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CHAPTER 6

Human Rights

A. GENERAL

1. Country Reports on Human Rights Practices

On February 27, 2014, the Department of State released the 2013 Country Reports on Human Rights Practices. The Department submits the reports to Congress annually 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/. Secretary of State John Kerry’s remarks on the release of the reports are available at www.state.gov/secretary/remarks/2014/02/222645.htm.

2. ICCPR

a. *Presentation to the Human Rights Committee*

The United States presentation to the Human Rights Committee on its Periodic Report Concerning the International Covenant on Civil and Political Rights (“ICCPR” or “Covenant”) was one of three presentations made by the United States in 2014 to UN committees in Geneva regarding its human rights record. The presentation to the Committee on the Elimination of Racial Discrimination (“CERD”) is discussed in section B.1.a., *infra*, and the presentation to the UN Committee Against Torture (“CAT”) is discussed in section H., *infra*. In anticipation of these presentations, U.S. State Department Principal Deputy Legal Adviser Mary McLeod wrote to state, tribal, and local leaders on February 18, 2014 calling their attention to the reports and presentations to these UN treaty bodies, and requesting their ongoing assistance in

helping the United State to promote and protect human rights. Excerpts follow from Ms. McLeod's February 18 letter, which is available in full at www.state.gov/j/drl/reports/treaties/index.htm#ftn1.

* * * *

I am writing to you to bring to your attention the important efforts the U.S. government is making this year to showcase the United States' human rights record. As you know, the United States has a long and proud tradition of advancing the protection of human rights around the globe. We also uphold these values by protecting human rights here at home, consistent with our international human rights obligations. These obligations are implemented not only by the federal government, but also through the dedicated efforts of state, local, insular, and tribal governments throughout our country, in areas such as protecting the civil and political rights of our citizens, combating racial discrimination, and protecting children from harms such as pornography and prostitution.

Over the next 18 months, the U.S. government will make four different presentations to United Nations committees in Geneva showcasing the United States' human rights record. These presentations provide vital opportunities to demonstrate to the world our country's commitment to protecting human rights domestically through the operation of our comprehensive system of laws, policies, and programs at all levels of government—federal, state, local, insular, and tribal. We want you to be aware of these efforts because we are proud of this shared role in upholding and protecting human rights. Indeed, representatives from state and local governments have participated in some of the U.S. government's prior treaty presentations, and we hope to continue this practice in the future.

Our first human rights presentation this year, in March 2014, will explain how the United States is implementing its obligations under the International Covenant on Civil and Political Rights (ICCPR), one of the seminal human rights treaties concluded following World War II. This will be followed in August by a similar presentation on U.S. government efforts to eliminate racial discrimination, consistent with the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and a presentation in November regarding the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT). In January 2015, we will submit the United States' second report under the UN Human Rights Council's Universal Periodic Review (UPR) process, followed by the presentation of this report in April or May 2015.

* * * *

On March 13-14, 2014, the United States presented for review its Fourth Periodic Report to the UN Committee on Human Rights Concerning the ICCPR. The United States submitted its Fourth Report in writing on December 30, 2011 and responded to questions from the Human Rights Committee on its Fourth Report on July 30, 2013. See *Digest 2013* at 124. Excerpted below and available in full at <https://geneva.usmission.gov/2014/03/13/u-s-opening-statement-at-presentation-of->

[the-fourth-periodic-report-of-the-u-s-on-implementation-of-the-iccpr/](#), is the March 13, 2014 opening statement by Ms. McLeod, the head of delegation at the U.S. presentation in Geneva of the Fourth Periodic Report.

* * * *

We have found the process of review and reflection with respect to the ICCPR very helpful as we continually strive to improve our efforts to protect civil and political rights in the United States. We appreciate this opportunity for dialogue with the Committee.

The broad and comprehensive legal framework within the United States to implement the ICCPR, described in the Second and Third Periodic Report presented seven years ago, remains firmly in place. Indeed, these laws form part of the bedrock of our democratic system of governance. The Fourth Periodic Report updated our prior Reports on major relevant developments, including new laws, judicial decisions, policies, and programs that expand protections in various areas and provide remedies for violations of protected rights.

Of course, many of the rights and freedoms protected under the ICCPR have parallels in the U.S. Constitution, including freedom of religion, speech, and peaceful assembly, the right to trial by jury, the prohibition on unreasonable searches and seizures, and the prohibition of cruel and unusual punishments, also find expression and protection in the ICCPR. Beyond these fundamental constitutional guarantees, we take pride in the numerous other civil and political rights protections available under U.S. laws and policies.

From our previous appearances before the Committee, we know that as we proceed over the next two days, there may be matters regarding the interpretation or application of the Covenant on which my government and members of the Committee may not be in full agreement. We hope the Committee will appreciate that our views on the interpretation of the treaty are informed by our principled interpretation of international treaty law and our abiding commitment to the protection of human rights and fundamental freedoms. We look forward to this wide-ranging discussion and to hearing the perspectives of the Committee. As in our last appearance before the Committee, we also know that our discussions may at times lead us to topics for which the law of armed conflict is the relevant governing law. We recognize your interest in this area and, in the spirit of cooperation with the Committee, we will provide as much information on these matters as possible, while identifying the relevant legal and policy considerations that guide U.S. actions in these areas.

We hope that our Fourth Periodic Report, along with our previous reports, has explained in detail the way in which the United States implements its obligations under the ICCPR, comprehensively and at all levels of government. As reflected in our report, a set of principles protecting civil and political rights, embedded structurally throughout our Constitution and laws, animates U.S. government action. While we enforce these fundamental protections through law, we view protection of civil and political rights as something that is more than a set of legal requirements, but as fundamental to our cultural identity, developed throughout our nation's history. While we are not perfect, our network of federal, state, and local institutions provides checks on the government and provides avenues for redress of rights violations. In the United States, there is a culture and history of civil society challenging the political branches of government through judicial processes, which is reflected by the fact that many of the authorities

referred to in our reports stem from litigation and from decisions of the United States Supreme Court and other courts. Finally, it is because we do have such strong protections for freedoms of expression, association, and peaceful assembly, that we have an active and vibrant civil society, as evidenced by the number of NGO reports submitted to the Committee, that provides an additional check to ensure the government is living up to its commitments to protect civil and political rights and continually striving to improve.

* * * *

Ms. McLeod's opening statement was followed by opening remarks by Roy Austin, Deputy Assistant Attorney General for Civil Rights at the U.S Department of Justice, addressing the measures taken by the Justice Department to protect civil and political rights in the United States. Mr. Austin's remarks are excerpted below and available at <https://geneva.usmission.gov/2014/03/13/iccpr-opening-statement-by-roy-l-austin-jr-deputy-assistant-attorney-general/>.

* * * *

Since the founding of our country, in every generation, there have been Americans who sought and struggled to realize our Constitution's promise of equal opportunity and equal justice for all. This past fall marked the 50th anniversary of the March on Washington, when Dr. Martin Luther King, Jr. delivered his "I Have a Dream" speech. As we as a country contemplate the progress we have made over the past fifty years, I am happy to take the floor to discuss our nation's continuing efforts to advance the cause of equality and ensure that all Americans can live free from discrimination.

Our aggressive enforcement of our nation's civil rights laws shows our commitment to meeting our international human rights obligations, including those under the International Covenant on Civil and Political Rights.

First and foremost, the right to vote is the bedrock of any democracy. The Justice Department is committed to ensuring full participation in our democratic process through the aggressive and evenhanded enforcement of our voting rights laws. In recent months, to protect the rights of minority voters, we, under the leadership of Attorney General Eric Holder, filed lawsuits against the states of Texas and North Carolina seeking to block the implementation of their highly restrictive voter identification laws. These lawsuits evidence the Department's continuing commitment to ensuring that Americans across the country can cast a ballot free from discrimination.

Like the right to vote, equal access to educational opportunities is essential to ensuring a strong future for our democracy. Education is the gateway to full participation in our society. Almost 60 years ago, our Supreme Court recognized that equal access to public education is a basic right. The Justice Department continues to vigorously enforce federal laws to expand opportunities for all students, protecting them from discrimination on the basis of race, national origin, sex, language, religion, and disability.

We strongly support diversity in our educational institutions. Diverse educational environments help to prepare students to succeed in our diverse nation and to transcend the boundaries of race, language, and culture as our economy becomes more globally interconnected. This past summer, the Supreme Court preserved the well-established legal principle that colleges and universities have a compelling interest in achieving the educational benefits that flow from a racially and ethnically diverse student body and can lawfully pursue that interest in their admissions programs.

Equal opportunity also means that qualified borrowers deserve equal access to fair and responsible lending. Since its creation in 2010, the Civil Rights Division's Fair Lending Unit has obtained more than \$775 million in monetary relief for borrowers and communities impacted by discriminatory lending.

For the infrastructure of our democracy to remain strong, we must ensure meaningful access to our courts. The stakes are too high in the courtroom context for parties or witnesses to be excluded because of their national origin. Under Title VI of the Civil Rights Act, state courts that receive Justice Department funds must provide people with limited English skills meaningful access to their programs and services, and we have recently worked with over 15 states to ensure this access.

Through its Access to Justice Initiative, the Department is working to help the justice system efficiently deliver outcomes that are fair to all, irrespective of wealth and status. In support of its mission to protect the Sixth Amendment guarantee of effective assistance of counsel, the Department successfully filed a Statement of Interest in 2013 in a class action lawsuit in Washington State. Last December, the court issued an injunction that required the cities to hire a public defender supervisor to monitor and report on the delivery of indigent defense representation.

Effective and accountable police departments are also a fundamental part of the infrastructure of democracy. The vast majority of police departments in the United States work tirelessly to protect the civil and constitutional rights of the communities they serve. But when systemic problems emerge, or officers abuse their power, the Department uses its authority to implement meaningful reform and to hold specific individuals accountable under our criminal laws. Over the last five years, the Civil Rights Division has obtained ground-breaking reform agreements with police departments to address issues including the excessive use of force; unlawful stops, searches or arrests; or policing that unlawfully discriminates against protected minority groups or women.

Individuals confined in institutions are also often among the most vulnerable in our society. For that reason, the Justice Department is continuing its work to prevent, detect, and respond to abuse in U.S. prisons. Last month, a Department investigation of Pennsylvania's prisons found that the manner in which PDOC uses long-term and extreme forms of solitary confinement on prisoners with serious mental illness—many of whom also have intellectual disabilities—constitutes a violation of their rights under the Eighth Amendment and the Americans with Disabilities Act.

The United States takes seriously the importance of addressing racial and ethnic disparities at all levels in the justice system, especially as it pertains to criminal sentencing. We are working to modify our charging policies so that those who commit certain low-level, nonviolent federal offenses will receive sentences commensurate with their individual conduct—rather than be subject to mandatory minimum sentences.

In addition, in our 2013 annual report to the Sentencing Commission, the United States called for reform of some mandatory minimum sentencing statutes, including sentences triggered by drug trafficking offenses. In January 2014, the Commission voted to propose, for public comment, amendments that would include possible reductions to the sentencing guidelines levels for federal drug trafficking offenses. These could have the effect of reducing eligible sentences by approximately 11 months.

We are also making significant strides in our effort to reduce violence against women. Under new provisions in the reauthorized Violence Against Women Act (Act), tribes and the federal government can better work together to address domestic violence against Native American women, who experience the highest rates of assault in the United States. The Act has led to significant improvements at the local government level—where the majority of these crimes are prosecuted—by encouraging victims to file complaints, improving evidence collection, and increasing access to protection orders.

The United States recognizes that the promotion of civil rights, equal opportunity, and non-discrimination are fundamental to ensuring universal respect for human rights. As these efforts make clear, the United States has made great strides, but we recognize that much work remains in our efforts to realize Dr. King’s dream of a country with equal opportunity and equal justice for all.

* * * *

Ms. McLeod also delivered a summary of the United States’ responses to the Human Rights Committee’s questions. That summary appears below. The numbered questions refer to the questions in the Committee’s List of Issues in relation to the U.S. report, document CCPR/C/USA/Q/4, available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsijKy20sgGcLSyqccX0g1nk3FW%2by259hAHCqEMzpDNIQ9sSE6eSLgy1itbTJ2ydz%2bMwU%2bXhagK4TthI2nKE6Y0tlel5Dn%2bc6Zk%2bRgfPrO9mg>.

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...The United States is working actively to address human and civil rights issues in ways too numerous to cover in the short time allotted, so we are looking forward to further elaboration during the discussion today and tomorrow. Let me also note that while we are pursuing these matters aggressively in the United States, and while we are making progress toward our goals, we would be the first to admit that there is much more work to be done.

Question 1. The United States continues to believe that its interpretation—that the Covenant applies only to individuals that are both within the territory of a State Party and within its jurisdiction—is the most consistent with the Covenant’s language and negotiating history.

The United States is committed to domestic implementation of the ICCPR at all levels and for this purpose, actively pursues policy, coordinating, and outreach processes consistent with our Executive Order 13107. We also continue to evaluate possible additional measures to enhance outreach and coordination.

Question 2. Although the United States does not have a single national human rights institution, it does have multiple complementary protections and mechanisms to guarantee respect for human rights, including through our independent judiciary. We welcome ideas on how our efforts can be strengthened even further.

Question 3. At the time it became a Party to the ICCPR, the United States carefully evaluated the treaty to ensure that it could fully implement all of the obligations it would assume. The reservations taken by the United States to a few provisions of the Covenant were crafted in close collaboration with the U.S. Senate. The United States has no current plans to withdraw these reservations.

Question 4. The United States is committed to addressing unwarranted racial disparities in the criminal justice system. The 2010 Fair Sentencing Act reduced disparities in sentencing between powder cocaine and crack cocaine charges. In addition, the Department of Justice has pledged to work with the United States Sentencing Commission and the U.S. Congress on reform of mandatory minimum sentencing statutes.

Question 5. The United States is tackling racial profiling aggressively, including through training; use of Incident Community Coordination Teams in responding to homeland security incidents; application of strict rules for ICE and Border Patrol agents; and investigation and prosecution of cases.

Question 6. Under its first-ever, strategic plan to end homelessness, the Administration is assisting communities to adopt alternatives to laws and policies that lead to criminalization of homelessness.

Question 7. By law, all people in the United States, including undocumented migrants, are entitled to emergency health services.

With regard to education, most—but not all—states allow undocumented students to enroll in public institutions at out-of-state tuition rates, and more than a dozen allow such students to pay in-state tuition provided, for example, that the student attended high school in that state.

Question 8. The number of states that have the death penalty, the number of persons executed each year in the United States, and the size of the population on death row have continued to decline over the last decade. At present, 32 states have laws permitting imposition of the death penalty—down from 38 states in 2000 and 34 in 2011 when we filed our report. This is in addition to capital crimes under Federal law.

Question 9. To update our response from last July, in 2012, approximately 470,000 fatal and nonfatal violent crimes were committed with firearms. With regard to domestic violence, firearms were used in about 5% of nonfatal violent victimizations by intimate partners in the 5-year period from 2008 to 2012. The percentage of gun-related homicides committed by intimate partners declined from 69% in 1980 to 51% in 2008.

Question 10. The United States is in an armed conflict with al-Qaida, the Taliban, and associated forces, and may also use force consistent with our inherent right of national self-defense. Targeted strikes with remotely piloted aircraft are conducted in a manner that is consistent with all applicable domestic and international law.

Question 11. Under U.S. law, every U.S. official is prohibited from engaging in torture or cruel, inhuman or degrading treatment or punishment, at all times, and in all places. The U.S. government conducts prompt and independent investigations into credible allegations concerning mistreatment of detainees, and has prosecuted a number of cases involving alleged detainee abuse

President Obama has said that he believes “waterboarding was torture and, whatever legal rationales were used, it was a mistake.” “Water boarding”—referenced in the Committee’s question—is explicitly prohibited in the Army Field Manual.

Question 12. The President has accepted and the U.S. government is implementing the recommendations of the Special Task Force on Interrogations and Transfer Policy Issues.

Where individuals are transferred subject to diplomatic assurances, the United States will pursue any credible report and take appropriate action if it has reason to believe that those assurances would not be, or have not been, honored. Where specific concerns about treatment cannot be resolved satisfactorily, the United States has declined to transfer the individual to the country of concern.

Question 13. The U.S. Department of Justice has jurisdiction to investigate and prosecute excessive uses of force, including where it constitutes a pattern or practice that violates the Constitution or federal law. Recently, our Department of Justice has put in place mechanisms to correct unlawful practices in police departments in New Orleans, Portland, Seattle, Puerto Rico and other places.

In Fiscal Years 2009-2012, 254 law enforcement officials were charged in 177 criminal cases for violating individuals’ constitutional rights.

With regard to activities on the U.S.-Mexico border, while the vast majority of Border Patrol Agents fulfil their duties professionally and responsibly, the Department of Homeland Security and the Department of Justice are committed to holding accountable U.S. government officers and agents who abuse their authority. For example, since 2008, the Department of Justice has opened 48 matters involving allegations of civil rights abuses by Border Patrol agents, and five such cases have been successfully prosecuted.

Question 14. With regard to corporal punishment, there has been an encouraging trend away from corporal punishment in schools across the United States. Discipline in schools is largely a matter of state and local law and practice in the United States and, today, at least 31 of the 50 States have outlawed corporal punishment in schools. On January 8, 2014, the Department of Justice and the Department of Education issued a comprehensive guidance document to assist schools in administering discipline without discriminating on the basis of race, color, or national origin. In addition, the Department of Education funds a Positive Behavioral Interventions and Supports Center, which is being used by over 19,000 schools across the country to put into practice effective and positive school-wide disciplinary practices.

Question 15. Involvement of individuals in non-consensual studies and medical treatment is subject to stringent limitations under the U.S. Constitution and laws. The specific rules for non-consensual use of medication are largely governed by state law, which cannot violate U.S. and state constitutional provisions on due process, liberty, equal protection, and privacy.

Question 16. Under federal and state law, inmates, including those with serious mental illness and juveniles, may not be subjected to solitary confinement absent an administrative hearing and other procedures protective of their right to due process. Since October 2005, the Department of Justice has authorized investigations of 28 adult correctional facilities and 29 juvenile detention facilities for misuse of solitary confinement, and DOJ is currently pursuing matters related to adult correctional institutions in approximately 25 states, the Virgin Islands, Guam, and the Northern Mariana Islands.

With regard to protection of detainees from violence, including sexual violence, the Department of Justice has published comprehensive regulations implementing the Prison Rape Elimination Act that are applicable to federal prisons. States also risk losing certain Justice Department funding unless they bring prisons into compliance. The Department of Homeland Security published similar regulations on March 7, 2014.

With respect to private prison facilities, they are required to follow all applicable local, state, and federal laws and regulations, and also to adhere to specified Bureau of Prison policies.

