more precisely, so that we can move forward together in better meeting the urgent challenges that confront us all. In that vein, let's be candid: the periodic African Union-UN Security Council consultations have not thus far been altogether productive or satisfactory. If they cannot be improved, they risk being jettisoned by one side or the other as not useful or worse. To make the UN-AU relationship more effective, we must do more than consider formalizing African Union-UN Security Council meetings. The meetings must prove their worth. The meetings must have set agendas and concrete priorities that lead to tangible improvements—not only in how we work together, but in how our work helps people in Africa and around the world.

Nonetheless, the opportunities for us to seize together are considerable. The European Union has set an example in its work to strengthen the AU's peace and security architecture. In peacekeeping, the African Standby Force is being improved and shows promise. Bilaterally, the United States continues to train and equip African militaries for deployment in multilateral peacekeeping operations. The UN-AU Joint Task Force on Peace and Security is a valuable forum that can greatly contribute to better UN-AU cooperation on peace and security. The UN could assist further by standardizing training of peacekeepers. It could go further still in offering DPKO guidance to the AU, including through peacekeeping programs that give instruction on the rule of law, sexual and gender-based violence, and the protection of civilians in armed conflict. We would also welcome sustained collaboration on lessons learned and best practices.

It's also time for a formal lessons-learned exercise concerning UN-AU joint operations so far, including UNAMID and AMISOM. One lesson the United States and others learned in Bosnia is that joint command-and-control operations, or so-called "dual keys," do not typically work well. Hybrid missions are very challenging at best. We need to analyze our experience in the field, discuss it, and agree on optimal mission structures linked to the objectives of the situation at hand. Recent UN-AU coordination in fighting the Lord's Resistance Army provides one positive example to consider.

The United Nations, for its part, could be more effective in Addis Ababa. The creation of UNOAU is a positive step, but the annual review of the UN agencies supporting the AU needs to improve. At present, no single UN office is in charge of UN efforts to assist the AU. This leads to unnecessary duplication. UN officials on the ground need stronger backing to streamline their own structures to better aid the African Union. This is definitely, however, a two-way street. For its part, the African Union should improve its internal management in the areas of administration, accounting, financial management and human resources. Improvements in these areas would help foster a more productive relationship on the ground in Addis Ababa and would energize progress on the UN-AU 10-Year Capacity Building Program. Key to this, as the AU Chairperson suggested in his report, is for the African Union to identify priorities. And the UN should be responsive to this. Since the program was established in 2006, far too little progress has been achieved through UN Delivering as One in its engagement with the African Union and

Regional Economic Communities. The African Union and the United Nations have already agreed on a range of actions to strengthen their operational relationship. More must be done to galvanize improvements at the programmatic and administrative levels.

Mr. President, South Africa has rightly emphasized conflict prevention and mediation in envisioning the future of AU peace and security policies. An atrocity prevention framework should also be developed and African Union mediation efforts should be expanded. The role of women in conflict mediation has not advanced nearly enough, and the African Union should consider developing a regional action plan on women, peace and security.

As we approach the African Union's tenth anniversary, we should seize this milestone to take stock and consider where we're going. We all hope that the peace and security challenges in Africa will continue to lessen over time. Improved cooperation between the Security Council and the African Union is critical to that goal. I urge colleagues not only to laud progress but to acknowledge frankly the challenges to this cooperation and to devise concrete ways to match reality to our shared aspirations. ...

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## **B. PALESTINIAN MEMBERSHIP EFFORTS IN THE UN SYSTEM**

As discussed in *Digest 2011* at 254-55, "Palestine" was admitted as a member of UNESCO in 2011, despite the opposition of the United States. On June 29, 2012, the U.S. Ambassador to UNESCO, David Killion, delivered a statement, available at <http://unesco.usmission.gov/statement-nativity.html>, reacting to the decision of the World Heritage Committee to take emergency action proposed by the Palestinians:

The United States is profoundly disappointed by the decision of the World Heritage Committee to take immediate emergency action as proposed by the Palestinians to inscribe the "Birthplace of Jesus: the Church of the Nativity and the Pilgrimage Route, Bethlehem" as a World Heritage site against the official recommendation of the International Council on Monuments and Sites, the expert advisory body that evaluated the site.