Question 17. President Obama has repeatedly reaffirmed his commitment to close the Guantanamo Bay detention facility. In furtherance of these efforts, he has appointed Special Envoys at the Departments of State and Defense, who continue to pursue vigorously the transfer of detainees designated for transfer, consistent with U.S. law and policy and applicable international law. The United States has legal authority to hold Guantanamo detainees until the end of hostilities, but, as a policy matter, we have elected to ensure that it holds detainees no longer than is absolutely necessary.

77 of the 155 detainees at Guantanamo are approved for transfer, subject to appropriate security measures by the receiving government. Since last summer, the United States has transferred eleven detainees from the Guantanamo Bay detention facility. With these transfers, approximately 80 percent of those held at one time at the facility have been repatriated or resettled, including all detainees subject to a valid court order directing their release.

Detainees who are not currently designated for transfer, and who have not been criminally charged or convicted, are eligible for the Periodic Review Board process, which is described in greater length in our written answer. Detainees at Guantanamo also have the right to challenge the legality of their detention in U.S. federal court with the assistance of counsel of their choosing.

With respect to Military Commissions, the U. S. government has taken great strides and steps to ensure that those accused of criminal activity receive a fair trial by an independent, impartial, and regularly constituted court, consistent with Common Article 3 of the Geneva Conventions.

Question 18. In the U. S. federal system, juveniles may not be placed in adult jails or correctional institutions in regular contact with incarcerated adults. To be eligible for federal grant funding, states must also implement laws and policies prohibiting contact between adult inmates and juvenile offenders.

Question 19. The Immigration and Nationality Act provides for detention of aliens who have committed certain criminal acts and those for whom there are reasonable grounds to believe they have engaged in or are likely to engage in terrorist activity.

With respect to unaccompanied alien children, the United States implements policies and procedures that take into account the best interests of children and provide age appropriate care and services for children under its care. Unless eligible for voluntary return, their custody is in the least restrictive environment available that is in the best interest of the child. Family groups are separated from the general adult populations, and every effort is made to maintain family unity wherever possible.

Question 20. The Violence Against Women Act, reauthorized in 2013, has led to significant improvements in addressing violence against women at the local level complemented by the Family Violence Prevention and Services Act, administered by the Department of Health and Human Services, and the Victims of Crime Act, administered by DOJ, that support the national infrastructure of community-based emergency domestic violence shelters. Together

these three make possible a coordinated community response to domestic violence that links law enforcement, legal systems, advocates, and health professionals.

Question 21. The United States government aggressively investigates and prosecutes human trafficking cases. Working through Pilot Anti-Trafficking Coordination Teams, the United States has successfully prosecuted domestic servitude cases in jurisdictions where such cases had never before been federally prosecuted and we've initiated complex, multi-jurisdictional, and international labor trafficking investigations.

With respect to sexual exploitation of children, the Department of Justice's Child Exploitation and Obscenity Section investigates and prosecutes cases designed to reach many aspects of commercial sexual exploitation of children and provides training. The Department of Homeland Security also investigates cases of child pornography and child sex tourism.

Question 22. As we explained in our response to the list of issues, NSA surveillance activities are subject to extensive oversight by the Executive Branch, the Congress, and the Judiciary. The Foreign Intelligence Surveillance Court plays an important role in overseeing certain NSA collection activities conducted pursuant to the Foreign Intelligence Surveillance Act. It not only authorizes these activities, but it also plays a continuing and active role in ensuring that they are carried out lawfully. The Obama administration undertook a review of U.S. signals intelligence in 2013. The review examined how, in light of new and changing technologies, the United States can use its intelligence capabilities in a way that optimally protects national security, while respecting privacy and civil liberties, maintaining the public trust, supporting U.S. foreign policy, and reducing the risk of unauthorized disclosures. At the close of this review, President Obama announced on January 17th of this year a number of reforms to various programs and their oversight.

Question 23. The National Labor Relations Act, which protects the rights of employees to form labor organizations and bargain collectively, does exclude certain agricultural and domestic employees. These workers, however, are covered by other Federal statutes providing labor protections, including the Fair Labor Standards Act and the Occupational Safety and Health Act. The limited reach of the National Labor Relations Act does not restrict the constitutional right to form and join labor unions for workers not covered by the Act.

Question 24. Following the Supreme Court decisions in Graham and Miller, the Department of Justice conducted a review to determine whether any federal prisoners might be affected, and notified the Federal Public Defender of the prisoners who were identified. In addition, the Administration is developing legislation to ensure that federal law complies with the requirements of the Court decisions.

Question 25. The United States has held approximately 2,500 individuals under the age of 18 at the time of their capture in detention in Iraq, Afghanistan, and at Guantanamo Bay. The U.S. government recognizes the special needs of young detainees, and every effort is made to provide them a secure environment, to separate them from adult detainees, to facilitate telephone and video calls with family members, and to attend to the special physical and psychological care they may need. Complaints may be made to the ICRC or directly to the U.S. military.

Question 26. The majority of the 48 states that restrict voting by persons convicted of felony offenses in some manner provide for restoration of voting rights to felons who have been released from prison and/or are no longer on parole or probation. With regard to state-imposed voter restrictions, the federal courts blocked implementation under Section 5 of the Voting Rights Act of a photo identification requirement imposed by Texas and Florida's attempt to reduce the number of early voting hours in advance of the 2012 election on the grounds that

these laws would have discriminatory effects on minority voters. However, in June 2013, the Supreme Court invalidated the existing statutory coverage formula for Section 5, and Texas implemented the voter photo ID requirements shortly thereafter. In August 2013, the Department of Justice filed suit against Texas under Section 2 of the Voting Rights Act to challenge the Texas voter photo ID requirements.

Question 27. The United States recognizes the importance of understanding matters of spiritual and cultural significance to Native American communities, and doing so in consultation with tribal leaders. Under the leadership of President Obama, who has held five high-level meetings with more than 350 Native American leaders at each meeting, federal agencies are actively pursuing outreach to tribes in many areas described in detail in the U.S. 2013 Periodic report to the Convention on the Elimination of Racial Discrimination Committee. And just last week the Office of the President issued the 2013 White House Tribal Nations Conference Progress Report which addresses protection of Native American lands, the environment and respect for cultural rights.

* * * *

b. *Observations on the Committee's Draft General Comment 35 on ICCPR Article 9*

On June 10, 2014, the United States submitted its observations in response to the Human Rights Committee's call for comments on draft General Comment 35 regarding Article 9 of the ICCPR. Article 9 provides:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

The U.S. submission is excerpted below (with most footnotes omitted) and available in full at www.state.gov/s/l/c8183.htm.

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1. The United States Government appreciates the opportunity to respond to draft General Comment 35 regarding Article 9 of the International Covenant on Civil and Political Rights (“the Covenant”), and thanks the Committee for its significant contributions to this project.¹

2. The observations of the United States focus on a few key statements in the draft General Comment that, in the view of the United States, should be revised or, in some cases, deleted, from the final text. These include: the scope of the right to security of person under Article 9; the obligations of States Parties with respect to the conduct of non-state actors; the relevance of international humanitarian law to the application of the Covenant; and limitations on a State Party’s derogation authority in times of public emergency under Article 4. After addressing these key topics, these observations make a number of specific points, which are illustrative of U.S. concerns rather than a comprehensive catalogue of all points on which the United States may disagree. The United States hopes its views will be useful to the Committee as it finalizes its General Comment on Article 9.

I. Preliminary Observations

3. The United States agrees with the Committee’s assessment of the profound importance of Article 9 for both individuals and society as a whole ...

4. The United States believes the views of the Committee should be carefully considered by the States Parties. Nevertheless, they are neither primary nor authoritative sources of law and the impression should not be given that they are being cited as such. Thus, the United States encourages the Committee in its final text to refrain from categorical statements regarding State Party obligations unless grounded in and referring to the specific text of the Covenant or other sources of treaty interpretation, rather than being based only on observations and comments of the Committee. The United States has addressed the functions and authorities of the Committee as established in Article 40 of the Covenant and refers the Committee to the U.S. Observations on General Comment 33, transmitted to the Chairman of the Committee on December 23, 2008, and to the U.S. Observations on General Comment 24, transmitted by the United States to the Chairman of the Committee on March 28, 1995.

5. Throughout the draft General Comment, references are made to the application of the Covenant, and Article 9 in particular, to actions outside the territory of a State Party. The United States has made the Committee aware of its position concerning the territorial scope of a State Party’s legal obligations under the Covenant: that the Covenant applies only to individuals that are both within the territory of a State Party and subject to its jurisdiction. In the U.S. view, this position is the most consistent with the Covenant’s language and negotiating history, and it is in accord with longstanding international legal principles of treaty interpretation. The United States has explained the legal basis for this position on a number of occasions and in considerable detail, including in response to the Committee’s General Comment 31 and during dialogues with the Committee in March 1995, July 2006, and March 2014. The United States

¹ *Draft General Comment No. 35: Article 9*, Human Rights Committee, hundred and tenth session, Geneva, March 29, 2010. Available at: <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/DGCArticle9.aspx>

refers the Committee to the U.S. Observations on General Comment 31, transmitted to the Chairman of the Committee on December 27, 2007, and to these prior dialogues for further information on this point.

II. The Relationship between Liberty and Security of Person

6. The United States generally agrees with the Committee's view in paragraph 7 of the draft General Comment that, within its scope of application, security of person under Article 9 would be jeopardized when a State authority intentionally and unjustifiably inflicts bodily or mental injury on an individual. However, the extent of a State Party's obligation pursuant to the Covenant to protect security of persons outside the context of deprivation of liberty is unclear.

7. The ordinary meaning and context of the language in Article 9 supports the conclusion that the right to liberty and security of person, for purposes of Article 9, pertains to situations involving deprivation of liberty. ...

8. The standards used in the text of Article 9—arbitrary and unlawful—are set forth only in relation to arrest, detention, and deprivation of liberty. Other articles of the Covenant that provide for security of persons more broadly adopt specific relevant standards, e.g., Article 6 provides that “no one shall be arbitrarily deprived of his life” and Article 7 creates a threshold of “cruel, inhuman or degrading treatment.” There is nothing comparable in Article 9 to address justifiable actions that may infringe on the security of a person (such as self-defense or other action in the face of imminent threat to others) beyond the context of deprivation of liberty.

9. Thus, in finalizing the text of the draft General Comment (and related paragraphs throughout), the United States recommends that the Committee focus on the right to security in the context of arrest or detention, such as instances of excessive use of force by law enforcement personnel in stopping, seizing, arresting and ultimately detaining individuals (as noted in draft paragraph 7) or extreme forms of arbitrary detention that are themselves life-threatening (as noted in draft paragraph 55).

III. Regulating Conduct of Non-State Actors

10. The United States agrees with paragraph 9 of the draft General Comment that a State Party is required under the Covenant to exercise responsibility for the conduct of private individuals or entities in situations where the State Party authorizes private individuals or entities to exercise governmental powers of arrest or detention. This would include responsibility to ensure that appropriate steps are taken to prevent violations and provide for effective remedial measures contemplated by both Articles 2 and 9 whenever a private individual or entity is authorized to exercise such powers and the circumstances in the particular case warrant. The United States disagrees, however, with the Committee's imputing affirmative obligations to States Parties to prevent, regulate, or punish the non-governmental conduct of private actors. The ordinary meaning of the text of the Covenant does not support such a reading, and there is no indication in the negotiating history of any agreement to impose obligations to prevent security threats or arbitrary and unlawful arrest and detention other than under governmental authority.

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13. If the Committee is inferring such obligations solely from the restatement in Article 9 of the inherent right to liberty and security of persons set out in UDHR Article 3, the United States would note that the Third Committee of the General Assembly rejected an amendment to the UDHR that would have added to that Article the following: “The State should ensure the protection of each individual against criminal attempts on his person.” This proposal

was presented and rejected immediately prior to the final vote on Article 3 in the Third Committee of the General Assembly in 1948² and nothing comparable was pursued during negotiation of the Covenant.

14. The absence of language in the Covenant imposing a duty or obligation on the part of the State Party to prevent crimes or other conduct by non-state actors is significant when contrasted with the text of other international conventions that specifically impose such obligations upon States Parties to prevent certain types of misconduct by non-state actors in limited circumstances. For instance, as noted in the U.S. Observations on General Comment 31, both the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) contain provisions that impose obligations upon States Parties to prevent discrimination “by any persons, group or organization” and “by any person, organization or enterprise.” Similarly, under Article 4(1)(e) of the Convention on the Rights of Persons with Disabilities (CRPD), States Parties undertake “to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise.”

15. Some States have chosen to assume affirmative treaty obligations regarding non-state actors in those States’ efforts to prevent, punish and eradicate violence against women by becoming parties to such regional conventions as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belem do Para”) and the Council of Europe Convention on preventing and combating violence against women and domestic violence (“COE Convention”). Both require States Parties to take a number of affirmative steps to prevent, investigate, punish and remedy acts of violence against women, including a “due diligence” obligation in each with respect to private conduct.

16. In addition, many States have taken on obligations with respect to conduct of private parties in the counter-terrorism context. The international community has elaborated 14 universal legal instruments and four amendments since 1963 to prevent various kinds of terrorist acts.³ Under these treaties, States Parties assume comprehensive obligations to criminalize, prevent, and prosecute or extradite crimes that directly threaten the liberty and/or security of persons in specific transnational contexts. These various counter-terrorism obligations require the suppression of unlawful acts of violence against aircrafts, airports, and maritime safety, and suppression of hijacking, hostage-taking, and crimes against internationally protected persons. More recently, crime control initiatives under the 2000 United Nations Convention against Transnational Organized Crime have included protocols to combat human trafficking, the smuggling of migrants, and illicit manufacturing of and trafficking in firearms.

17. That the CERD, CEDAW, CRPD, Convention of Belem do Para, COE Convention and other conventions include provisions explicitly creating State obligations requiring the regulation of conduct by private actors demonstrates that when treaty drafters intend for state obligations to include the regulation of private conduct, they explicitly impose such obligations, allowing States to decide whether or not to undertake international obligations on these subjects. The absence of any language to this effect in Article 9 or Article 2 of the Covenant reflects a decision by the drafters not to reach such conduct.

18. Although the United States appreciates that several of these recommendations are already framed as such (“should”), it strongly encourages the Committee to refrain from assertions that States Parties are “obliged” or “must” take measures against private conduct or threats when there is no legal basis in the Covenant for such interpretations.

IV. The Law of Armed Conflict

19. In all situations of armed conflict, the United States is deeply committed to complying with its obligations under the law of armed conflict (also referred to as international humanitarian law or the law of war). However, the United States does not agree with the analysis or conclusions set forth in several paragraphs of the draft General Comment regarding the applicability of Article 9 in situations of armed conflict.

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21. In particular, several paragraphs incorrectly imply that international humanitarian law does not provide the *lex specialis* in non-international armed conflicts. For example, after acknowledging that international humanitarian law applies in the context of an international armed conflict, paragraphs 15 and 65 appear to rule out the applicability of international humanitarian law in non-international armed conflicts. Although identifying the international law rules that apply to particular government action in the context of an armed conflict is a highly fact-specific inquiry, international humanitarian law is the *lex specialis* in both international and non-international armed conflicts, including with respect to detention of enemy combatants in the context of the armed conflict. Deleting the word “international” before “armed conflict” in paragraphs 15 and 65 would effectively address this issue.

22. Given that international humanitarian law is the controlling body of law in armed conflict with regard to the conduct of hostilities and the protection of war victims, the United States does not interpret references to “detainees” and “detention” in several paragraphs to refer to government action in the context of and associated with an armed conflict. For example, paragraph 15 incorrectly implies that the detention of enemy combatants in the context of a non-international armed conflict “would normally amount to arbitrary detention as other effective measures addressing the threat, including the criminal justice system, would be available.” On the contrary, in both international and non-international armed conflicts, a State may detain enemy combatants consistent with the law of armed conflict until the end of hostilities. Similarly, to the extent paragraphs 15 and 66 are intended to address law-of-war detention in situations of armed conflict, it would be incorrect to state that there is a “right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention” in all cases. In addition, to the extent the discussion of an individual right to compensation under Article 9 in paragraphs 49-52 is intended to extend to individuals detained in the context of an armed conflict, as a matter of international law, the rules governing available remedies for unlawful detention in the context of an armed conflict would be drawn from international humanitarian law. Relatedly, paragraph 31 and accompanying footnote 11, in references to “military prosecutions” and “military courts,” do not distinguish between different types of military prosecutions. For example, there may be a distinction between military tribunal proceedings under the law of war and courts-martial proceedings against service members, given that international humanitarian law is the *lex specialis* in situations of armed conflict.

23. Those portions of paragraphs 63-67 and other paragraphs throughout the General Comment that address the applicability of Article 9 in situations of armed conflict should be revised substantially to reflect appropriately the principle of *lex specialis*, or should be eliminated from the draft.

V. Derogation under Article 4

24. The United States also has concerns regarding the draft General Comment's treatment of derogation from Article 9. As the Committee notes, Article 9 is not included in the list of non-derogable rights in Article 4(2), but Article 4(1) requires that any derogation must be "strictly required by the exigencies of the situation" and must not be inconsistent with a State's other obligations under international law. The United States agrees with the Committee's statement in General Comment 29 (paragraph 11) that this limitation in Article 4(1) means that "[s]tates parties may in no circumstances invoke Article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law." But the United States does not agree with the Committee's statement in paragraph 65 that "the fundamental guarantee against arbitrary detention would be non-derogable" on this basis. The only cited authority for this sweeping statement is a footnote reference to paragraph 11 of General Comment 29 which refers to "arbitrary deprivation of liberty" as either a peremptory norm, violation of international humanitarian law, or both, without any elaboration or authority. The United States does not believe that a "fundamental guarantee against arbitrary detention" is considered a peremptory norm. The United States also notes that, as discussed in paragraph 21, international humanitarian law provides the *lex specialis* in non-international armed conflicts as well as international armed conflicts, and that as a general matter derogation would only be relevant as to action within the Covenant's scope of application.

25. Nor can the United States support the sweeping statement in paragraph 64 that "prohibitions against taking of hostages, abductions or unacknowledged detention are . . . not subject to derogation" because they would necessarily violate international law. The only cited support for this statement is a prior statement by the Committee. The United States believes that the authority under Article 4 to derogate from the specific prohibitions contained in Article 9 – which does not use the terms "hostages, abductions or unacknowledged detention" – is not, as a strictly legal matter, constrained in this manner, but agrees that once a State Party has derogated, measures taken must be consistent with the State Party's other obligations under international law, to include specific treaty obligations, customary international law and peremptory norms.