The site is sacred to all Christians; it clearly has tremendous religious and historical significance. However, the emergency procedure used in this instance is reserved only for extreme cases, specifically when a site is under imminent threat of destruction. In the 40 years of the World Heritage Convention's existence, the emergency procedure has been used only four times and only in the most extreme cases, and always consistent with the recommendation of the advisory bodies. This body should not be politicized.

On November 29, 2012, the UN General Assembly passed a resolution on Palestinian status in the UN by a vote of 138 in favor, 9 against, with 41 abstentions. U.N. Doc. A/RES/67/19. The resolution granted "Palestine" non-member observer state status. The resolution also expressed the hope that the Security Council would "consider favourably" the application submitted in September 2011 by Palestine for full UN membership. See

*Digest 2011* at 256.\* The United States voted against the resolution. Ambassador Rice delivered the U.S. explanation of vote, excerpted below and available at <http://usun.state.gov/briefing/statements/201226.htm>.

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For decades, the United States has worked to help achieve a comprehensive end to the long and tragic Arab-Israeli conflict. We have always been clear that only through direct negotiations between the parties can the Palestinians and Israelis achieve the peace that both deserve: two states for two peoples, with a sovereign, viable and independent Palestine living side by side in peace and security with a Jewish and democratic Israel.

That remains our goal, and we therefore measure any proposed action against that clear yardstick: will it bring the parties closer to peace or push them further apart? Will it help Israelis and Palestinians return to negotiations or hinder their efforts to reach a mutually acceptable agreement? Today's unfortunate and counterproductive resolution places further obstacles in the path to peace. That is why the United States voted against it.

The backers of today's resolution say they seek a functioning, independent Palestinian state at peace with Israel. So do we.

But we have long been clear that the only way to establish such a Palestinian state and resolve all permanent-status issues is through the crucial, if painful, work of direct negotiations between the parties. This is not just a bedrock commitment of the United States. Israel and the Palestinians have repeatedly affirmed their own obligations under existing agreements to resolve all issues through direct negotiations, which have been endorsed frequently by the international community. The United States agrees—strongly.

Today's grand pronouncements will soon fade. And the Palestinian people will wake up tomorrow and find that little about their lives has changed, save that the prospects of a durable peace have only receded.

The United States therefore calls upon both the parties to resume direct talks without preconditions on all the issues that divide them. And we pledge that the United States will be there to support the parties vigorously in such efforts.

The United States will continue to urge all parties to avoid any further provocative actions—in the region, in New York, or elsewhere.

We will continue to oppose firmly any and all unilateral actions in international bodies or treaties that circumvent or prejudge the very outcomes that can only be negotiated, including Palestinian statehood. And, we will continue to stand up to every effort that seeks to delegitimize Israel or undermine its security.

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\* Editor's note: On January 23, 2012, Ambassador Rice provided this explanation of the Security Council's consideration of the Palestinians' application to the UN in September 2011: "...the Security Council went through the traditional process of considering that application in the membership committee. We went through ... an exhaustive legal discussion, debate, analysis. And once that was completed and the committee's report was forwarded to the Security Council, ... it's essentially stayed there for the time being. I presume that is because the Palestinians decided that given the voting—likely outcome in the Council, it wasn't timely to push it to a vote." Remarks at a meeting with the American Jewish Committee National Board of Governors, available at <http://usun.state.gov/briefing/statements/182371.htm>.

Progress toward a just and lasting two-state solution cannot be made by pressing a green voting button here in this hall. Nor does passing any resolution create a state where none indeed exists or change the reality on the ground.

For this reason, today's vote should not be misconstrued by any as constituting eligibility for U.N. membership. It does not. This resolution does not establish that Palestine is a state.

The United States believes the current resolution should not and cannot be read as establishing terms of reference. In many respects, the resolution prejudices the very issues it says are to be resolved through negotiation, particularly with respect to territory. At the same time, it virtually ignores other core questions such as security, which must be solved for any viable agreement to be achieved.

President Obama has been clear in stating what the United States believes is a realistic basis for successful negotiations, and we will continue to base our efforts on that approach.