26. In addition, the United States agrees that the duration of any derogating measure must be strictly constrained by the exigencies of the situation. But it cannot accept the view expressed in paragraph 65 that in determining that a derogating measure is "strictly required by the exigencies of the situation" within the meaning of Article 4(1), the derogating State Party is constrained by a requirement of "strict necessity or proportionality" for any derogating measures involving security detention. Nor can it accept the view that any such measures must be accompanied by procedures that the Committee considers necessary to prevent arbitrary application of measures involving security detentions, such as "review by a court or an equivalent independent and impartial tribunal." First, the United States does not recognize that "strict necessity or proportionality" is the correct standard or that such procedures are necessarily required to prevent arbitrary detention under Article 9, even in the absence of derogation (see paragraph 31 below). Additionally, if the Covenant negotiators had intended for such requirements to apply, they would have added specific language so providing in the text of either Article 4(1) or (2).

27. Furthermore, the assertion in paragraph 66 (citing paragraph 6 of General Comment 32) that “[t]he procedural guarantees protecting liberty of person may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights” is not supported by the ordinary meaning of the text of Article 4. The United States agrees that a derogating State Party would need to ensure compliance with all other international obligations, including the provisions of the Covenant not subject to derogation and, in so doing, carefully weigh the impact of any derogating measure on its ability to do so. But Article 4(2) clearly defines which articles are non-derogable. All other articles are thus derogable, to the extent authorized by Article 4. The Committee has not identified a general “non-circumvention obligation” either in the Covenant or elsewhere, nor does it indicate what would constitute circumvention. It is therefore within the discretion of a derogating State Party to determine how best to meet any related obligations without reliance on derogated measures.

28. As a practical matter, the United States has never declared a public emergency within the meaning of Article 4 or availed itself of the right of derogation under its terms. It is in fact highly unlikely that the United States would ever do so. There is no authority under the U.S. Constitution to suspend any of the Constitutional rights that parallel Covenant rights, with the sole exception of the authority under Article I, Section 9, to suspend the Writ of *Habeas Corpus* “when in Cases of Rebellion or Invasion the public Safety may require it.” The United States shares the Committee’s laudable objective of discouraging derogation of Covenant rights and freedoms to the extent possible. But it believes the text of Article 4 is sufficient for this purpose and that in defining States Parties’ obligations under the Covenant, the draft General Comment needs to remain true to that text.

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3. Human Rights Council

a. Overview

The United States participated in three sessions of the HRC in 2014. The key outcomes of each session for the United States are summarized in fact sheets issued by the State Department. The key outcomes at the 25th session, described in a March 28, 2014 fact sheet, available at www.state.gov/r/pa/prs/ps/2014/03/224138.htm, include: responses to the situations in Sri Lanka, Iran, Syria, DPRK, Burma, Ukraine, and Venezuela and cross-cutting resolutions on civil society and the renewal of the mandate of the special rapporteur on freedom of expression. The key outcomes at the 26th session are described in a June 30, 2014 fact sheet, available at www.state.gov/r/pa/prs/ps/2014/06/228634.htm. They include responses to the situations in Ukraine, Syria, Belarus, and South Sudan and resolutions on Internet freedom, women’s rights, and business and human rights. The key outcomes at the 27th session are summarized in the State Department’s September 26, 2014 fact sheet, available at www.state.gov/r/pa/prs/ps/2014/09/232210.htm. They include resolutions on violence and discrimination against LGBT persons, civil society, Syria, Yemen, Central African Republic, Democratic Republic of Congo, Sudan, safety of journalists, female genital mutilation (“FGM”), and equal political participation.

b. Actions regarding Ukraine

See Chapter 9 for a discussion of measures by the UN Security Council and the UN General Assembly in response to actions by the Russian Federation against the territorial integrity of Ukraine. See Chapter 16 for discussion of sanctions targeting those responsible for Russian actions in Ukraine. The situation in Ukraine was also addressed at the Human Rights Council, including through a resolution during the 26th session in June 2014. U.N. Doc. A/HRC/RES/26/30. On March 26, 2014, at the 25th session of the HRC, the United States delivered a statement on behalf of 42 states, which appears below and is available at <https://geneva.usmission.gov/2014/03/26/joint-statement-by-42-states-at-the-human-rights-council-on-the-situation-in-ukraine/>.

* * * *

1. Mister President. We stand with the people of Ukraine at this moment of crisis.
2. We strongly support the new Ukrainian government. That government was overwhelmingly approved by the democratically elected parliament, representing all regions of the country, and supported by all major political parties in Ukraine.
3. The new government has proposed and is preparing for presidential elections on May 25 that will give all the people of Ukraine the opportunity to decide their own future democratically, a decision they must be able to take freely without any outside interference.
4. We reiterate the importance of respecting the sovereignty, unity and territorial integrity of Ukraine, according to Article 2(4) of the United Nations Charter. We condemn all use or threat of the use of force against the territorial integrity or the political independence of any state, or in any other manner inconsistent with the Purposes and Principles of the United Nations.
5. We express our deepest concern regarding the continuing deterioration of the situation in Ukraine. We are further concerned by Russia's unsubstantiated narrative of human rights violations, including as a justification for its military incursion into Ukraine. We are further concerned by Russian actions that continue to contribute to the deterioration of the situation, including its ongoing violation of Ukraine's sovereignty and territorial integrity, its actions in support of the illegal Crimean referendum—which took place despite a boycott of the referendum by the Crimean Tatars, who comprise 15% of the population of the region—and its purported annexation of Crimea. These actions are in violation of Russia's obligations under the UN Charter and inconsistent with its commitments under the Helsinki Final Act.
6. We are deeply concerned about credible reports of kidnappings of journalists and activists, the blocking of independent media, and the barring of independent international observers. Furthermore, the situation of minorities in Crimea, in particular the Crimean Tatars, is extremely vulnerable since the Russian military incursion. The best method to ensure the rights of all Ukrainians are being respected, including ethnic Russians, is for Russia to support international monitors in all of Ukraine, including Crimea, so that alleged human rights violations and abuses can be reported objectively and independently.

7. We commend the measured response shown so far by the new Ukrainian government and call upon the Ukrainian authorities, through an inclusive process, to continue efforts to ensure free and fair national elections, advance constitutional reform and investigate all acts of violence and human rights violations and abuses. Efforts should continue to reach out to all Ukrainian regions and population groups and to ensure full protection of the rights of persons belonging to minorities, drawing on the expertise of the Council of Europe and the OSCE.

8. We support the call made by the High Commissioner at the beginning of this session for an immediate, comprehensive and independent investigation into all human rights violations and abuses including killings, disappearances, arbitrary detentions, torture and ill-treatment.

9. We welcome Assistant Secretary General Simonovic's recent visit to Ukraine and call for access to be granted to all parts of Ukraine, including Crimea, to the human rights monitoring mission. We request that the OHCHR publically release the findings of its assessment report from both missions.

10. In addition to the UN presence, we welcome the involvement of Council of Europe mechanisms and the deployment of OSCE monitors in Ukraine. We call on Russia and all concerned to ensure full and unimpeded access and protection for the teams to all of Ukraine, including Crimea, in order to provide transparency and unbiased reporting on the human rights, economic, and security situation there, including the situation of persons belonging to all minority groups.

11. We support the actions undertaken by UN Secretary General Ban Ki-moon, who personally traveled to Ukraine and Russia in order to find a diplomatic solution to this crisis. We believe that the UN, pursuant to its Purposes and Principles, has a key role to perform in order to restore calm and promote dialog between the parties.

12. We call on all member states to work together to provide necessary assistance to Ukraine, and welcome further engagement by the High Commissioner's office and the special procedures of the Council, to assist in ensuring that human rights are respected during this period of crisis.

13. Finally, we call upon the authorities of Ukraine and the Russian Federation to engage in direct dialogue in order to restore calm and order, as well as to find a peaceful solution to this crisis.

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The United States joined in another joint statement on Ukraine delivered at the 27th session of the HRC by Peter Mulrean, U.S. Deputy Permanent Representative to the U.S. Mission to the UN in Geneva, on behalf of 25 states. The September 24, 2014 joint statement follows, and is available at <https://geneva.usmission.gov/2014/09/24/joint-statement-on-minorities-in-ukraine/>.

* * * *

We remain concerned by reports of violations of the rights of Crimean Tatars and members of other minorities in Crimea.

We are deeply concerned by reports that de facto authorities in Russia-occupied Crimea are systematically committing abuses against native Crimean Tatars, other religious and ethnic minorities, and those who oppose the occupation.

Raids on Tatar homes and mosques, prosecutions of Tatars for possessing so-called “extremist” literature, pressure on Tatar NGOs and publications, and the recent raids against the Crimean Tatar Mejlis are just the latest in a series of human rights violations that raise concerns about dramatically deteriorating conditions for minority populations.

De facto authorities in Crimea have also banned respected Ukrainian parliamentarian and former leader of the Crimean Tatar Mejlis, Mustafa Dzhemilev, and current head of the Mejlis, Refat Chubarov. We condemn this baseless five year ban of these officials from Crimea, their homeland.

This interference with elected officials and civil society also further undermines democracy in Crimea. The illegal referendum held in Crimea on 16 March was neither free, nor fair. As acknowledged in the United Nation’s report of 15 April, there was widespread vote rigging and a policy to exclude voters from minority groups.

There has also been an increase in violence against Jews and members of other religious minorities in Crimea since the Russian occupation began. Following threats of violence, the Chief Reform Rabbi and numerous Ukrainian Orthodox Clergy were forced to flee the peninsula. Ukrainian Greek Catholic Clergy have also been subjected to harassment and surveillance by de facto authorities in Crimea. We are concerned over the increase of hate crimes, including physical violence and vandalism, against Jehovah’s Witnesses and their houses of worship in Crimea.

We also note with concern that de facto authorities in Russia-occupied Crimea are requiring a new registration for all religious organizations in Crimea, including more than 1,500 previously registered with the Ukrainian government.

We call on Russia to cease its repressive actions towards these communities and to end its illegal purported annexation of Crimea, and we encourage all parties to cooperate with the UN Human Rights Monitoring Mission in Ukraine (HRMMU) and give it access throughout all regions of the country, including Crimea.

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c. *Actions regarding Syria*

The HRC adopted several additional resolutions addressing the crisis in Syria in 2014 and supported the ongoing work of the HRC’s Independent International Commission of Inquiry on the Syrian Arab Republic (“COI”). At the 25th session of the HRC, on March 27, 2014, Paula Schriefer, Deputy Assistant Secretary of State for International Organization Affairs and the head of the U.S. delegation, delivered an explanation of vote, explaining the U.S. vote in favor of a resolution on Syria and urging the renewal of the mandate of the COI. The resolution was adopted by a vote of 32 in favor, 4 against, and 11 abstentions. U.N. Doc. A/HRC/RES/25/23. Ms. Schriefer’s statement is excerpted below and available at <https://geneva.usmission.gov/2014/03/28/u-s-appeals-to-all-delegations-to-renew-mandate-of-syria-coi/>.

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The U.S. strongly supports the resolution on “the continuing grave deterioration of the human rights and humanitarian situation in the Syrian Arab Republic” and urges all members to vote in favor of it.

In addition to the extension of the Commission of Inquiry and other elements the other co-sponsors have laid out, the resolution calls attention to the desperate humanitarian situation inside Syria. Reliable access for humanitarian workers to reach those in need is urgent. The resolution stresses the need for full implementation of UN Security Council resolution 2139 and condemns the regime’s starvation campaign. There has been no significant progress in the implementation of UNSCR 2139. As the Secretary-General states in his report, “humanitarian access in Syria remains extremely challenging . . . and delivering lifesaving items remains difficult.” Since the unanimous adoption of resolution 2139, 200 people have been killed daily, 220,000 people remain besieged, and the regime has continued its ruthless aerial, indiscriminate bombardment campaign.

We remain gravely concerned about the Asad regime’s continued detention of tens of thousands of Syrians—including women, children, doctors, humanitarian aid providers, human rights defenders, journalists, and civilians from opposition controlled areas. They are subjected to torture, cruel, inhuman and degrading treatment, and extrajudicial killings. The resolution condemns these violations and calls for the immediate release of all arbitrarily detained persons, improvement in prison conditions, and access for independent monitors, including the Commission of Inquiry.

This tragic chapter in Syria’s history began over three years ago with the Asad regime’s decision to meet peaceful protests with violence. We reiterate our call, united with the Syrian people and members of the international community, for an immediate end to all violations of human rights and abuses and violations of international humanitarian law, especially those egregious, widespread and continued violations committed by the Asad regime.

There must be accountability for these crimes. We appeal to all members of this Council to vote in favor of this resolution and the renewal of the mandate of the Commission of Inquiry, so it may continue to provide objective, balanced reporting on the appalling human rights situation in Syria. With the passage of this resolution, the Human Rights Council continues to fulfill the important role of drawing global attention to the atrocities taking place in Syria and collecting the evidence necessary to ensure future accountability for these acts.

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d. *Actions regarding Sri Lanka*

On March 27, 2014, the UN Human Rights Council adopted a resolution on reconciliation, accountability, and human rights in Sri Lanka. U.N. Doc. A/HRC/RES/25/1. Secretary Kerry’s press statement on the vote is excerpted below and available at www.state.gov/secretary/remarks/2014/03/224003.htm. The White House also issued a statement welcoming adoption of the resolution, available at <https://geneva.usmission.gov/2014/03/28/white-house-on-u-n-human-rights-council->

[vote-on-sri-lanka/](#). For discussion of previous Sri Lanka resolutions at the HRC, see *Digest 2013* at 131 and *Digest 2012* at 140.

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Today's vote in the UN Human Rights Council sends a clear message: The time to pursue lasting peace and prosperity is now; justice and accountability cannot wait.

This resolution reaffirms the commitment of the international community to support the Government of Sri Lanka as it pursues reconciliation and respect for human rights and democratic governance. That's why the resolution requests that the Office of the High Commissioner for Human Rights continues monitoring the human rights situation in Sri Lanka. That's why it calls on the Office to conduct an investigation into allegations of serious human rights abuses and related crimes during Sri Lanka's civil war. And that's why the United States will continue speak out in defense of the fundamental freedoms that all Sri Lankans should enjoy.

We are deeply concerned by recent actions against some of Sri Lanka's citizens, including detentions and harassment of civil society activists. Further reprisals against these brave defenders of human rights and the dignity of all Sri Lankan citizens would elicit grave concern from the international community.

The Sri Lankan people are resilient. They have demonstrated grit and determination through years of war. Now, they are demanding democracy and prosperity in years of peace. They deserve that chance.

The United States stands with all the people of Sri Lanka. We are committed to helping them realize a future in which all Sri Lankans can share in their country's success.

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e. *Actions regarding North Korea ("D.P.R.K.")*

On February 17, 2014, the United States welcomed the release of the final report of the UN HRC's Commission of Inquiry on human rights in the Democratic People's Republic of Korea ("D.P.R.K."). The State Department press statement on the subject is available at www.state.gov/r/pa/prs/ps/2014/02/221710.htm. That press statement notes that the report "provides compelling evidence of widespread, systematic, and grave human rights violations by the D.P.R.K." and "reflects the international community's consensus view that the human rights situation in the D.P.R.K. is among the world's worst." The United States co-sponsored the resolution at the UN HRC that established the Commission of Inquiry in March 2013. U.N. Doc. A/HRC/RES/22/13. The Commission of Inquiry presented its report on the situation in the D.P.R.K. in front of the Human Rights Council in March.

In December, the UN Security Council held a meeting on North Korea's human rights record, spurred in part by the work of the Commission of Inquiry. Permanent Representative to the UN for the United States Samantha Power delivered remarks,

which are excerpted in Chapter 3 and available at <http://usun.state.gov/briefing/statements/235494.htm>.

f. *Joint Statement on Egypt*

On March 7, 2014, the United States cosigned a cross-regional joint statement on Egypt at the UN Human Rights Council. U.S. State Department Spokesperson Jen Psaki explained in the daily press briefing on March 7 that the United States remains “concerned about the climate for freedom of expression and freedom of assembly and association in Egypt.” Excerpt from Daily Briefing, available at <https://geneva.usmission.gov/2014/03/08/u-s-joins-cross-regional-joint-statement-on-egypt-at-the-human-rights-council/>. Ms. Psaki elaborated on the U.S. position on the joint statement on Egypt:

We were pleased to join 27 countries to reiterate our common concern for the ...universal human rights of all Egyptian citizens. In addition, and separately, the international community clearly condemns the reprehensible terrorist attacks that have taken place in Egypt.

The statement also reflects a broad consensus that restrictions to peaceful assembly, association, and expression run counter to Egypt’s pursuit of stability and democracy, and that a free press is an essential pillar of any democratic society. It further expresses our concern about the disproportionate use of lethal force by security forces against demonstrators, noting that even when faced with persistent security challenges, security forces have a duty to respect and observe Egypt’s international human rights obligations and commitments.

g. *Actions regarding the situation in Israel and the Palestinian Territories*

On July 23, 2014, the 21st Special Session of the HRC adopted resolution S-21/1, titled “Ensuring respect for international law in the Occupied Palestinian Territory, including East Jerusalem,” by a vote of 29 in favor, 1 against, and 17 abstentions. The United States voted against the resolution. The U.S. explanation of vote delivered by Ambassador Keith Harper, U.S. Representative to the UN Human Rights Council, is excerpted below, and available in full at <https://geneva.usmission.gov/2014/07/23/u-s-explanation-of-vote-on-the-hrc-resolution-on-the-situation-in-gaza/>. The U.S. statement delivered during the special session is available at <https://geneva.usmission.gov/2014/07/23/u-s-statement-at-the-hrc-special-session-on-gaza/>.

The United States remains gravely concerned over the recent violence that has impacted Palestinian and Israeli civilians. We are working intensively to secure an immediate cessation of hostilities based on a return to the November 2012 cease-fire agreement between Israel and Hamas. But this resolution will not help in achieving that goal. This resolution is not constructive, it is destructive.

The United States is deeply troubled by the resolution presented for adoption today. We will vote against it. Once again, this Council fails to address the situation in Israel and in the Palestinian Territories with any semblance of balance. There is no mention of indiscriminate rocket attacks by Hamas into Israel or the tunnels used to cause mayhem.

Nor is the resolution tailored to act in furtherance of our shared goals. Our goal is to facilitate an immediate cessation of hostilities. Let us be clear: This resolution will undermine achieving that objective.

The resolution also creates yet another one-sided mechanism targeting Israel. The Commission of Inquiry this resolution calls for is a needless, duplicative effort. This would be the fourth such investigation created by this body since 2006. This resolution is not tailored towards impacting the human rights of Palestinians or Israelis. It is a political and biased instrument. The resolution will cause real and lasting damage to this Council and its ability to comprehensively address human rights in this region. This body already has a standing agenda item solely focused on Israel. No other state faces such intense scrutiny. It also has a special rapporteur with a virtually unlimited mandate that could review any relevant human rights question. There is absolutely no need for an additional mechanism concerning Israel.

Additionally, this resolution takes steps that are far outside the mandate of this Council by attempting to convene the high contracting parties to the Geneva Conventions. It is essential that we do not politicize these important treaties. The action today threatens to do exactly that.

The United States calls for a vote and will vote NO on the draft resolution. We call on other states to join us in voting against it. We call on other states to underscore their opposition to any initiative of this Council that takes a one-sided approach to the Israeli-Palestinian conflict. It is essential that the community of nations takes a balanced approach to these issues.

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B. DISCRIMINATION

1. Race

a. Committee on the Elimination of Racial Discrimination

The United States appeared before the Committee on the Elimination of Racial Discrimination on August 13 and 14, 2014 in Geneva to present its 2013 periodic report on the implementation of U.S. obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”). The United States submitted its written report to the Committee on June 13, 2013. See *Digest 2013* at 132. See also discussion in section A.2., *supra*, of the letter sent to state, tribal, and local authorities informing them of the CERD presentation, among others. Ambassador Keith Harper led

the U.S. delegation. The delegation made a presentation and took questions from the Committee on a broad range of issues, including racial profiling; racial disparities with respect to criminal justice, education, housing, health care, and employment; voting rights; treatment of Native Americans and members of other racial and ethnic minorities; and immigration policy. Ambassador Harper's opening remarks are excerpted below and available at

<https://geneva.usmission.gov/2014/08/13/ambassador-harper-opening-remarks-at-u-s-presentation-to-the-committee-on-the-elimination-of-racial-discrimination-cerd/>.

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The United States is a vibrant, multi-racial, multi-ethnic, and multi-cultural democracy, in which individuals are protected against discrimination based on race, color, and national origin under the U.S. Constitution and federal laws, as well as under the constitutions and laws of the states and other governmental units. As noted in our report, the United States has made great strides towards eliminating racial discrimination. This progress is reflected in many levels in our society as will be elaborated further by my colleagues on our delegation. But one notable indicator of this is our country's political leadership. Thirty years ago, the idea of having an African-American president would not have seemed possible. Today it is reality. The nation's top law enforcement officer, our Attorney General, is also African-American. Three of the last five Secretaries of State have been women, and two have been African-American. We have appointed Justice Sonia Sotomayor, the first Latina Supreme Court Justice.

As a member of the Cherokee Nation of Oklahoma I am proud to be the first Native American to be U.S. Ambassador to the Human Rights Council. On a related note, I would like to congratulate the Chairperson of this Committee as the first indigenous Chairperson of any human rights treaty body.

While we have made visible progress that is reflected in the leadership of our society, we recognize that we have much left to do. Issues covered by this Convention are of such fundamental and deep importance that we must continue to make progress. For this reason, we value the opportunity for dialogue with the Committee. We hope and expect it to generate new ideas, to identify new ways to address persistent challenges, and to assist us in our ongoing efforts to improve. And for that, we are grateful.

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The opening statement of Deputy Assistant Secretary Schriefer is excerpted below, and is available at <https://geneva.usmission.gov/2014/08/13/32479/>.

* * * *

Over the last several years, under active White House leadership, the State Department has worked closely with many federal agencies and others to reinforce the importance of human rights obligations, including those set forth in the Convention, in our daily work implementing domestic laws and policies. The reporting processes for the Convention and other human rights

treaties, as well as the Universal Periodic Review, have helped create a core network of officials throughout the federal government who spread awareness of human rights obligations within their agencies and with other stakeholders. Through mechanisms such as the Equality Working Group, co-chaired by the Departments of State and Justice, we are trying to leverage that increased engagement to focus on concrete issues of implementation, not simply reporting.

At the same time, given our federal system of government, implementation of our obligations under the Convention must be a true collective effort among federal, state, local, tribal, and territorial governments. Communication and coordination with these federal government partners is critical, and we have stepped up efforts in this regard significantly since our 2008 presentation before this Committee. In particular, we have increased our communications with state, local, tribal, and territorial governments, both by providing information related to these treaties and their requirements, and requesting information relevant to implementation. The presence of the Attorney General McDaniel and Mayor Bell today is one testament to this improved outreach.

We have also worked to improve our outreach to the public and coordination with members of civil society, who serve as vital partners and constructive critics in the implementation of our obligations. In addition to making public extensive amounts of information about our treaty obligations and reporting activities, U.S. agencies engage in an ongoing dialogue with civil society. We have held several consultations with civil society specifically about our recent periodic report, and we look forward to future consultations. We greatly appreciate the efforts of civil society to coordinate and organize their concerns and recommendations, which inform our consideration of actions our government should take to improve implementation of our obligations.

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Statements of other members of the U.S. delegation are also available on the website of the U.S. Mission to the UN in Geneva. The opening statement of Loretta Lynch, U.S. Attorney for the Eastern District of New York, is available at <https://geneva.usmission.gov/2014/08/13/32482/>. The opening statement of Mark Kappelhoff, Deputy Assistant Attorney General of the Civil Rights Division of the U.S. Department of Justice, is available at <https://geneva.usmission.gov/2014/08/13/deputy-assistant-attorney-general-mark-kappelhoff-opening-statement-before-cerd-committee/>. The opening statement of Catherine Lhamon, Assistant Secretary for Civil Rights, U.S. Department of Education, is available at <https://geneva.usmission.gov/2014/08/13/catherine-lhamon-opening-statement-committee-on-the-elimination-of-racial-discrimination/>. The opening statement of William Bell, Mayor of Birmingham, Alabama, is available at <https://geneva.usmission.gov/2014/08/13/william-bell-mayor-of-birmingham-alabama-addresses-committee-on-the-elimination-of-racial-discrimination/>. The opening statement of Dustin McDaniel, Attorney General of Arkansas, is available at

<https://geneva.usmission.gov/2014/08/13/arkansas-attorney-general-dustin-mcdaniel-opening-remarks-to-committee-on-the-elimination-of-racial-discrimination/>.

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b. Human Rights Council

On March 28, 2014, the United States explained its position on the resolution introduced at the 25th session of the Human Rights Council on the mandate of the special rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance. U.N. Doc. A/HRC/RES/25/32. As David Sullivan, Legal Adviser for the U.S. Mission to the UN in Geneva, explained in the U.S. statement, the United States disassociated from consensus on the resolution. Mr. Sullivan’s statement is excerpted below and available at <https://geneva.usmission.gov/2014/03/28/u-s-statement-on-resolution-mandate-of-the-special-rapporteur-on-contemporary-forms-of-racism-racial-discrimination-xenophobia-and-related-intolerance/>.

* * * *

The United States has consistently sought to support practical and concrete efforts to end racism and racial discrimination wherever it occurs. We discussed some of these efforts the United States is pursuing domestically just a few weeks ago here in Geneva with the Human Rights Committee, and we look forward to discussing them in more detail in a few months’ time with the Committee on the Elimination of Racial Discrimination. Our priority, as we have made clear for some years, is to help ensure that all states live up to their obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and implement practical measures to fulfill the promise of that Convention and other instruments barring racial discrimination. Unfortunately, we are concerned that the mandate of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance does little to contribute to forward movement on such practical measures.

Moreover, as in the past, we cannot endorse all of the provisions of the current mandate. The mandate contains elements we believe neither reflect international law nor advance appropriate policies. For instance, we believe it is critically important to balance necessary legal protections for freedom of expression with solutions to the problem of incitement.

It is, therefore, with sincere regret that the United States must again disassociate from consensus on this resolution. We will continue to look for ways to balance our differences with the overriding goal we all share to eliminate racism in all its forms, wherever it occurs. We are proud of the efforts we have made in that regard and will continue to seek consensus on practical ways to make progress to achieve that worthy objective.

* * * *

In April 2014, the United States attended the 12th session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Program of Action, a body in which the United States normally does not participate. This session was dedicated to the negotiation of a Program of Activities for the Implementation of the International Decade for People of African Descent. For background on U.S. concerns about the Durban Declaration, 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, *Digest 2011* at 160-62, and *Digest 2012* at 148-50. The U.S. opening statement, delivered on April 7, 2014 by David Sullivan, is excerpted below and available at <https://geneva.usmission.gov/2014/04/07/durban-declaration-program-action/>.

* * * *

As you know, the United States normally does not participate in this working group because of our significant and well-known concerns about the Durban Declaration and Program of Action.

That said, we are always ready to find common ground with others in the effort to combat racism, bigotry, and racial discrimination. As Brazil's delegation emphasized, our nation's society is also multiracial, multiethnic, and multicultural. The situation of people of African descent is a very significant element of our national history, of the social fabric of our society, and of our concern about human rights worldwide.

Accordingly, in New York last December we supported UN General Assembly resolution 68/237, which proclaims the International Decade for People of African Descent beginning January 1, 2015. That resolution also asked this Working Group to develop a draft Program, to serve as the basis for the General Assembly President's work in developing a program for the implementation of the Decade.

As you told us as the Chair, the time for that project is short; the Decade will begin less than eight months from now, and General Assembly gave itself a deadline of June 30, 2014 to finalize and adopt the program.

In our work on the Program, as my European Union colleague said, we should emphasize the significant common ground that we share in our struggle against racism and racial discrimination, rather than our areas of differences. This means focusing on taking real, practical steps in all of our countries, in law and in policy, to confront racism and racial discrimination. We are skeptical, however, of proposals to create new instruments rather than focusing on implementation of existing ones such as the CERD, and of proposals to create costly new mechanisms that would have minimal impact on the lives of people of African descent.

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On June 24, 2014, Candace Bates delivered a statement for the United States at the interactive dialogue with the special rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance, held during the 26th session of the HRC. The U.S. statement is excerpted below and available at

<https://geneva.usmission.gov/2014/06/24/dialogue-on-contemporary-forms-of-racism-racial-discrimination-xenophobia-and-related-intolerance/>.

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The United States welcomes Special Rapporteur Mutuma Ruteere and thanks him for his thoughtful attention in his most recent report to the use of the Internet and social media to propagate racist ideas.

As we live in an increasingly interconnected world, expanded access to the Internet and new connections via social media have enabled unprecedented access to information.

These technological developments have also brought mutually beneficial exchanges of ideas, linking individuals throughout countries and across borders in ways unimagined even a decade ago.

At the same time, we recognize that some have tried to use these tools to spread hateful and discriminatory ideas and beliefs.

The United States abhors racist ideology.

As our history and experience have shown us, the best way to counteract these statements is through allowing a variety of more reasoned voices, including voices of members of minority groups, to outshine the vitriol of a hardened few.

We appreciate the Special Rapporteur’s focus on the various methods that are being used around the world to counteract the use of Internet and social media to spread hate speech.

We agree strongly with his conclusion that the “censorship approach” to controlling hate speech has significant draw backs.

However, we strongly disagree with Mr. Ruteere’s recommendation that legislative measures are essential to combat and prevent racial hatred on the Internet.

We disagree with the assertion that Article 19(3) of the ICCPR allows for prohibition of any hate speech—a very broad category of speech.

We would highlight the very different and well-reasoned approach to this issue taken by others, including Special Rapporteur Frank LaRue, emphasizing the need for restrictions to be very narrowly tailored.

We firmly support a multi-stakeholder approach to the issue, as noted in the report.

Technology companies, the private sector, civil society, academia, and governments can work together to address and overcome this complex phenomenon.

One example is the positive collaboration between stakeholders and ISPs to take down infringing content.

We applaud the inclusion in the Special Rapporteur’s report of some of the novel educational programs, online tools, and mobile apps being developed by organizations such as the Southern Poverty Law Center, the Anti-Defamation League, and other non-governmental organizations around the United States and the globe to address this issue.

We encourage the continued exchange of such best practices.

* * * *

c. UN General Assembly

On December 10, 2014, Ambassador Power addressed the UN General Assembly at a special event on the International Decade for People of African Descent, which will extend from January 2015 through December 2024. Her remarks are excerpted below and available at <http://usun.state.gov/briefing/statements/234942.htm>.

* * * *

The United States comes to the International Decade for People of African Descent with a full and robust commitment to ensuring the rights of persons of African descent, and to combating racism and discrimination against them. That is our commitment to members of all groups—whether they are discriminated against because of the color of their skin, because of what they believe, because of their ethnic group, because of who they love, or for any other reason

Our commitment to addressing enduring discrimination and inequality is rooted in our belief in “the inherent dignity and of the equal and inalienable rights of all members of the human family” — a principle the General Assembly affirmed when it adopted the Universal Declaration of Human Rights.

And our commitment is rooted in the understanding that when we reduce discrimination and racism — whether it is manifested in access to education or access to credit, in political participation or economic empowerment — entire societies benefit. ...

While we are proud of the progress we have made in the United States toward reducing discrimination and ensuring equal opportunity for all, we know that we are not yet where we need to be. ...

* * * *

The President has laid out a series of steps we are taking ... , from creating a task force to promote community-oriented policing, which encourages strong relationships and builds trust between law enforcement and the communities they serve, to budgeting money for local law enforcement agencies to purchase body-worn cameras, which have been shown to strengthen accountability and transparency. These actions complement the reinvigorated police reform work being led by the Justice Department and United States Attorneys’ Offices throughout this nation.

We understand that the most effective way to address gaps in rights and opportunities is by pinpointing where they exist, analyzing their causes, and finding targeted interventions to address them.

For example, we know boys and young men of color face disproportionate challenges and obstacles in the United States. In 2013, only 14 percent of black boys and 18 percent of Hispanic boys in the fourth grade scored proficient or better on the National Assessment of Educational Progress, the test we use to measure students’ knowledge; by comparison, 42 percent of white boys scored proficient or better.

In response, in February, President Obama launched the “My Brother’s Keeper” initiative, which is aimed at empowering boys and young men of color from cradle to college to career and ensuring that all young people can reach their full potential. ...

We believe strongly that the Decade for People of African Descent will be most effective in tackling racism if it is rigorous in its analysis of where discrimination persists, and if it encourages fact-driven interventions to address it.

The United States also recognizes that we have to go beyond tackling racism and discrimination within our own borders, as big a challenge as that remains. In 2008, we launched a joint action plan with Brazil to promote racial and ethnic equality in both countries; and in 2010, we started a similar program with Colombia. The programs and others like them allow us to learn from and share best practices with our neighbors, such as hosting representatives of Brazil's Ministry of Health at our Centers for Disease Control to discuss ways to address racial disparities in health. We are also developing tools that can be used beyond our communities, like the "Teaching Respect for All" initiative, which we are spearheading with Brazil and UNESCO. The program launched a curriculum guide in June to instill respect and tolerance in young students, which has already been piloted in Côte d'Ivoire, Guatemala, Indonesia, Kenya, and South Africa.

Sixty-six years ago today, the General Assembly adopted the Universal Declaration of Human Rights, affirming the human rights of all individuals, "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status." And fifty years ago this year, in 1964, the United States enacted the Civil Rights Act, broadly outlawing discrimination in our country. Upon signing the act into law, then-President Lyndon Johnson said, "Its purpose is to promote a more abiding commitment to freedom, a more constant pursuit of justice, and a deeper respect for human dignity."

In these two historic documents we see a common sense of purpose in working to ensure the rights of all people, and eradicating the discrimination and prejudice that undermines their inherent dignity. We remain fully committed to achieving that noble purpose.

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2. Gender

a. Sexual violence in conflict and emergencies

(1) United Nations

On April 25, 2014, Ambassador Power addressed the Security Council at a debate on sexual violence in conflict. Her remarks are excerpted below and available at <http://usun.state.gov/briefing/statements/225207.htm>.

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In the past decade, the Security Council has identified the scourge of sexual violence in conflict as a matter of acute and urgent concern. We meet today to assess progress in combating this pernicious form of criminality and to consider next steps. We begin with confidence that the standards we have established are clear, and the terrible knowledge that these standards are regularly ignored. We have made abundantly clear that there should be zero tolerance for rape and zero tolerance for other forms of sexual abuse in all circumstances and at all times. The

terror of sexual violence is uniquely horrific and merits our continued and determined efforts to eliminate it. Neither the fog of war nor the associated breakdown of law provide any explanation or excuse for actions that violate the rights and disrespect the fundamental dignity of human beings.

To articulate a zero tolerance standard of course is not difficult. Indeed, we have done it many times. But to endow it with real meaning in real conflicts remains a challenge of great urgency and one of many dimensions. This is not work that should be delegated only to a Special Representative of the Secretary-General on Sexual Violence—even one as capable as Special Representative Bangura—or to Women’s Protection Advisors in a peacekeeping mission or to UN Women. These offices and officials, and the UN as a whole, assuredly have an indispensable role to play, but the key to further progress in reducing suffering and protecting the vulnerable is action by parties to conflict. Every government has a responsibility to establish standards, to develop institutions, and to pursue policies that protect its people from sexual violence, whether perpetrated by the government’s own forces or by others. This responsibility includes, as Special Representative Bangura just put it, redirecting the stigma from the survivors to the perpetrators. This duty extends to men and boys, who have suffered sexual violence to an extent we have only recently begun to appreciate in places like Colombia, where boys were turned into sex slaves by illegal armed groups; in Rutshuru in the DRC, which was under savage M23 control for much of 2013; and in Libya, where the UN reported armed brigades used rape in detention as a form of torture. In far too many countries, the victims of sexual violence still have little, if any, effective legal recourse. Until that changes, predators will not be deterred, victims will hesitate to come forward, and justice will remain beyond reach.

In places where governments are weak, we must help to improve their capabilities, while also holding accountable those who commit crimes. Among the most culpable are the ruthless militias in the Central African Republic, whose assaults on civilians have almost literally torn the country apart and where rape, forced marriage, and sexual slavery are widespread. In Burma, where there are widespread reports of soldiers raping women and girls. And, as we’ve just heard, in South Sudan where, just this week, militants have gone on radio - which my Rwandan colleague has called an evil multiplier—to incite the use of sexual violence against named ethnic groups. In Yemen, where child protection workers have verified the abduction and abuse of boys by Ansar Al-Shari’a. With all of this in mind, we must express special outrage at the continued and widespread incidence of sexual abuse practiced by Syrian government armed forces as part of the regime’s ruthless campaign to terrorize civilians and drive families from their homes.

Despite chronic under-reporting and difficulties of access, we do know more about the nature and scope of the problem than ever before. The Secretary General’s report, the information collection mechanisms on which it is based, and the steadfast leadership shown by Special Representative Bangura are all welcome developments.