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### C. INTERNATIONAL COURT OF JUSTICE

On November 6, 2012, the United States responded to the report of the International Court of Justice to the UN General Assembly's Sixth Committee (Legal). Joan Prince, Public Delegate for the U.S. Mission to the UN, delivered the U.S. response. The U.S. statement, excerpted below, and available at <http://usun.state.gov/briefing/statements/200300.htm>, praised the Court for clearing its backlog while increasing its caseload in recent years.

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We would like to thank President Tomka for his leadership as President of the International Court of Justice, and for his report last Thursday on its activities, including on the very important cases in which the Court has rendered decisions during the last year.

The International Court of Justice is the principal judicial organ of the United Nations. The preamble of the Charter underscores the determination of its drafters "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." This goal lies at the core of the Charter system, and in particular at the role of the Court.

The General Assembly itself, in its Declaration on the Rule of Law on September 24, underscored the positive contribution of the International Court of Justice, including in adjudicating disputes among States, and the value of its work for the promotion of the rule of law. In addition, the Security Council, in its Presidential Statement on the rule of law issued earlier this year, similarly emphasized the key role of the Court and the value of its work.

It is against this backdrop that we can see the real importance of the renewed willingness over the last two decades of states to turn to the ICJ to resolve their disputes peacefully. As President Tomka has noted, the Court has more than doubled its rate of decisions just since 1990. This increasing caseload demonstrates the appreciation that States—and the international community more broadly—have for the value of the Court's work.

And it is against this backdrop that we can see the real importance of the fact that, under President Tomka's leadership, the Court has been able to clear its backlog of cases, and of the effort by the Court to ensure that States, as soon as they complete their written exchanges, will be able to move promptly to the oral stage. Such efforts contribute immeasurably to the confidence states can have in bringing cases to the Court and, in turn, to the ability of the Court to fulfill its mandate in helping to ensure the peaceful resolution of disputes.

For its part, the United States applauds such efforts. It takes this opportunity to express its pleasure with the successes of the Court in fulfilling its key role in the UN system, together with the other Charter organs, in the peaceful resolution of disputes between States, and is pleased to add its voice to the many today in the emphasis it places on the success of the Court's work.

#### D. INTERNATIONAL LAW COMMISSION

On November 5, 2012, U.S. Department of State Assistant Legal Adviser for UN Affairs Todd Buchwald delivered a statement in response to the report of the International Law Commission ("ILC") on the work of its 64<sup>th</sup> session at the UN General Assembly's Sixth Committee. Mr. Buchwald's remarks, excerpted below and available in full at <http://usun.state.gov/briefing/statements/200301.htm>, provided U.S. comments on the topics presented by the ILC's report.

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#### Immunity of State Officials from foreign criminal jurisdiction

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The reports prepared so far engage questions of considerable importance. The United States stands ready to engage on this topic and remains committed to striking the right balance between immunity and accountability. We must keep in mind these twin goals in order that state officials performing their official duties overseas are adequately protected and those guilty of gross crimes do not go unpunished.

The Commission's report poses two questions to states regarding their national law and practice with respect to this topic: "(a) Does the distinction between immunity *ratione materiae* and immunity *ratione personae* result in different legal consequences and, if so, how are they treated differently? (b) What criteria are used in identifying the persons covered by immunity *ratione materiae*?" We understand the Commission not to be seeking information on the provision of immunities to diplomats, consular officials, officials of international organizations, or persons on special missions, and our answers are limited to foreign officials who do not fall into any of these categories.

As a general matter, the bulk of U.S. practice centers on civil suits and the issue arises rarely in the criminal context. To the extent U.S. practice in civil cases could be relevant to our handling of criminal cases, we offer the following.

The United States government analyzes cases that raise questions of immunity *ratione materiae* and those that raise questions of immunity *ratione personae* differently. Immunity

*ratione materiae* is a conduct-based immunity such that an individual who has immunity *ratione materiae* enjoys immunity only for acts taken in an official capacity. For this reason, in cases that necessitate determining whether an official enjoys immunity *ratione materiae*, the United States analyzes whether the acts at issue were taken in his official capacity.