In addressing sexual violence, the UN must set the right example in what it does both here in New York and in places around the world where tensions are high and UN peacekeepers or political missions are deployed. Special Representative Bangura has shown determination in coordinating UN efforts across agencies to ensure that the imperative of stopping sexual violence is addressed in training, included in mission mandates and reports, is a central focus of enforcement activities, and is a major part of holding perpetrators accountable for war crimes and crimes against humanity. As members of this Security Council though, we must do our part by exercising proper oversight and pushing for full implementation of the objectives we set - mission by mission.

In this connection, I note that Women Protection Advisers were deployed last year to Somalia and Mali and are expected this year in Sudan, South Sudan, Cote d'Ivoire, and the Central African Republic. In Somalia, the UN has helped to train 12,000 police officers and the government has supported increased recruitment of women police. An improved effort has also been made to strengthen investigative and prosecutorial capabilities in the Democratic Republic of Congo, where sexual violence perpetrated by government and rebel forces has long been a source of chronic and massive injustice. We must strive, as well, to help the Secretariat achieve its goal of twenty percent female participation among UN police. But for this to happen, each of our countries must ourselves increase recruitment of women police into our domestic forces so that there is a far broader pool on which the UN can draw. We must also insist on enforcing the absolute prohibition on sexual abuse by UN peacekeepers. Again this requires home countries to hold perpetrators of sexual violence accountable once they are sent home.

In closing, let me voice the strong support of my government and the American people for a concerted strategy across the globe to address the problem of sexual violence both in and outside situations of combat. For far too long such abuses have been treated as part of the spoils of victory or the rewards of physical might. Let us be clear. Sexual abuse is among the worst of crimes, because it robs people of the precious and inalienable right to be secure in their bodies and because it is inflicted out of cruelty. In our effort to stop it, we have made gains in recent years, but we have a very long way to go. Thank you.

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(2) *U.S. Actions*

On February 25, 2014, the U.S. Department of State hosted a discussion on ending and preventing sexual violence in conflict situations. Secretary Kerry, U.S. Ambassador-at-Large for Global Women's Issues Catherine M. Russell, and United Kingdom Foreign Secretary William Hague delivered remarks to open the discussion. Secretary Kerry's remarks excerpted below include the announcement of a U.S. visa ban directed at perpetrators of sexual violence in conflict. Remarks at the discussion are available at www.state.gov/secretary/remarks/2014/02/222556.htm.

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...[T]here's really no way to adequately describe the depths of depravity and the extraordinary violence of rape as a tool of war, as violence against women as a tool of intimidation, coercion, submission, and power. And I think that those of us who have known about this for a long time are disturbed by the levels at which this is used as exactly that kind of tool in too many parts of the world.

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So I have seen this also, personally, in ways around the world in too many places of conflict. And today, we're making certain something additional; even though we've been aware

of it, we haven't sent yet an embassy-wide message, which I am sending today, that no one, and I mean no one at the highest level of military or governance, who has presided over or engaged in or knew of or conducted these kinds of attacks, is ever going to receive a visa to travel into the United States of America from this day forward. We're not going to allow that. And every embassy will engage—every embassy and post will be alert to this and to report any of these kinds of incidences, but most importantly there has to be a price attached, and that's one of the things we need to do.

The way we will make a difference on this issue is, frankly, by heeding the example of people who've gone before us who broke the back of slavery and other oppressive acts that were being applied to the life of people in various times in history. William Wilberforce, historic figure in Great Britain, stood up against slavery and set an example for people elsewhere. And it was that example that helped us ultimately to break the back of Jim Crow in the United States when people learned that you needed to put yourselves on the line, and you needed to take risks as a matter of moral conscience in order to be able to make the difference.

That's really what we're going to have to summon here, is that kind of moral commitment to fighting back against and holding accountable those people who engage in these kinds of activities on a global basis. ...

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b. Addressing gender-based violence

On March 20, 2014, the State Department issued a media note on the launch of the Gender-Based Violence Emergency Response and Protection Initiative. The media note, available at www.state.gov/r/pa/prs/ps/2014/03/223727.htm, is excerpted below.

* * * *

Under Secretary for Civilian Security, Democracy, and Human Rights Sarah Sewall launched the Bureau of Democracy, Human Rights, and Labor's (DRL) Gender-Based Violence Emergency Response and Protection Initiative (GBV Initiative) today at the Department of State. This first-of-its-kind, global program is dedicated to assisting survivors of extreme forms of gender-based violence around the world. To mark the launch of this program, the Department of State hosted experts from around the world to discuss the initiative, including activists from India, Mexico, Nepal, and South Africa.

The GBV Initiative's coordination network is funded by DRL, and is managed by a consortium of nongovernmental organizations led by Vital Voices Global Partnership. Consortium partners include Promundo-US, the International Organization for Migration, and the American Bar Association Rule of Law Initiative. ...

This targeted program addresses the immediate security needs of survivors of severe gender-based violence, as well as individuals under credible threat of imminent attack due to their gender or gender identity. The initiative includes provision of short-term emergency grants to cover medical and psychosocial care, emergency shelter, legal assistance, and other costs.

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On April 18, 2014, the State Department issued a fact sheet, available at www.state.gov/r/pa/prs/ps/2014/04/224983.htm on the new Gender-Based Violence Emergency Response and Protection Initiative. Excerpts follow from the fact sheet.

* * * *

Under the leadership of President Barack Obama, the United States has put gender equality and the advancement of women and girls at the forefront of U.S. foreign policy. Preventing and responding to gender-based violence (GBV) is a cornerstone of the Administration's commitment to advancing gender equality. In recognition of this policy, and in coordination with other GBV-related programs at the U.S. Department of State and USAID, the Bureau of Democracy, Human Rights, and Labor (DRL) has launched the GBV Emergency Response and Protection Initiative. This Initiative fills a critical gap by providing urgent assistance to threatened individuals with rapid, targeted, short term assistance.

Gender-based violence is a global pandemic that affects women, men and children. GBV should be understood as violence directed at a person based on gender, gender identity, or perceived adherence to socially defined norms of masculinity or femininity. The GBV Initiative can assist individuals facing harmful traditional practices such as early and forced marriage, "honor" killings, and female genital mutilation, as well as other forms of GBV, such as female infanticide; child sexual abuse; sex trafficking and forced labor; sexual coercion and abuse; neglect; domestic/intimate partner violence and elder abuse.

Initiative Objectives

- Short-term Assistance for Survivors

The GBV Initiative addresses the immediate security needs of survivors of severe gender-based violence, as well as individuals under credible threat of imminent attack due to their gender or gender identity. Individuals can receive assistance for up to 6 months or \$5,000. Assistance is intended to be one-time support. Funds can be used to address short-term emergency needs, like payment of legal and medical bills, relocation, security, and dependent support.

- Targeted training and Advocacy

The Initiative supports integrated training for governments, judiciary and key civil society in implementing laws that address GBV. These trainings are funded by a partnership with the Avon Foundation.

The Initiative also supports targeted advocacy programs for civil society groups working to address cultural attitudes and norms around gender-based violence. These programs include engaging men and boys around GBV prevention.

- Building and Coordinating a Global Network

The Initiative will focus on and coordinate programs in 11 hub countries in the Middle East, Africa, South and Central Asia, and Latin America.

The Initiative's network is managed by a consortium of non-governmental and international organizations led by Vital Voices Global Partnership. Consortium members include

Promundo-US, the International Organization for Migration, and the American Bar Association Rule of Law Initiative.

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At the 26th session of the HRC, the Council adopted a resolution on eliminating all forms of violence against women. U.N. Doc. A/HRC/RES/26/15. On June 26, 2014, Ambassador Harper delivered a general comment welcoming the resolution, excerpted below and available at <https://geneva.usmission.gov/2014/06/26/u-s-welcomes-resolution-on-eliminating-all-forms-of-violence-against-women/>.

* * * *

The United States welcomes the resolution entitled “Accelerating efforts to eliminate all forms of violence against women: Violence against women as a barrier to women’s political and economic empowerment.”

Seven out of ten women and girls suffer gender-based violence in their lifetimes, and for women and girls to take full advantage of opportunities in the political and economic sphere they must be able to live freely, without the threat of violence.

We applaud the focus of this resolution on that critical nexus.

The United States considers harmful traditional practices a form of violence against women and girls.

Those include child, early, and forced marriage, which the resolution mentions specifically, as well as “honor” killings, acid-related violence, and female genital mutilation/cutting.

The significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, but states have a duty, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

We are pleased that this resolution recognizes that members of minority groups may be at increased risk of violence.

In this regard we welcome its specific references to indigenous women and girls and women and girls with disabilities.

We underscore our continuing, deep concern about violence against lesbians and transgender women and girls, violence against women human rights defenders, and conflict-related sexual violence.

Violence seriously jeopardizes the physical and mental health of women and girls, including, in many instances, their sexual and reproductive health.

Respecting and promoting reproductive rights—including the right to make decisions concerning reproduction free of discrimination, coercion and violence, and access to comprehensive sexual and reproductive health services—must be integral to our efforts to end violence against women and girls.

We are, therefore, pleased that this resolution recognizes the strong connection between sexual and reproductive health and reproductive rights and efforts to address and end violence against women, including rape.

Reproductive rights were originally defined in the International Conference on Population and Development's Program of Action adopted in 1994 and elaborated and reaffirmed in numerous intergovernmental documents since.

They provide the foundation for our global effort.

Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing, and timing of their children and to have the information and means to do so.

The implementation of these instruments is contributing significantly to progress on preventing, mitigating, and ultimately eliminating violence against women and girls.

We believe this resolution should have contained specific references to sexual and reproductive health services, which among other things are crucial because the risk of pregnancy is also an important possible outcome of rape.

We are pleased to note that the Commission on the Status of Women and CPD have recognized the significance for survivors of access to emergency contraception, safe abortion, and post-exposure prophylaxis for HIV and other sexually transmitted infections.

We continue to believe this Council should do the same.

We are gratified that this resolution urges states to take myriad actions to further the goal of ending violence against women and girls.

We note that nothing in this resolution urges states to implement special measures where such actions would not be appropriate; the United States will address other recommendations in the resolution consistent with our federal system.

In conclusion, the United States is pleased to renew our commitment to supporting the Council as it redoubles its efforts to eliminate all forms of violence against women and girls.

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c. *Commission on the Status of Women*

Ambassador Power addressed the UN Commission on the Status of Women on March 10, 2014. Ambassador Power's statement is excerpted below and available at <http://usun.state.gov/briefing/statements/223217.htm>.

* * * *

Whether women and girls are prohibited from pursuing an education, serving their country, driving a car, or earning equal pay, the reminders are everywhere that our work is far from complete. So let us reaffirm, together, our global commitment to fight against discrimination and prejudice. In so doing, we must also recognize that our reaffirmations are insufficient. Words matter, but words alone do not shatter glass ceilings, actions do. And each of us—each of our governments—must act to ensure that half of the citizens of these United Nations will one day enjoy an equal chance to serve, to work, to live, to grow, and to thrive.

As we know, the Millennium Development Goals have served as an important rallying point for equality, helping the world to nearly establish gender equality in primary education and to make progress on maternal health. Yet, we remain far short of equality for boys and girls in

secondary education, and more than sixty percent of young adults who lack basic literacy skills are women; thus stifling both the hopes of these women, and endangering the next generation.

A woman in a poor country is still fifteen times more likely to die giving birth than her wealthier counterpart. That is just wrong: for any mother anywhere, a bank account should never spell the difference between death and life.

The United States believes that women's empowerment belongs at the heart of our global development agenda. This means having a standalone goal on the equality and empowerment of women and girls, and strong gender-specific targets in critical areas, including the elimination of sexual and gender-based violence, secondary education, equal access to productive economic assets like property and credit, and advances in political participation at all levels of government.

It is true that the number of women parliamentarians has almost doubled since 1995, but 10 percent compared to 20 percent only underscores the size of the equality gap remaining. We have miles to go. The goals we set are more than social aspirations; they reflect profound truths about women's capabilities, women's dignity, and our common humanity. Equality must be our standard, justice our watchword, and unity our strength. Thank you.

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U.S. Ambassador-at-Large For Global Women's Issues Catherine M. Russell also delivered remarks before the Commission on the Status of Women at its 58th session on March 12, 2014. Ambassador Russell's remarks are excerpted below and available at <http://usun.state.gov/briefing/statements/223393.htm>.

* * * *

Today I stand before you to reaffirm the commitment of the United States to the full and effective implementation of the Millennium Development Goals, and to the simple but foundational statement that was so groundbreaking almost 20 years ago.

“Human rights are women's rights, and women's rights are human rights.”

These words are just as true today as they were two decades ago, when then First Lady Hillary Rodham Clinton spoke them for the first time at the Fourth World Conference on Women in Beijing.

And just as she did then, today each of us speaks for the women and girls around the world who continue to be denied the opportunity to gain an education, to live free from violence, to obtain employment and escape poverty, or to enjoy equal access to health care, simply because of their gender.

For almost 30 years, this Commission as well as the broader United Nations community has sought to promote gender equality. And thankfully, the progress and commitments we have made together are significant.

By setting blueprints such as the Program of Action adopted during the 1994 International Conference on Population and Development, and the landmark 1993 Declaration on the Elimination of Violence Against Women, we have made clear our shared commitment to women's autonomy and empowerment.

And since the adoption of the Millennium Development Goals 15 years ago, and through our specific focus on gender equality through MDG 3, we have helped lift millions of women out

of extreme poverty, send millions of girls to primary school, and seen a slow rise in women's political participation.

But unfortunately, like many blueprints, too many boxes and too many aspirations remain unchecked and under-achieved.

Of the more than one billion people living in extreme poverty today, the majority are women. In fact, poverty continues to increase for women in rural areas. While we have seen unprecedented progress in achieving access to universal primary education, of the 123 million young people unable to read or write, a majority are girls. Secondary education continues to be only an aspiration for far too many girls and young women. The quality of education also remains a serious problem.

Worldwide, we continue to see women overrepresented in informal, unstable sectors of the labor market, and underrepresented at all levels of government.

One in three women worldwide will be beaten, coerced into sex, or otherwise abused in her lifetime, most often by an intimate partner. Some of the most vulnerable women, including lesbian, gay, bisexual, and especially transgender women, experience levels of violence many times greater.

Women and girls with disabilities are particularly vulnerable.

Addressing early and forced marriage is another profound challenge. There are more than 60 million child brides worldwide, and one in nine girls around the world marries before the age of 15, often facing severe health consequences as a result.

And as we all know, despite a specific "to-do" list we set for ourselves through MDG 5, the least progress has been made on reducing maternal mortality and providing universal access to sexual and reproductive health information, education, and services, including addressing the unmet need for family planning.

Fully meeting the ambitious goals we set for ourselves almost 15 years ago will require a careful review of what has worked and what has not. It will also require us to acknowledge that a tremendous amount of work remains to be done.

We know that countries where women can reach their full potential are more stable and more prosperous. And that is why the United States cannot imagine a Post-2015 development agenda that does not include the equality and empowerment of women and girls as one of its central goals. Furthermore, we believe gender-specific targets should be integrated into other relevant goals.

The United States has made important progress with respect to the MDGs, and we will continue to prioritize these efforts. As Secretary of State John Kerry has said, "gender equality is critical to our shared goals of prosperity, stability, and peace, and that is why investing in women and girls worldwide is critical to advancing U.S. foreign policy."

In 2011, the Administration launched our National Action Plan on Women, Peace and Security. Now in our second year of implementation, we have taken concrete actions to institutionalize and better coordinate our efforts to advance women's inclusion in peace negotiations, peacebuilding activities, conflict prevention, and decision-making institutions.

In 2012, the Obama Administration launched the first-ever U.S. Strategy to Prevent and Respond to Gender-Based Violence Globally. And this year, Secretary Kerry launched *Safe from the Start*, a joint initiative with USAID to strengthen the humanitarian system to prevent and respond to gender-based violence at the very onset of emergencies.

We continue to support programs to improve the quality of clinical care for sexual assault survivors in both refugee camps and communities, to improve data collection on gender-based violence, and to identify best practices on safe shelter to protect survivors.

Through our PEPFAR support, there are now more than 4 million women receiving anti-retroviral treatment. In the last four years, we've also provided post-rape care for more than 115,000 survivors to prevent HIV contraction.

The United States also continues to be a leader in providing international family planning assistance.

And of course, the United States fully supports the efforts of the UN to promote gender equality and end violence against women and girls—from the creation of UN Women in 2011, to the establishment of a UN Special Representative on Sexual Violence in Conflict, to demanding accountability when UN personnel engage in sexual exploitation and abuse, to empowering women as equal partners in conflict prevention and peacebuilding.

Two years ago, we were proud to launch the Equal Futures Partnership at the General Assembly—a multilateral platform to break down barriers to women's political and economic participation. Today, we are proud to stand with 24 member countries, the European Union, UN Women, the World Bank, and private sector partners in making a committed effort to identify those barriers so we can systematically break them down.

Through our programmatic efforts, we have made great strides in helping others achieve the goals set out 15 years ago. By investing in women's entrepreneurship through networks like the African Women's Entrepreneurship Program, we are providing skills, training, and tools necessary for women to start and grow their businesses.

Funding has increased women's leadership of small and medium-sized enterprises, and to higher education programs that cultivate women leaders in business, academia and research. New and innovative efforts have strengthened the skills and capacity of women members of legislatures, and supported the creation of a new female parliamentarian network.

However, each of us recognizes that we have much more to do. A blueprint and a checklist are not enough. We must implement our blueprint, and hold ourselves accountable. We must continue to prioritize women's and girls' empowerment as we look to the next 15 years.

We need action, not just by governments but by all parts of society – the NGO community, religious and faith-based leaders, grassroots organizations, research institutions, and the private sector. And so we are especially thankful for those representatives from civil society with whom we all work. We must also recognize that full gender equality will not be achieved without the support and participation of men and boys, who are critical partners in this effort.

The United States looks forward to forging a robust set of Agreed Conclusions that recognize and reaffirm the bold statements of almost 20 years ago. Women and girls are not just a line on our to-do list: they are our mothers, sisters, daughters, friends, and neighbors. They are each of us, and so today, and every day, we speak out and we speak up for each and every one of them.

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d. U.S. actions

On September 8, 2014, the State Department issued a fact sheet on “Promoting Gender Equality and Advancing the Status of Women and Girls,” available at www.state.gov/r/pa/pl/231391.htm. The fact sheet is excerpted below.

* * * *

Globally, women and girls are disproportionately affected by poverty and discrimination. Women often end up in insecure, low-wage jobs, and have limited access to the educational resources and financial tools they need to succeed. Women’s leadership and participation in politics, civil society, and the private sector is limited on local, national, and global levels. Adolescent girls in developing countries face particular challenges, including poorer educational outcomes; traditional harmful practices such as early and forced marriage; and higher vulnerability to disease and infections, such as HIV.