This can be contrasted with cases that raise questions of immunity *ratione personae*, a status-based immunity. Under United States practice, a foreign official who enjoys immunity *ratione personae* must occupy a particular governmental office. An individual's status as the current occupant of that office generally results in broad immunity but only while in office. Thus, cases that raise questions of immunity *ratione personae* do not necessitate an analysis of whether the acts at issue were taken in an official capacity and were official acts. Instead, the analysis required is only whether the official currently occupies an office to which immunity *ratione personae* generally attaches. If the official enjoys immunity *ratione personae*, the official is usually immune for all acts while he occupies the relevant office, *i.e.*, in general, he is immune for acts taken both before he took office as well as those taken while in office, and he is immune for acts taken in both his official and his private capacities and official and private acts.

In the United States, our practice has been that only the troika—heads of state, heads of government and foreign ministers—are covered by what is often referred to as “head of state immunity” and thus generally enjoy immunity *ratione personae*. The United States would be happy to provide examples of U.S. domestic courts recognizing such immunity in the civil context. However, the United States has never experienced a criminal case directed against a foreign head of state, head of government or foreign minister.

#### **Provisional application of treaties**

... In our view, provisional application means that states agree to apply a treaty, or certain provisions, as legally binding prior to its entry into force, the key distinction being that the obligation to apply the treaty—or provisions—in the period of provisional application can be more easily terminated than is the case after entry into force. We hope that the result of this work includes a clear statement to this effect. With regard to the issue of whether States should give notice prior to terminating provisional application, the United States urges caution in putting forward any proposed rule that could create tension with the clear language in Article 25 of the Vienna Convention on the Law of Treaties, which has no such restriction regarding a State's ability to terminate provisional application of a treaty. Finally, we think a decision on the final form that this project should take is best left to a later date.

#### **Formation and evidence of customary international law**

...[T]he United States welcomes the Commission's decision to add this topic to its program of work. ... In response to the Commission's request for input from States, we are reviewing United States practice with respect to the formation and development of customary international law with a view to providing materials that may be useful to the Commission.

#### **Obligation to Extradite or Prosecute**

...[W]e look forward to the working paper to be prepared, by the Chairman of the Working Group, Kriangsak Kittichaisaree, for the sixty-fifth session “reviewing the various perspectives in relation to the topic in light of the judgment” of the International Court on July 20, 2012 in Questions Relating to the Obligation to Prosecute or Extradite.

The United States is a party to a number of international conventions that contain an obligation to extradite or submit a matter for prosecution. We consider such provisions to be an integral and vital aspect of our collective efforts of denying terrorists a safe haven and fighting impunity for such crimes as genocide, war crimes and torture. The United States continues to

believe, however, that its practice, as well as the practice of other States, reinforces the view that there is no norm of customary international law obliging a State to extradite or prosecute. States only undertake such obligations by joining binding international legal instruments that contain detailed provisions that identify a specific offense and then apply a specific form of the extradite or prosecute obligation in that particular context. The obligation to extradite or prosecute is not uniform across these treaty regimes, as is clear from the Commission's own work on this topic to date. Further, while many of these treaty regimes are widely-adhered to, they are not universally adhered to, and they contain various important exceptions specific to the regime. The State practice reported to date in the Commission's reports is largely confined to State implementation of treaty-based obligations, which has been recognized by the Special Rapporteur as varying widely in scope, content, and formulation. As such, it is not possible to extract a customary norm from the existing treaty regimes or associated practice.

### **Treaties over time**

... [W]e extend our compliments to Professor Nolte on his selection as Special Rapporteur for the topic, "Subsequent agreements and subsequent practice in relation to the interpretation of treaties." The United States continues to believe that there is a great deal of useful work to be done on this subject, and thus welcomes the more specific focus that this topic has taken on.

In reviewing the most recent report submitted to the Study Group, the United States welcomes in particular its emphasis that subsequent agreements or subsequent practice must, for purposes of Article 31 of the Vienna Convention, reflect agreement among, or practice by, parties to a given treaty in their application of that treaty. One important consideration as the work on this topic is carried forward involves the importance of striking the right balance when deriving general conclusions from particular treaties; in particular, we feel that caution is important when extrapolating such conclusions from limited precedent.

Finally, we are also curious to learn more about how other States address the domestic legal questions raised by shifting interpretations of international agreements on the basis of subsequent practice after ratification, if the legislative branch is involved in approving such agreements prior to ratification.

### **Most-Favored-Nation clause**

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We support the Study Group's decision not to prepare new draft articles or to revise the 1978 draft articles. MFN provisions are a product of specific treaty formation and tend to differ considerably in their structure, scope and language. They also are dependent on other provisions in the specific agreements in which they are located, and thus resist a uniform approach. Given the nature of MFN provisions, we agree with the Study Group that interpretive tools or revised draft articles are not appropriate outcomes. We continue to encourage the Study Group in its endeavors to study and describe current jurisprudence on questions related to the scope of MFN clauses in the context of dispute resolution. This research can serve as a useful resource for governments and practitioners who have an interest in this area, and we are interested to learn more about what areas beyond trade and investment the Study Group intends to explore.

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## E. OTHER ORGANIZATIONS

### 1. OAS

#### a. *General Assembly Resolution on the ICC*

On June 4, 2012, the United States joined consensus on a resolution of the General Assembly of the Organization of American States on “Promotion of the International Criminal Court.” AG/RES. 2728 (XLII-O/12), available at [www.oas.org/en/sla/docs/AG05796E04.pdf](http://www.oas.org/en/sla/docs/AG05796E04.pdf). Among other things, the resolution calls on member states to consider ratifying or acceding to the Rome Statute of the ICC and emphasizes the importance of support for and cooperation with the ICC. The United States supplied a footnote to the resolution clarifying that, “The United States understands that any OAS support rendered to the International Criminal Court will be drawn from specific fund contributions rather than the OAS regular budget.” The United States has supplied a similar footnote to resolutions on promotion of the ICC in 2010 and 2011.

#### b. *U.S. Comments on Efforts to Reform the Inter-American Commission on Human Rights*

On October 5, 2012, Ambassador Carmen Lomellin, U.S. Permanent Representative to the OAS, submitted U.S. comments on efforts to reform the Inter-American Commission on Human Rights to the Commission’s president, José de Jesús Orozco Henríquez. That submission appears below and is also available at [www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm).

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The United States commends the Inter-American Commission on Human Rights for commencing a process to improve and strengthen its procedures and practices for carrying out the mandate granted by the OAS Charter, which is “to promote the observance and defense of human rights and to serve as a consultative organ” of the OAS. In response to the Commission’s call for comments on the documents it has circulated related to this initiative, and in light of the report adopted by the OAS Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a view to Strengthening the Inter-American Human Rights System, the Government of the United States is pleased to submit a number of observations for consideration by the Commission.

In presenting these observations the United States stresses its full support for the mandate and role of the Commission, acknowledges the Commission’s historic success in identifying and promoting remedies for gross violations of human rights, and underlines the crucial role that the protection of human rights continues to play in the hemisphere. The independence and autonomy of the Commission, acting within the bounds of its mandate, are fundamental. By improving the ability to carry out its work, the Commission can sustain its role as one of indispensable pillars of the Inter-American human rights system.

The United States offers comments on specific areas where the Commission can improve its practices and procedures and thereby strengthen the overall effectiveness of its work. In particular, these comments suggest ways to decrease backlog and delay; improve transparency, including the clear application of applicable law and fact; and prioritize the core human rights concerns for which the Commission is best suited.

*I. Individual Petition System (including friendly settlement)*

The United States commends the Commission for efforts it has made to address the backlog of pending petitions. We believe it is crucial to continue these efforts and to implement additional procedures to speed up intake and routine processing of petitions. Because “justice delayed is justice denied,” the delay in processing applications fundamentally threatens the Commission’s ability to function effectively.

We believe it is important that the Commission be prepared to make changes in how it applies its rules, organizes its work, and carries out its procedures to eliminate these delays. While we understand inadequate resources are a factor, we believe that steps can be taken to achieve this goal within a limited budget. First, there is a great deal of information available about mass claims processing by domestic and international bodies that the Commission should draw on to make its procedures as efficient and cost-effective as possible. Second, the United States believes the Commission should undertake a review of its priorities for addressing petitions, as well as the balance between handling petitions and other parts of its mandate, to ensure that its available resources are focused as effectively as possible on its priorities. Third, the Commission should consider the kinds of petitions it is best positioned to address: as a body with limited resources that complements the national and provincial justice systems in the countries of the region, the Commission should not attempt to take action in every situation brought to its attention where individuals and communities are at risk. Rather it should take up those cases where applicable international human rights obligations are specifically implicated, the requirements for admissibility are met, and where the Commission’s intervention is necessary.