Promoting Peace and Ending Gender-based Violence

Women’s perspectives and participation, which are vital to achieving and sustaining peace, are too often overlooked in conflict resolution, prevention, and relief and recovery efforts. Women’s active participation in decision-making processes is critical to sustainable conflict resolution and in turn increases the effectiveness of prevention efforts. Throughout the world, we continue to see risks of gender-based violence increase when disasters or conflicts strike. This type of violence especially impacts women and girls and remains pervasive in both developed and developing countries, in times of both peace and conflict.

Providing Opportunity

There is ample evidence to show when governments and societies afford women and girls the opportunity to lead healthy, safe, and productive lives, greater economic growth and stronger societies emerge.

Diplomacy and Women’s Equality

... [T]he United States has brought an unprecedented focus to bear on promoting gender equality and advancing the status of women and girls around the world.

The Department of State, through the Quadrennial Diplomacy and Development Review and the Policy Guidance on Promoting Gender Equality and Advancing the Status of Women and Girls, supports global progress towards gender equality through its diplomatic engagement, foreign assistance programming, and partnerships with civil societies and private sector actors across the globe.

Strengthening U.S. Efforts

Secretary Kerry has directed all U.S. embassies and Department bureaus to continue to prioritize these issues in all of their diplomatic, development, and operations activities, including focusing efforts to:

- **Promote women’s economic and political participation** – by addressing discrimination against women in economic and political spheres, fostering entrepreneurship and leadership, and removing barriers to meaningful engagement and opportunity;
- **Support U.S. strategic initiatives related to gender-based violence and women, peace, and security** – by implementing the U.S. Strategy to Prevent and Respond to

Gender-based Violence Globally (2012) and the U.S. National Action Plan on Women, Peace, and Security (2011);

- **Empower adolescent girls** – by focusing on the specific challenges faced by girls, investing in girls’ education, and countering harmful traditional practices, such as early and forced marriage and female genital mutilation/cutting;
- **Prioritize gender equality in international fora** – by advocating for issues affecting women and girls, including a stand-alone goal on gender equality in the Post-2015 Development Agenda; and
- **Lead by example** – by continuing to promote, fund, and integrate gender equality into programs, policies, and planning in all areas of the State Department.

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e. *Inter-American Commission on Human Rights.*

On September 10, 2014, the United States submitted its response to a questionnaire from the Inter-American Commission on Human Rights (“IACHR”) on access to information from a gender perspective. The IACHR plans to use the information gathered in response to the questionnaire to produce a report on the challenges women face in accessing State-managed information in the areas of violence and discrimination. The U.S. response and the questionnaire are both available at www.state.gov/s/l/c8183.htm.

Also on September 10, the United States submitted a response to a request for information pursuant to article 18 of the IACHR Statute regarding reports of forced sterilization of female inmates in U.S. prisons. The U.S. response to this request is also available at www.state.gov/s/l/c8183.htm. The response describes measures taken to investigate the sterilizations, pay reparations to victims, and prevent future sterilizations.

3. *Sexual Orientation and Gender Identity*

a. *Human Rights Council*

On September 26, 2014, at its 27th session, the HRC adopted its second resolution on human rights, sexual orientation and gender identity, by a vote of 25 in favor, 14 against, and seven abstentions. U.N. Doc. A/HRC/RES/27/32. See *Digest 2011* at 177-79 for discussion of resolution 17/19. Ambassador Harper delivered the U.S. explanation of vote, which is excerpted below and available at <https://geneva.usmission.gov/2014/09/26/human-rights-council-expresses-grave-concern-about-violence-against-lgbt-persons/>.

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As a strong proponent of the rights of all persons and an advocate for anti-discrimination, the United States is pleased to be among the strong supporters of this resolution protecting LGBT persons.

We appreciate the leadership shown by the core group of Chile, Colombia, Uruguay and Brazil and the support of all Council members and observer delegations who cosponsored this resolution.

The Council's decision today to again reaffirm the Council's grave concern about acts of violence and discrimination against individuals because of their sexual orientation and gender orientation is an historic step in improving human rights protections for all.

President Obama said recently that the story of America's LGBT community is "the story of our fathers and sons, our mothers and daughters, and our friends and neighbors who continue the task of making our country a more perfect Union. It is a story about the struggle to realize the great American promise that all people can live with dignity and fairness under the law."

We are pleased to see that today the international community is visibly and publicly upholding the rights of LGBT individuals, and thereby we demonstrate ourselves as a global community respecting the rights of all.

We appreciate that today's vote is not an easy one for many states and that the issues we face today are the subject of controversy and also rapid change in many member states—including my own.

But just as some, at one point in history, claimed that cultural reasons justified slavery and discrimination and apartheid, we stand firmly for the idea that human rights are universal. Cultural or regional differences simply cannot justify discrimination. It cannot excuse violence in any way, in any place, or against any person.

We appreciate that the Council's decision will allow for a report by the Office of the High Commissioner for Human Rights. This report should help to guide us in the future as states continue to address difficult and challenging issues related to the rights of LGBT persons.

So while the vote today was difficult for many, I am confident that the issues will become easier and easier for the Council to address with over time. I am also confident that, as an international community and as a Council, we can find ways to work together to combat all types of violence and discrimination. I look forward to the day when a future resolution on this topic that will be able to pass this Council by consensus.

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Secretary Kerry issued a press statement on resolution 27/32, excerpted below and available at www.state.gov/secretary/remarks/2014/09/232225.htm. Ambassador Power also issued a statement on September 26 on the HRC resolution on sexual orientation and gender identity, which is available at <http://usun.state.gov/briefing/statements/232223.htm>.

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Today the community of nations made an historic statement in support of LGBT rights, which are human rights.

The United Nations Human Rights Council adopted the second-ever UN resolution on the human rights of lesbian, gay, bisexual and transgender (LGBT) persons. Along with the Ministerial event at the UN General Assembly yesterday, this marks yet another important chapter in UN efforts to stand united against the human rights abuses that LGBT individuals face around the world.

The United States was pleased to work with countries from many regions of the world on this resolution, especially the lead sponsors Brazil, Chile, Colombia, and Uruguay. This resolution will commission a major UN report on the challenges facing LGBT persons around the globe and will help move LGBT human rights issues to the forefront of international attention.

The United States will continue to promote human rights around the world for all people. Who you love, and who you are, must not be an excuse or cover for discrimination or abuse, period.

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b. United States

The United States hosted the third Annual Conference to Advance the Human Rights of and Promote Inclusive Development for Lesbian, Gay, Bisexual, Transgender and Intersex Persons (“LGBTI”) held in Washington from November 12–14, 2014. On November 21, 2014, the State Department issued a media note summarizing the key outcomes from the conference, available at www.state.gov/r/pa/prs/ps/2014/11/234331.htm. Excerpts follow from the November 21 media note.

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The conference was the largest such gathering to date, bringing together senior leaders from government, civil society and the private sector to discuss and strategize on how to most effectively protect the human rights of LGBTI persons and promote their inclusion in development programs. Thirty governments were represented from all regions as well as representatives from nine multilateral agencies, including the United Nations and World Bank. Key outcomes of the conference include:

- *Joint Communique*: Over 25 governments and multilateral bodies formally affirmed their commitment to increase cooperation to advance the human rights of and promote inclusive development of LGBTI persons through agreeing to support a joint communique issued yesterday. The communique sets out important principles to guide our collective engagement and notes the signatories’ plan to continue to hold regular discussions on an annual basis

- *Chile Joins the Global Equality Fund*: Chile became the first Latin American government to support the Global Equality Fund. Chile joins a group of nine like-minded governments, two corporations, three private foundations and Out Leadership who are all dedicated to committing resources to advance the human rights of LGBTI persons through providing support to civil society organizations.
- *PEPFAR Launches New Partnership with Global Equality Fund*: The President's Emergency Plan for AIDS Relief (PEPFAR) announced plans to provide funding for the Global Equality Fund to document how stigma and discrimination, including discriminatory laws and policies, impede efforts to address HIV/AIDs, as well as undermine human rights.
- *New Initiatives to Support the Human Rights of Transgender and Intersex Persons*: Private donors announced efforts to strengthen assistance to transgender and intersex persons through activist-led funding initiatives.
- *Increasing Research and Data on LGBTI-related Assistance*: Activists, researchers, and a number of governments expressed their intention to further explore how to most effectively share information on efforts, both diplomatic and financial, to further advance the human rights of LGBTI persons.

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4. Age

At the 27th session of the HRC, a clustered interactive dialogue convened with the independent expert on older persons. The United States statement at the clustered dialogue regarding the independent expert on older persons was delivered on September 8, 2014 by Valerie Ullrich, political officer for the U.S. Mission to the UN in Geneva, and is excerpted below. The full text of Ms. Ullrich's statement is available at <https://geneva.usmission.gov/2014/09/09/hrc-holds-dialogue-with-independent-expert-on-older-persons/>.

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The report mentions the Independent Expert's intent to complement rather than duplicate the work of the Open-Ended Working Group on Ageing; to assess how member states implement the Madrid International Plan of Action on Ageing and laws relating to older persons; and to identify best practices. The United States strongly supports all of those approaches.

We agree with the report's observation that although there is no international instrument devoted solely to older persons, most human rights treaties contain implicit obligations toward them. This is consistent with the U.S. view that the protections found in international human rights instruments apply to persons of all ages, including older persons.

While we do not regard many of the important issue areas identified by the Independent Expert as "rights," the United States nonetheless believes that many of the ideas put forward by

the Independent Expert represent an aspirational framework that can better inform and guide our policies to protect older persons.

For example, the United States has emphasized developing practical measures to address the rights of older persons and to improve their quality of life. President Obama signed into law the Elder Justice Act in 2010, dedicated to preventing, detecting, and responding to elder abuse, neglect, and exploitation. We have established the Elder Justice Coordinating Council, consisting of the heads of 12 federal departments and other government entities, to coordinate activities related to these issues.

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C. CHILDREN

1. Rights of the Child

a. *Human Rights Council*

The United States delegation to the 25th session of the Human Rights Council delivered a statement on March 27, 2014 on two resolutions on children adopted at that session. U.N. Doc. A/HRC/RES/25/6 and U.N. Doc. A/HRC/RES/25/10. The statement, as delivered by Deputy Political Counselor for the U.S. Mission to the UN in Geneva Eric Richardson, is excerpted below and available at <https://geneva.usmission.gov/2014/03/28/u-s-deeply-committed-to-protecting-the-rights-of-children-and-to-preventing-violence-against-children/>.

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...The United States is pleased to have joined consensus on the resolution on the “Rights of the Child: Access to Justice for children” and to have co-sponsored the resolution on “Ending violence against children: a global call to make the invisible visible.” The United States appreciates the collaborative efforts of other member states during the negotiations of both texts. Our domestic efforts to strengthen existing protections for children, including under our National Action Plan for Children in Adversity, and ensure that the rights of the child are realized remain a priority for the United States.

We are glad to see that the resolution on the rights of the child calls upon states to take steps to remove barriers to children’s access to justice by ensuring their national legal systems provide effective remedies to children for violations and abuses of their rights. As this resolution also emphasizes, international cooperation is of relevant importance to supporting the efforts of each nation in ensuring child-sensitive justice. We are pleased to see specific language on vulnerable persons and persons in vulnerable situations and emphasize that LGBT persons fall within this category. The United States strongly supports any language protecting the rights of vulnerable groups, including LGBT persons, persons with disabilities, women, and indigenous persons, among others.

We thank the sponsors of this resolution for incorporating some of our suggestions into the rights of the child resolution. We were unable to co-sponsor that resolution due to concerns that the resolution calls upon States to comply with various principles that are not obligations undertaken by the United States. For example, the resolution calls upon States to ensure that life imprisonment is not imposed on individuals under the age of 18 which is not an obligation that customary international law imposes on States or that the United States has undertaken.

Our action on these resolutions today was taken with the express understanding that neither implies 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. States will consider the measures recommended within this resolution in accordance with relevant international law and their own domestic laws, within their constitutional and legal frameworks. Furthermore, to the extent that it is implied these two resolution[s] or any others this Council adopts at this session, the United States does not recognize the creation of any rights or principles that we have not previously recognized, the expansion of the content or coverage of existing rights or principles, or any other change in the current state of treaty or customary international law. Further we understand the reaffirmation in the rights of the child resolution of prior documents to apply to those who affirmed them initially.

The United States remains deeply committed to protecting the rights of children and to preventing violence against children. We look forward to continuing to work with other nations and international partners to ensure justice systems are child-sensitive and that progress is demonstrated more readily in the countries where serious challenges exist to accessing justice.

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On September 26, 2014, at the 27th session of the HRC, the United States provided an explanation of position on resolutions on human rights and children: one entitled “preventable mortality and morbidity of children under 5 years of age as a human rights concern,” and another, “the right of the child to engage in play and recreational activities.” U.N. Doc. A/HRC/RES/27/14 and U.N. Doc. A/HRC/RES/27/15, respectively. Eric Richardson delivered the statement of the U.S. delegation, explaining why the United States would join consensus on the resolutions. Mr. Richardson’s statement is excerpted below and available at

<https://geneva.usmission.gov/2014/09/26/explanation-of-position-resolutions-on-rights-of-the-child/>.

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... The United States is pleased to join consensus on the resolutions addressing morbidity and mortality for children under five and the importance of play and recreation for children.

Preventing childhood mortality and morbidity is a priority for the United States government. In 2013, the United States—one of the largest government donors—contributed more than \$130 million to UNICEF.

These funds are helping support the health of children, including through vaccinations, breastfeeding campaigns, and nutrient supplementation. We look forward to continuing our work

with other States to ensure that all children around the globe live healthy lives. We are glad that this resolution calls upon States to increase efforts to address child mortality, including by focusing on root causes.

However, we wish to reiterate the importance of using United Nations resources cost-effectively, and ask the OHCHR to minimize the cost of the report this resolution requests. We welcome the development of the OHCHR technical guidance as a useful policy orientation, although it is overly prescriptive, particularly in its description of a human-rights based approach.

We understand that a human rights-based approach is anchored in a system of rights and corresponding obligations established by international human rights law.

With regard to the right to play: the United States believes that play and recreation are instrumental in helping a child learn about the world.

We are pleased that the resolution suggests a range of activities to promote play and recreation for children. It also addresses the need to encourage these important activities in humanitarian situations.

We thank the Government of Romania for accommodating many of our concerns. We also note that our support is consistent with our limited authority at the federal level with respect to education, as education is primarily a responsibility of our state and local governments.

We are glad the resolution signals the importance of including children in digital activities and we fully promote children's safe use of digital technology, while respecting freedom of expression, including for children.

We support both of these resolutions with the understanding that they do not imply that States must become parties to instruments to which they are not a party, or implement obligations under instruments to which they are not a party.

The United States does not recognize the creation of any rights or principles we have not previously recognized or the expansion of the content or coverage of existing rights or principles. We also understand the resolution's reaffirmation of prior documents to apply to those who affirmed them initially.

We are glad that the Human Rights Council is addressing these important matters on the well-being of children.

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b. UN General Assembly

On October 15, 2014, the United States made a statement at the UN General Assembly Third Committee meeting on the rights of children. Kelly L. Razzouk, United States Senior Advisor, delivered remarks on behalf of the United States, excerpted below and available at <http://usun.state.gov/briefing/statements/233085.htm>.

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We welcome the opportunity to participate in today's general debate on children and to commemorate the twenty-fifth anniversary of the Convention of the Rights of the Child. The United States is party to two of its Optional Protocols. We are dedicated to improving the lives

and promoting the rights of children both within our borders and throughout the world. We support UNICEF, as one of its largest donors, and applaud the organization for the lifesaving work it is doing around the world. Children's rights are an important piece of the Post-2015 discussions, and the outcome document must adequately reflect them.

We enthusiastically congratulate Malala Yousafzai of Pakistan and Kailash Satyarthi of India for receiving the Nobel peace prize earlier this month. Their fearless and tireless work on girls' education, child labor, and human trafficking is making lasting changes to the world, and is an inspiration to us all.

The United States government is expanding and improving services for children. For example, we are providing new funding for our Early Head Start and Race to the Top programs to expand access to high-quality preschool education to children from low and moderate-income families. Our Affordable Care Act gives parents greater control over their children's health care by providing quality, affordable health care for all children; lowers costs to cover children; and provides greater choices to meet the needs of children.

We should all celebrate our successes in improving the lives of children over the past twenty-five years. As the Secretary-General's report indicates, the global rate of under-five mortality has been almost halved, from 90 deaths per 1,000 live births in 1990 to 48 per 1,000 in 2012. New HIV infections in children under 15 have declined by 35 percent globally between 2009 and 2012.

But challenges remain, and there is much work that still needs to be done. In 2014, the lives of children around the world continue to be threatened. We have been horrified by images of ISIL terrorists rounding up young Yezidi and Christian girls from Iraq and auctioning them off to the highest bidder as sex slaves. Ebola has orphaned thousands of children in West Africa. We were appalled when hundreds of schoolgirls in Nigeria were abducted and terrorized because they were seeking an education. And the children of Syria continue to suffer physical and psychological pain under a brutal regime. According to UNICEF, over 5 million are in need inside Syria and 1.5 million are living in Syria's neighboring countries as refugees.

Improving the lives of girls must remain a top priority for all of us. Being born a girl should not resign you to a life without an education or future. Being born a girl should not mean that you are forced into marriage at the age of 12. We must do more to ensure that our girls are empowered to reach their full potential. As a group of UN experts recently said, "When adolescent girls are empowered, it benefits all. Empowered girls grow into empowered women who can serve as active and equal citizens and change agents, who make valuable contributions to the growth of their communities and nations."

We have a lot to learn from our children and we must all do more to ensure, together, that we leave them the world they deserve. As President Obama said in his speech last month at the UN General Assembly, "No children are born hating, and no children—anywhere—should be educated to hate other people. Around the world, young people are moving forward, hungry for a better world. Around the world, in small places, they're overcoming hatred and bigotry and sectarianism. And they're learning to respect each other, despite differences."

As Eleanor Roosevelt—an author of the Universal Declaration of Human Rights—said, "It is today that we must create the world of the future."

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On December 18, 2014, the United States joined consensus in adopting the annual UN General Assembly resolution on the rights of the child. U.N. Doc. A/RES/69/157. Terri Robl, U.S. Deputy Representative to the UN Economic and Social Council, delivered the U.S. explanation of its position on the resolution in the UN Third Committee when the resolution was discussed there in November. The U.S. explanation of position appears below, and is available at <http://usun.state.gov/briefing/statements/234386.htm>.

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The United States is very pleased to join consensus on the Rights of the Child resolution today. We welcomed working with the sponsors and other partners throughout the extensive negotiation process. Our domestic efforts to strengthen existing protections for children and ensure that the rights of the child are protected remain a priority for the United States.