Strict adherence to procedural rules is important for the Commission both to address the backlog and to enhance its credibility. As a body with a quasi-judicial role that is often called on to review the consistency of domestic legal proceedings with international standards, it is important for the Commission to ensure that its own handling of petitions is carried out in compliance with applicable procedures and with full transparency. In order to provide maximum transparency to petitioners and States in cases where petitions are granted or denied, Commission communications should set forth clearly and specifically how it applies standards of admissibility, including the requirement that domestic remedies be exhausted.

When addressing the merits of a petition the Commission should state the specific provisions of relevant international instruments or treaties at issue, as well as the relevant facts, and analyze their applicability to the petition at hand.

In many cases—particularly where similar facts and allegations are raised in multiple petitions—processing can be made more efficient through the use of template communications and checklists. The United States encourages the Commission to speed up the transition to full online access to petitions, reports, and recommendations.

The Commission is encouraged to improve the use and effectiveness of friendly settlements, but should seek specific additional funding and staff for these efforts, which can be quite demanding of personnel resources.

*II. Precautionary Measures*

The United States believes that the Commission should carefully review, particularly in light of Article 25.2 of its Rules, its practices for requesting States to take precautionary measures. Such recommendations should be rare because they may be made only in the most serious cases involving the likelihood of imminent and irreparable harm to persons, and according to the factors spelled out in Article 25.4 of its Rules. If the Commission applies effectively the standards outlined in the Rules for determining that precautionary measures are warranted, the legal basis for such measures will be better understood and accepted. By contrast, a lack of rigor in applying the standards may increase the likelihood that precautionary measures will not be carried out. Requests to States to seek precautionary measures cannot be justified, for example, only on the potential harm to the persons for whom they are sought. Decisions should be made in a written determination that explains why, in light of the standards and other factors set out in the Rules, they are called for, with reference to the specific provisions of applicable international instruments or treaties and to the relevant facts at issue.

By their nature precautionary measures—as opposed to decisions on the merits of a petition—are only temporary, and this should also be plainly stated in the Commission’s requests to States to take precautionary measures. In cases where permanent or indefinite—as opposed to temporary—measures are appropriate, the case should be processed as a petition. Finally, in a case where the Commission believes a State has not effectively responded to the Commission’s requests to take precautionary measures, it should consider bringing the matter to the Court, where applicable.

### *III. Monitoring Country Situations*

A core feature of the Commission’s mandate as a consultative organ of the OAS is its monitoring and reporting function. For several decades the Commission has been justly praised for the substantial assistance it has provided under this part of its mandate to individuals who have suffered gross violations of their human rights and in guiding Member States of the OAS in addressing systematic human rights violations. This role has never been easy or comfortable either for the Commission or for the OAS Member States. It requires the Commission to determine that its intervention is necessary, to investigate and raise criticisms of States’ laws and practices, and to assist and consult with States on how to improve the protection of human rights. The Commission should exercise this mandate by addressing the most pressing, systemic violations. It would undermine the effectiveness of the Commission if it would attempt to address simultaneously the situation of human rights in all States of the OAS.

In creating the Commission the OAS Member States had the wisdom and the courage to realize that it was only through ensuring the autonomy, independence, and expertise of the Commission to address the most pressing human rights concerns that they would further their central goal of promoting the observance and protection of human rights in the region. In carrying out this part of its mandate, therefore, the Commission should continue to apply independently and objectively the five criteria established for determining that it should monitor individual country conditions.

### *IV. Promotion, Universality and Transparency*

Promoting the protection of human rights in all the OAS Member States and serving as a consultative organ for the OAS are core parts of the Commission’s mandate and should not be threatened by unaddressed backlogs in petitions and precautionary measures. The Commission should continually look for ways to balance and prioritize its work as circumstances change. Promotion is a function that can be carried out universally and at many levels, and is well suited

to attracting voluntary funding and cooperative partners. The Commission should actively pursue such assistance for this part of its mandate.