We join consensus on this resolution today, as well as the resolutions on Migrant Children and Adolescents and Protecting Children from Bullying, 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. Further we understand the resolution's reaffirmation of prior documents to apply to those who affirmed them initially. The United States also underscores its understanding that this resolution does not change its or other States' obligations under current treaty or customary international law. Nor does this resolution affect States' domestic laws implementing such treaty or customary international law.

We also note that U.S. support for this resolution is consistent with our limited authority at the federal level with respect to education, as education is primarily a responsibility of our state and local governments. We reaffirm that each country has primary responsibility for its own economic and social development and note that language on the mobilization of all necessary resources should not be interpreted as constituting new or expanded commitments of official development resources.

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2. Children and Armed Conflict

a. United Nations

(1) Security Council

On March 7, 2014, Ambassador Power delivered remarks at a UN Security Council debate on children in armed conflict. Ambassador Power's remarks are excerpted below and available at <http://usun.state.gov/briefing/statements/223124.htm>.

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My colleagues, few issues are of graver humanitarian concern than the impact of armed conflict on civilians. The horror is especially acute when the victims—or the perpetrators—are boys and girls. In recent years, the tragic connection between children and war has assumed a prominent place on the global agenda. In 2008, the United States approved the Child Soldiers Protection Act, which curtails U.S. military assistance, licenses, and sales to governments that recruit or use child soldiers, and which has given our diplomats leverage to engage constructively with governments on additional steps they need to take.

In 2012, in one example, the United States withheld security assistance the DRC needed to develop a second light infantry battalion until the government there signed an action plan with the UN to address use and recruitment of child soldiers. Within just a couple weeks, the government signed the action plan and is now working with the UN in a sincere effort to address this challenge. In 2012, the International Criminal Court sent a welcome message when it found Thomas Lubanga guilty of forcibly conscripting child soldiers in the Democratic Republic of Congo.

Meanwhile, the UN has launched a systematic campaign to help governments and armed groups develop action plans to end the use of child soldiers—eighteen of which have now been signed. Chad and Yemen are among the countries that have recently made a commitment to further progress. To that end, I commend Ambassador Lucas for leading a Security Council Working Group trip to Burma to review the country's effort to fulfill its action plan. Rescuing children from armed conflict is not always a simple process, especially when they have experienced the trauma of direct involvement in violence. Reintegration requires careful planning, money, and the recognition that some scars—whether of body or mind—will heal slowly, if at all.

And yet, for all the helpful activity, too many children are still being exploited. And some leaders have not thrown their weight behind eliminating this scourge. No state or armed group has yet been delisted by the Secretary General, and 28 of the 52 listed parties are persistent perpetrators who have been listed for more than five years. Sudan is the one listed government that still has not signed an action plan. But even when plans are developed, they have value only if implemented. Donors can help by sharing resources, and the UN must provide assistance and monitoring. The United States encourages the deployment of child protection advisers in all relevant UN missions. Further, we urge the UN to develop standardized training on child protection responsibilities so that UN peacekeepers who encounter violations respond effectively. These training standards should be shared with member states, the African Union, and other regional organizations involved in peacekeeping activities. And all of us must press for the creation of birth registration systems in order to verify that a child is a child. And as this resolution does, we must each urge greater protections for schools, which are too often militarized.

Today, Syria is at ground zero of the most appalling humanitarian catastrophe of our era, and children—Syria's future—are among the principal victims. Since the civil war began, more than ten thousand boys and girls have been killed; more than 1.2 million have become refugees; and more than 3 million are unable to attend school. The United States is part of the UN-led "No Lost Generation" initiative that is striving to shield children from the fighting, re-unite broken families, and deliver opportunities for education. One four year old refugee in Turkey told

UNICEF that he wants to become a surgeon so that he will be able to save his brother, who is still in Syria, should he get hurt.

According to the Secretary General's January 27th report, the government and extremist groups have inflicted direct and unspeakable violence against children, including kidnappings, torture, maiming, and murder. Pro-government forces have detained children as young as 11 for alleged association with the opposition and subjected them to beatings and other brutal mistreatment in order to extract confessions. Both sides have prevented injured children from receiving medical treatment and both—but especially the government—have launched indiscriminate attacks in which children and other civilians have been killed. Babies—some killed and some barely breathing—have been pulled from the rubble caused by barrel bombs.

On February 22, the Council demanded a halt to such attacks, and to the sieges that have forced many Syrians to choose between the certainty of starvation and the false promise of safety through surrender. The Assad regime may be sure that our scrutiny of its actions, as well as any of those who would recruit or target children, will not let up until our demands are met and the savagery is stopped.

In recent months, the Central African Republic has also been the scene of horrific violence. The cycle of vengeance between the Séléka and anti-balaka militias has been singularly repulsive in that nearly all of the victims on both sides have been unarmed. Children have been attacked, beaten, maimed, raped, and killed, some by beheading. An estimated 6,000 young people have been recruited and trained to kill by armed groups and, in some cases, girls have been forced into marriage.

In addition, the outlaw Lord's Resistance Army—the LRA—remains a threat in the Central African Republic and parts of South Sudan and the Democratic Republic of Congo. It is heartening that, in December, nineteen soldiers—including six young boys—defected from the LRA and that they cited radio broadcasting produced by Invisible Children as giving them the courage to take that brave step. It is encouraging, as well, that the LRA has been forced to break up into small groups and that, in 2013, the number of their attacks went down. The level of deaths and abductions attributable to those attacks, however, remains far too high. The world must not rest until Joseph Kony and his clique have been held accountable and the LRA has become just a horrible memory.

Finally, in South Sudan, children are once again being made subject to all the ravages of war because the country's leaders have failed to settle their differences peacefully. Scared youngsters are wandering among the thousands of displaced persons searching for their "mommies and daddies." Our hearts go out to Mangkok Bol, a former "lost boy," now living in Boston, who has returned to his home village in South Sudan to try to find his nieces and nephews who've been abducted by militants from a competing ethnic group.

In 2001, when the 14-year-old Alhadji Babah Sawaneh testified before this Council, he said, quote "removing the gun from me was a vital step." In that context, I commend the special representative for her "Children, not Soldiers" campaign. Boys and girls belong in playgrounds, not battle grounds. Around their young shoulders, they should have school backpacks, not ammunition belts. Their hearts should be filled with optimism and hope, not terror at what the next day may bring.

To make matters right for all the world's children is a daunting mission, but none could be more worthy of our resources, our dedication, or our time. Thank you, Mr. President.

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Ambassador Power again addressed the subject of children and armed conflict on September 8, 2014. Her remarks are excerpted below and available at <http://usun.state.gov/briefing/statements/231361.htm>.

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We've heard a lot of statistics today measuring the massive scale of this problem: 3 million kids out of school in Syria; 9,000 children recruited to fight in South Sudan. And many of my colleagues have rightly spoken to the enduring, big-picture problems we have to address, like sexual violence and attacks on schools. Amidst so many numbers and issues, it's easy to forget that we're talking about a lot of individual children—boys and girls and infants—who suffer these deplorable injustices.

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First, we're seeing the continuing rise of extremist groups that are openly hostile to children's rights, and particularly the rights of girls. Girls captured by groups like Boko Haram and ISIL are being sold into markets, given to fighters as so-called "brides," or kept as sex slaves.

Second, as others have noted, we have a repeat offender problem. 31 of the 59 armed groups listed in the report have been named ... the last five years. 11 of those "persistent perpetrators" have been named in every single report issued by the Secretary General since the office began issuing reports in 2002.

We have to do better in protecting kids.

One key step is condemning—in a single, unified voice—these abuses. The resolution this Council adopted in March condemning military use of schools is one example. The only battles fought in schools should be battles over ideas.

We also need to try to work with all groups—state and non-state—to set concrete, time-bound action plans to root out these practices. This can be especially challenging with non-state groups, but in 2013, nine non-state groups issued public statements or command orders prohibiting the use of child soldiers. Last month, the Free Syrian Army sent a letter to this Council announcing it had banned the use of child soldiers, and pledging to punish child recruiters.

As the "persistent perpetrator" problem makes clear, global campaigns, action plans, and trainings won't do it alone. As Sandra told us today so movingly, perpetrators have to be held accountable. Groups that fail to change their behavior must be hit where it hurts.

The UN can apply this pressure, of course. So can individual countries. In 2008, the United States passed the Child Soldier Prevention Act, which limits U.S. military assistance to governments that recruit or use child soldiers.

Chad provides an example of how multilateral pressure can bring about real change. Last year, a chorus of actors pressed Chad to address its child soldier problem in the run up to re-hatting its peacekeepers for the UN mission in Mali. And Chad responded – setting up child protection units in its military; conducting age verification reviews of its troops with the UN; and signing a presidential decree making 18 the minimum recruitment age; among other steps. As a result, Chad was taken off the list of abusive parties in the Secretary General's annual report.

Now, this doesn't mean that our work is finished, but real progress has been made. Governments can change, and when they do, so do the lives of kids.

We were all so moved today by Sandra's story – a child, as she described it, “born into war.” A girl driven from her school and her home, who witnessed her relatives gunned down, in cold blood, in a refuge that they thought was safe.

But the most defining part of Sandra's story is not the trembling, ten-year-old girl – who said that what she feared was her last prayer at the barrel of a gun. The defining feature is the young woman who, with tremendous strength and determination, addressed the United Nations today, a young woman who spoke not of revenge, but of justice. A young woman who's already done so much to assist children recovering from experiences like hers, and dedicated herself to changing the world so fewer children endure such horrors.

To see Sandra today is to see the potential of all the children out there whose destinies hang in the balance in today's conflicts. There are so many of them. Sandras held captive in Nigeria; Sandras suffering through humanitarian blockades in Syria; Sandras fleeing massacres in the Central African Republic, children who, like Sandra, have a world to change. We must do more to ensure that they can.

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(2) *General Assembly*

On October 15, 2014, the United States participated at the 69th UN General Assembly in an interactive dialogue with Special Representative of the Secretary-General for Children and Armed Conflict Leila Zerrougui. Carol Hamilton, Senior Advisor for the U.S. delegation, delivered remarks for the United States, excerpted below and available at <http://usun.state.gov/briefing/statements/233772.htm>.

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We enthusiastically congratulate Malala Yousafzai of Pakistan and Kailash Satyarthi of India for receiving the Nobel Peace Prize earlier this month. Ms. Yousafzai and Mr. Satyarthi's fearless work on girls' education, child labor, and human trafficking is making lasting changes to the world, and is an inspiration to us all.

We are concerned when any innocent victim is affected by conflict, and our hearts break when those victims are children. The abuses that children endure in conflict settings are horrifying: sexual violence, child soldiering, ideological indoctrination, unlawful attacks on schools and hospitals, indiscriminate killings, indiscriminate maiming. Those responsible for such violations and abuses committed against children, including non-state actors, must be held accountable.

We support the Special Rapporteur's work, and want to highlight some important themes in her report: engagement with non-state actors, ending the unlawful recruitment and use of children by government forces, and mainstreaming child protection concerns in mediation and peace processes.

As noted in the Special Representative's report, there is a significant social stigma against children who have experienced sexual violence in conflict settings. Community acceptance provides basic dignity to victimized children and represents a crucial step in their rehabilitation

process. What best practices can the Special Representative share about communities who accept children who have been sexually abused in conflict, and accept babies born of rape? To what extent can lessons of community reintegration in non-conflict settings translate to conflict settings?

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b. *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 2014 Trafficking in Persons report lists 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 2014 report are the governments of Burma, Central African Republic, Democratic Republic of the Congo, Rwanda, Somalia, South Sudan, Sudan, Syria, and Yemen. The full text of the TIP report is available at www.state.gov/j/tip/rls/tiprpt/2014/index.htm. 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 30, 2014, 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 Rwanda, Somalia, and Yemen,” and that, with respect to the Central African Republic, the Democratic Republic of the Congo, and South Sudan, it is in the national interest that the prohibition should be waived in part. Daily Comp. Pres. Docs., 2014 DCPD No. 00732, p. 1.

D. ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

1. General

On March 27, 2014 at the 25th session of the HRC, Regina Waugh delivered the explanation of position of the United States on the resolution on “the realization in all countries of economic, social and cultural rights.” U.N. Doc. A/HRC/RES/25/11. Ms. Waugh’s statement is excerpted below and available at <https://geneva.usmission.gov/2014/03/27/eop-on-resolution-question-of-the-realization-in-all-countries-of-economic-social-and-cultural-rights/>.

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The United States is pleased to join consensus on this resolution concerning the realization of ESC rights. We engaged in the negotiations that developed this resolution and join consensus today as part of our efforts to work constructively with like-minded delegations on this important area.

As a matter of public policy, the United States continues to take steps to provide for the economic, social and cultural needs of its people.

While we share the broad aims of this resolution, the United States is concerned about a few key points in it. As the International Covenant on Economic, Social, and Cultural Rights provides, each State Party undertakes to take the steps set out in Article 2.1, “with a view to achieving progressively the full realization of the rights.” We agree that States’ Parties efforts to that end are important. Even so, we interpret this resolution’s references to the obligations of States as applicable only to the extent they have assumed such obligations, and with respect to States Parties to the Covenant, in light of its Article 2(1). The United States is not a party to that Covenant, and the rights contained therein are not justiciable as such in U.S. courts.

The principle of non-discrimination that underpins the very concept of human rights is critical, and one the United States strives continually to fulfill. We read the references to non-discrimination in this resolution consistent with Article 2.2 of the International Covenant on Economic, Social, and Cultural Rights, as well as Article 2.1 of the International Covenant on Civil and Political Rights.

On a separate issue, the United States regrets the introduction of language on the “right to development” in this resolution. The concerns of the United States about the existence of a “right to development” are long-standing and well known, and the term does not have an agreed international understanding. Work is needed to make it consistent with human rights, which the international community recognizes as universal rights that individuals hold and enjoy—and which every individual may demand from his or her own government.

The United States takes this opportunity to reinforce the need for all States to promote, protect, and respect human rights when carrying out their development goals and policies. We welcome the contribution of the Council and other relevant UN bodies to the process of elaborating the post-2015 development agenda. However we stress the Council itself is not the agreed venue for international community to reach consensus on the agenda itself. Nothing in this resolution should be construed as pre-determining the post-2015 development agenda.

Finally, we interpret this resolution’s reaffirmation of previous documents, resolutions, and related human rights mechanisms as applicable to the extent states affirmed them in the first place. In joining consensus on this resolution the United States does not recognize any change in the current state of conventional or customary international law.

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2. Food

On March 27, 2014, the United States joined consensus on a resolution adopted at the 25th session of the HRC on the right to food. U.N. Doc. A/HRC/RES/25/14. The U.S. explanation of position on the right to food resolution, delivered by Jonathan Mitchell, is

excerpted below and available at <https://geneva.usmission.gov/2014/03/27/eop-on-resolution-right-to-food/>.

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By robbing people of a healthy and productive life and stunting the development of the next generation, hunger and malnutrition has devastating consequences for individuals, families, communities, and nations. The United States believes that maintaining a focus on global food and nutrition security is essential to realize our vision of a world free from hunger and malnutrition and pursues domestic and international policies that reflect that view. In joining consensus on this resolution today, the United States reiterates our commitment to pursuing a variety of approaches to reduce hunger and address poverty sustainably.

Despite our broad support for policy initiatives to end hunger and malnutrition, we have several concerns about this resolution. It contains numerous references to “the world food crisis,” yet no such global crisis exists. Factors such as long-term conflicts, lack of strong governing institutions, and systems that deter investment and innovation contribute significantly to the recurring state of food insecurity in some parts of the world. We regret that this resolution does not even mention those issues.

Furthermore, we reiterate that states are responsible for implementing their human rights obligations. This is true of all obligations that a state has assumed, regardless of external factors, including, for example, the availability of technical and other assistance. The United States also does not concur with any reading of this resolution or related documents that would suggest that states have particular extraterritorial obligations arising from a right to food.

We would also like to take the opportunity to note that the text contains many references to obligations on the part of donor nations and investors. We believe that a well-balanced text would also include references to obligations of nations receiving assistance—specifically regarding transparency, accountability, and good governance, as well as the obligation to create an environment conducive to investment in agriculture. We also underscore our view that the statements on trade and trade negotiations in this resolution are inappropriate, as they are both beyond the subject-matter and the expertise of this Council. We also wish to clarify that this resolution today 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 ongoing trade negotiations.

The United States supports the right of everyone to an adequate standard of living, including food, as recognized in the Universal Declaration of Human Rights. In joining consensus on this resolution, the United States does not recognize any change in the current state of conventional or customary international law regarding rights related to food. The United States is not a party to the International Covenant on Economic, Social and Cultural Rights. Accordingly, we interpret this resolution’s references to the right to food, with respect to States Parties to that Covenant, in light of its Article 2(1). We also construe this resolution’s references to member states’ obligations regarding the right to food as applicable to the extent they have assumed such obligations. Domestically, the United States pursues policies that promote access to food, and 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.

Finally, while this resolution reaffirms previous documents, resolutions, and related human rights mechanisms, that language applies only to the extent countries affirmed them in the first place.

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The Second International Conference on Nutrition, hosted by the Food and Agriculture Organization of the United Nations (“FAO”) and the World Health Organization (“WHO”), was held at the Headquarters of the FAO in Rome, Italy, in November 2014. The Conference resulted in the Rome Declaration on Nutrition with its accompanying Framework for Action. The United States provided the following explanation of its position on the Rome Declaration and the Framework for Action, which forms part of the official record of the Conference, available at www.fao.org/3/at764e.pdf.

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The United States views the Political Declaration and the voluntary Framework for Action as important steps in our collective efforts to advance global food security.

States are responsible for implementing their international obligations, including human rights obligations. This is true of all obligations a state has assumed, regardless of external factors. The United States does not concur with any reading of the Declaration or Framework that suggests states have particular extraterritorial obligations arising from a right to food; and in adopting these documents today in no way changes appropriate interpretation of any other international instrument or undermines or modifies commitments of the United States, or any other government, to trade and investment agreements or the mandates of ongoing trade negotiations.

The United States supports the right of everyone to an adequate standard of living, including food, as recognized in the Universal Declaration of Human Rights. In joining consensus on the Political Declaration and Framework for Action, the United States does not recognize any change in the current state of conventional or customary international law or obligations, including regarding rights related to food, or to the interpretation of trade or investment obligations, including those related to intellectual property, public health, and sanitary or phytosanitary measures. The United States also reiterates its view that individuals, and not governments, should make determinations about what foods comport with each individual’s culture and traditions, and the United States does not view anything in the Political Declaration or Framework for Action as suggesting otherwise. The United States does not accept that anything in either the Political Declaration or Framework for Action can or should be taken to offer any guidance on the interpretation of any international instrument.