Transparency should be a core value and a consistent feature of the Commission's work. Efforts should be made to complete a transition to wholly electronic processes that can be more easily used for individuals, groups, defenders, petitioners, and States to consult the Commission's current and historic work and to stay abreast of pending matters. With regard to the operations and function of the Commission, its Strategic Plan is a model for the OAS in making clear, comprehensive information on the IACHR available to Member States and the public.

#### *Conclusion*

The United States offers these observations and recommendations in the spirit in which they were solicited by the Commission—in order to promote the strengthening of the Commission's procedures and practices and ensure that the Commission can carry out its entire mandate in the most efficient and effective way. We understand that this is the beginning of a continuing process of interaction between the Commission, the Member States, and civil society to achieve the best system possible to advance human rights in the hemisphere.

The United States welcomes the Commission undertaking this process of review and reform. Under the Inter-American human rights system, the initiative is with the Commission to make recommendations and changes in procedures. At the same time, as a consultative body of the OAS we are confident that the Commission will take the Member States' views seriously and consider them carefully.

The United States looks forward to further consultations with the Commission, Member States of the OAS, and members of civil society aimed at strengthening the work of the Commission.

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## **2. U.S. Observer Status at SICA**

On May 18, 2012, the United States signed a memorandum of understanding with the Central American Integration System ("SICA") granting the United States observer status with SICA. See U.S. Department of State media note, available at [www.state.gov/r/pa/prs/ps/2012/05/190327.htm](http://www.state.gov/r/pa/prs/ps/2012/05/190327.htm). The State Department media note provides this background information on SICA and U.S. involvement in the organization:

Established in 1991, SICA is the institutional framework for regional integration in Central America. Member states include Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama. The Dominican Republic participates as an Associated State. Countries holding observer status are Chile, Germany, Italy, Japan, Mexico, and Spain.

At the June 22, 2011, SICA International Conference of Support in Guatemala City, Secretary of State Hillary Rodham Clinton announced the United States would seek observer status with SICA. On December 16, 2011, the SICA Heads of State or Government instructed the SICA General Secretariat to proceed with the necessary steps to formalize the admission of the United States as a Regional Observer to SICA as

soon as possible. The Memorandum of Understanding is nonbinding and lays out the privileges of a SICA observer state.

### **3. U.S. Membership in the Multilateral Organization Performance Assessment Network (“MOPAN”)**

On November 2, 2012, U.S. Assistant Secretary of State for International Organization Affairs Esther Brimmer announced that the United States had joined the Multilateral Organization Performance Assessment Network (“MOPAN”). See Department of State media note, available at [www.state.gov/r/pa/prs/ps/2012/11/200088.htm](http://www.state.gov/r/pa/prs/ps/2012/11/200088.htm). The United States became the 17<sup>th</sup> country to join MOPAN since it was founded in 2002 to assess the organizational effectiveness of multilateral organizations. The Department media note described U.S. support for MOPAN’s mission:

The United States is strongly committed to an effective multilateral system and supports MOPAN’s work as a vital contribution to international efforts to review and improve the efficiency and effectiveness of international organizations.

By joining forces with other donor countries, the United States will minimize the cost and duplication of our own bilateral reviews of international organizations and substantively advance our push for greater accountability in those institutions under review. MOPAN’s emphasis on improving organizational effectiveness also increases the positive impact of international organization efforts around the world, including through strengthened cooperation with host governments and regional organizations.

#### **Cross References**

*Human Rights Council*, **Chapter 6.A.3.**

*Immunities of international organizations*, **Chapter 10.E.**

*EU Emissions Trading Scheme and ICAO*, **Chapter 11.A.2.**

*World Radiocommunication Conference (ITU)*, **Chapter 11.F.2.**

*World Conference on International Telecommunications*, **Chapter 11.F.3.**

*Outer space*, **Chapter 12.B.**

*Climate and Clean Air Coalition*, **Chapter 13.A.1.a.**

*Mid-east peace process*, **Chapter 17.A.**

*Peacekeeping*, **Chapter 17.B.**

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