The United States is not a party to the International Covenant on Economic, Social and Cultural Rights. Accordingly, we interpret this resolution’s references to the right to food, with respect to States Parties to that Covenant, in light of its Article 2(1). We also construe these documents’ references to member states’ obligations regarding the right to food as applicable to the extent they have assumed such domestic obligations. Domestically, the United States pursues policies that promote access to food, and 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.

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3. Water and Sanitation

On September 25, 2014, the U.S. delegation provided an explanation of its position, joining consensus on the resolution at the 27th session of the HRC on “the human right to safe drinking water and sanitation.” U.N. Doc. A/HRC/RES/27/7. The U.S. explanation of position, delivered by Ambassador Harper, appears below and is available at <https://geneva.usmission.gov/2014/09/25/explanation-of-position-the-human-right-to-safe-drinking-water-and-sanitation/>.

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The United States recognizes the importance and challenges of meeting basic needs for water and sanitation to support human rights, economic development, and peace and security. The United States is committed to addressing the global challenges relating to water and sanitation and has made access to safe drinking water and sanitation a priority in our development assistance efforts.

In joining consensus on this resolution today we reaffirm the understandings in our explanations of position on the Council’s September 2012 and 2013 resolutions on the human right to safe drinking water and sanitation, available on the U.S. Mission’s website.

The United States joins consensus with the express understanding that it does not imply that States must implement obligations under human rights instruments to which they are not a party.

The United States is not a party to the International Covenant on Economic, Social, and Cultural Rights (ICESR), and the rights contained therein are not justiciable in U.S. courts.

In addition, we also stress that we read preambular paragraph 20 of this year’s resolution to be consistent with the Council’s 2010, 2011, and 2013 resolutions on this topic, which noted that transboundary water issues fall outside the scope of the human right to drinking water and sanitation derived from the economic, social and cultural rights contained in the ICESCR.

We are pleased that preambular paragraph 8 of this resolution refers to the 2014 Sanitation and Water for All High-Level Meeting. The United States participated actively in that meeting, at which participants made commitments concerning access to safe drinking water and sanitation. Those commitments were made in support of achieving universal access to safe drinking water and sanitation and not explicitly to advance a human right to water.

In addition, while the United States agrees that safe water and sanitation are critically important, we do not accept all of the analyses and conclusions in the Special Rapporteur’s latest report.

Likewise, while the United States attaches high priority to agreeing on a meaningful and ambitious post-2015 development agenda by next September, we underscore that this resolution does not preclude those continuing negotiations.

Our views on the outcome document of the Open Working Group on Sustainable Development Goals are elaborated in our statement on the resolution on technical cooperation and capacity resolution.

With respect to the resolution's language concerning human rights education and training, we note that within the federal structure of the United States, higher education, including law school education, is primarily a state and local responsibility.

We therefore join consensus on the understanding that the United States will continue to address the resolution's goals consistent with current U.S. law and the federal government's authority.

Unfortunately, while we are pleased to join consensus on this year's resolution, the United States must dissociate from consensus on preambular paragraph 21.

The language used to define the right to safe drinking water and sanitation in that paragraph is based on the views of the Committee on Economic, Social, and Cultural Rights, which does not appear in an international agreement and does not represent a consensus position.

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4. Housing

On March 28, 2014, the U.S. delegation provided an explanation of its position, joining consensus on the resolution at the 25th session of the HRC on "Adequate housing as a component of the right to an adequate standard of living." U.N. Doc. A/HRC/RES/25/17. The U.S. explanation of position, delivered by Regina Waugh, appears below.

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The United States is pleased to join consensus on this resolution on housing. We welcome the focus of this text which draws our attention to the housing challenges of the urban poor and persons belonging to marginalized groups. We congratulate Germany and Finland for the spirit of flexibility and compromise they brought to the negotiations, and regret that certain delegations sought to subvert the negotiating process through last minute amendments. The United States supports the need to promote, protect, and respect human rights in carrying out housing policies. We note the importance of mainstreaming human rights in urban development. We understand that approach to mean one anchored in the rights established by international human rights law. To that end, we read this resolution's references to nondiscrimination as reflecting the prohibition, under the international covenants on human rights, of discrimination on the basis of all protected grounds, or as otherwise furthering important policy goals.

We take note of this resolution's description of the concept of security of tenure. Like good governance and the rule of law, security of tenure has the potential to enhance the enjoyment of relevant human rights. This concept is not itself a human right. It is also not part of the right to adequate housing as a component of the right to an adequate standard of living. Security of tenure is nonetheless a tool that can help all states accomplish their housing policy goals.

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 to which they are not a party, or signal any change in the current state of conventional or customary international law. 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 make adequate housing available to all of our people, we are pleased to join consensus on this resolution today.

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5. Health

On December 11, 2014, at its 69th session, the UN General Assembly adopted a resolution on global health and foreign policy. U.N. Doc. A/RES/69/132. Terri Robl delivered a statement on behalf of the United States, which was a co-sponsor of the resolution. Ms. Robl's remarks, excerpted below, are available at <http://usun.state.gov/briefing/statements/235162.htm>.

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... This year's focus on the safety and security of health workers is particularly timely and relevant in light of the recent tragic outbreak of the Ebola Virus in West Africa. The devastating impact on the region's health workers, both national and international, has emphasized the dangers faced by medical professionals in the field. We have all been immeasurably inspired by their service. In this regard we were pleased to see that Time Magazine has named them their People of the Year for this year. This outbreak has decimated the health profession in a region already challenged with limited health infrastructure. We must give all possible support to the courageous individuals on the front lines of this crisis. We must do more to ensure the safety of health workers as they respond to the public health challenges of their patients.

The international community needs to reinforce the obligation of parties to armed conflicts to respect and protect medical personnel exclusively engaged in medical duties. We also need to respect the personal safety of medical workers who come to an area to provide vaccinations and other health services to the local population. And we must take necessary steps to provide supplies and train health workers in the ways of avoiding infections.

Not all threats to the safety of health workers come from their proximity to disease. In recent years we have seen violations by parties to armed conflicts of the obligation to respect and protect medical personnel exclusively engaged in medical duties. The origins of this rule date back 150 years to the Geneva Conference of 1863.

Threats to the safety of health workers are increasingly apparent in parts of Syria where, according to the WHO, nearly 70 percent of hospitals and health care centers have been damaged

or closed. Forces loyal to the Assad regime have been making it next to impossible for doctors and nurses to do their jobs—dropping barrel bombs on medical facilities as if they were military encampments, stealing medicine out of humanitarian convoys, and even dragging patients from sickbeds. More than 460 civilian health professionals have been killed across Syria, and of the 5,000 doctors who worked in Aleppo before the war, only 36 remain.

Let me highlight the Global Health Security Agenda, which has brought together a strong coalition of countries dedicated to strengthening global capacity to prevent, detect and respond to infectious diseases.

We look forward to continuing to work with our international counterparts to reinforce the rights of health workers, through the activities and resolutions of the General Assembly, Security Council and other relevant UN bodies, and by our actions on the ground.

One small but important clarification: We are joining consensus and co-sponsoring resolution A/69/L.35 today with the express understanding that this resolution's reaffirmation of human rights instruments are applicable to the extent countries have affirmed those instruments in the first place, and that it does not imply that States must implement obligations under human rights instruments to which they are not a party [including the International Covenant on Economic, Social, and Cultural Rights (ICESCR)]. To the extent that it is implied in this resolution, the United States does not recognize the creation of any new right which we have not previously recognized, the expansion of the content or coverage of existing rights, or any other change in the current state of treaty or customary international law, including international humanitarian law. Countries have a wide array of policies and actions that may be appropriate for the progressive realization of the right to the enjoyment of the highest attainable standard of physical and mental health, and neither this resolution or others should try to prescribe or define how individual countries pursue such progressive realization.

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At the 26th session of the Human Rights Council, on June 26, 2014, the United States joined consensus on a resolution on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: sport and healthy lifestyles as contributing factors. U.N. Doc. A/HRC/26/18. The United States delivered an explanation of position, including the following:

[W] e are pleased to join consensus on this resolution today.

The United States wishes to offer a limited point of clarification on Operative Paragraph 6. That language, calling for certain international financial and technical support, is derived from the International Covenant on Economic, Social and Cultural Rights, to which the United States is not a party. The United States reiterates that while international technical and financial support can facilitate positive health outcomes, human rights law does not address states' decisions whether or not to provide such support. Furthermore, as the language in this operative paragraph notes, states have the primary responsibility for promoting and protecting human rights, and while international assistance may facilitate a state's promotion of human rights domestically, its absence does not justify a state's failure to fulfill its human rights obligations to its people.

Additionally, to the extent that it is implied in this resolution, the United States does not recognize creation of any new right which we have not previously recognized, the expansion of the content or coverage of existing rights, or any other change in the current state of treaty or customary international law. We consider the resolution's phrase "the right to the highest attainable standard of physical and mental health" to be synonymous with the longer phrase in the title of the resolution, and with similar language in Article 21 of the International Covenant on Economic, Social and Cultural Rights.

E. HUMAN RIGHTS AND THE ENVIRONMENT

On March 28, 2014, on behalf of the U.S. delegation to the 25th session of the HRC, David Sullivan delivered the U.S. explanation of position on the resolution entitled "Human rights and the environment." U.N. Doc. A/HRC/RES/25/21. Mr. Sullivan's statement is excerpted below and available at <https://geneva.usmission.gov/2014/03/28/eop-on-resolution-human-rights-and-the-environment/>.

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The United States continues to agree with other members of the Council that protection of the environment and its contribution to sustainable development, human well-being, and the enjoyment of human rights are vitally important. In this spirit, we join consensus on this resolution.

At the same time, we remain concerned regarding the general approach of placing environmental concerns in a human rights context and about addressing them in fora that do not have the necessary expertise. For related reasons, while we recognize the efforts of the independent expert and UN bodies in this area, we do not agree with a number of aspects of their work.

We are also concerned about certain elements in the final text. For example, while sustainable development is a goal we all aim to achieve, the concerns of the United States about the existence of a "right to development" are long-standing and well known—the "right to development" does not have an agreed international meaning. Furthermore, work is needed to make it consistent with human rights, which the international community recognizes as universal rights held and enjoyed by individuals and which every individual may demand from his or her own government.

We interpret this resolution's references to the obligations of States as applicable only to the extent the State has assumed such obligations by becoming party to various human rights instruments. In joining consensus on this resolution the United States does not recognize any change in the current state of conventional or customary international law. Furthermore, we reiterate that States are responsible for implementing their human rights obligations. This is true of all obligations that a State has assumed, regardless of external factors, including the availability of technical and other assistance.

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On June 27, 2014, at the 26th session of the HRC, the United States provided an explanation of its position on a resolution on human rights and climate change adopted by the Council. U.N. Doc. A/HRC/RES/26/27. David Sullivan delivered the statement on behalf of the U.S. delegation, excerpted below and available at <https://geneva.usmission.gov/2014/06/27/eop-on-climate-change/>.

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The United States thanks the Philippines and Bangladesh for their continued dedication to an issue of tremendous importance to all countries. We recognize that climate change is an urgent, complex, and far-reaching global challenge. Addressing climate change requires cooperation among all nations—for any effective solution to climate change depends upon all nations taking responsibility for their own actions and for our planet. The United States has recently re-emphasized our continued firm commitment to addressing this challenge at home and with our partners around the world. Furthermore, as we said regarding the last resolution on this topic, we agree that the effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights. On that basis, we will join consensus on this resolution.

At the same time, this resolution raises a number of serious concerns for the United States.

We regret that the sponsors missed an opportunity to discuss climate change issues through a true human rights lens. That means ensuring that States respect their human rights obligations to persons in their territories when they react to climate change. By including language in the resolution on issues beyond the competence and expertise of this body, the sponsors have attempted to insert the Human Rights Council into expert climate negotiations taking place in other UN fora. The result could be misinterpreted in a way that would risk sabotaging existing initiatives that have the potential to meaningfully address climate change. Therefore, we want to make clear that the language of this resolution will in no way affect what is considered acceptable and has been agreed on in the context of the UN Framework Convention on Climate Change (UNFCCC).

In addition, we interpret this resolution's reaffirmation of human rights instruments as applicable to the extent countries affirmed those instruments in the first place. Regarding the resolution's multiple references to the right to development, the United States position on this issue is well known, and applies here. Further, we understand the phrases used in this text to refer to many human rights as shorthand for the more accurate and widely accepted terms, consistent with their phrasing in the applicable international covenants, and we maintain our longstanding positions on those rights.

The resolution's unnecessary and inappropriately selective quotations from the UNFCCC, to which the United States is a party, and its Conference of Parties (COP) decisions, also raise concerns. We understand the quotations from the UNFCCC and COP decisions as acknowledging that the Convention and those Decisions contain the stated provisions. They do not mean the Council itself has endorsed the content of such provisions. Of course, the applicability of these quotations and the concepts they describe is limited to the context of that carefully negotiated Convention. Furthermore, to the extent that the language in this resolution

might be misused in the context of the UNFCCC or elsewhere to reinterpret carefully negotiated climate change decisions about climate impacts and vulnerability, financial and technical support, or responsibility for climate action, we underscore that we will stand by the UNFCCC decisions.

While we appreciate the tremendous work by everyone who participated in the negotiation of this resolution, this text suffers from failure to take into consideration a diverse range of views. To a great and unfortunate degree, it addresses the issue in polarized terms of north versus south opposition. We believe that approach is the wrong way for this Council to address such important and challenging issues. We strongly recommend that the Council's future work on this topic be led by a cross-regional core group that includes representation of a range of valid perspectives. That will allow a future session of this Council to take a less divisive and more effective approach to this important issue that we all face.

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F. RESPONSIBLE BUSINESS CONDUCT

1. Implementation of Guiding Principles

In 2014, the United States continued to promote implementation of the UN Guiding Principles on Business and Human Rights, which were endorsed by the Human Rights Council in 2011 in resolution 17/4. The United States opposed a resolution introduced at the 26th session of the HRC which proposed the creation of an intergovernmental working group ("IGWG") to work toward the conclusion of a new, legally-binding instrument on business and human rights. Stephen Townley, Deputy Legal Adviser for the U.S. Mission to the UN in Geneva, delivered the U.S. explanation of vote on the resolution, which was adopted by a vote of 20 to 14, with 13 abstentions, on June 26, 2014. U.N. Doc. A/HRC/RES/26/9. Mr. Townley's statement is excerpted below and available at <https://geneva.usmission.gov/2014/06/26/proposed-working-group-would-undermine-efforts-to-implement-guiding-principles-on-business-and-human-rights/>.

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We are extremely disappointed with the decision by Ecuador and South Africa to table this resolution.

We regret they have decided to proceed to action now, as we heard this morning that the core group on Business and Human Rights, consisting of Argentina, Russia, Norway, and Ghana, remains interested in seeking a consensus solution to the debates we have had at this session.

Indeed, as we understand it, the core group has proposed to the main sponsors of this resolution the establishment of an intergovernmental expert group, an idea that might have enjoyed consensus and made a meaningful difference, but which was rejected out of hand.

This action contradicts the consensus-based approach of John Ruggie's mandate and the first few years of the UN Guiding Principles.

It will unduly polarize these issues, taking us back ten years to the days of the Commission on Human Rights.

We have not given states adequate time and space to implement the Guiding Principles.

Despite that lack of time, the Principles have already made a meaningful difference in raising standards across industry, promoting responsible investment, and encouraging further collaboration among stakeholders.

They have also helped to create a level playing field for companies.

Furthermore, individual states have taken a variety of steps in implementing the Guiding Principles to prevent corporate involvement in human rights abuses.

The Guiding Principles are a success, although they are only three years old.

Indeed, while we share and appreciate the concerns expressed by some delegations and civil society colleagues that we need to do more to improve access to remedy for victims of business-related human rights abuses, our concern is that this initiative will have exactly the opposite effect.

First, this resolution is a threat to the Guiding Principles themselves.

To be clear, it is not complementary to the resolution to be offered by the Business and Human Rights core group.

The proposed Intergovernmental Working Group will create a competing initiative, which will undermine efforts to implement the Guiding Principles.

The focus will turn to the new instrument, and companies, states, and others are unlikely to invest significant time and money in implementing the Guiding Principles if they see divisive discussions here in Geneva.

Second, on the substance, this initiative is unlikely to address the concerns that animate calls for a legally binding instrument, as a one-size-fits-all instrument is not the right approach to handling the complex fabric that is regulation of business.

It also would only be binding on the states that became party to it.

The IGWG will not benefit from the necessary and important voices of key stakeholders, including the private sector.

The United States will not participate in this IGWG, and we encourage others to do the same.

There are also a host of practical questions about how an internationally binding instrument would apply to corporations, which are not subjects of international law, and how states would implement such an instrument.

For one thing, we heard one of the sponsors during informals that it wishes to apply legal obligations directly to businesses, which are non-state actors.

What precedent will this set? Second, we see in this resolution an effort to define certain businesses.

How will this create a coherent set of legal rules if there are exceptions to what purports to be a human rights instrument?

For all these reasons, and because the main sponsors of this initiative did not appear to wish to have a consensus solution, we request a vote on this text and will vote no.

We urge others to do likewise.

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With regard to national implementation of the Guiding Principles, President Obama announced on September 24, 2014, on the margins of the UN General Assembly, that the United States would develop a National Action Plan (“NAP”) to promote responsible and transparent business conduct overseas. See Remarks of President Obama at an Open Government Partnership Meeting at the UN in New York on September 24, 2014, available at www.whitehouse.gov/the-press-office/2014/09/24/remarks-president-obama-open-government-partnership-meeting. As explained by President Obama when he announced the development of the plan:

...[W]e intend to partner with American businesses to develop a national plan to promote responsible and transparent business conduct overseas. We already have laws in place; they’re significantly stronger than the laws of many other countries. But we think we can do better. And we think that ultimately it will be good for everybody, including business. Because when they know there’s a rule of law, when they don’t have to pay a bribe to ship their goods or to finalize a contract, that means they’re more likely to invest, and that means more jobs and prosperity for everybody.

The United States convened the first of several planned dialogues with interested stakeholders to gather input for the NAP process and content in December 2014. See Announcement of Opportunity to Provide Input, available at www.whitehouse.gov/blog/2014/11/20/announcement-opportunity-provide-input-us-national-action-plan-responsible-business.

2. Extractive industries

On March 26-27, 2014, Switzerland hosted the Voluntary Principles on Security and Human Rights Initiative annual plenary meeting in Montreux. For background on the Voluntary Principles (“VPs”) see *Digest 2013* at 354-55; *Digest 2012* at 409-10; and *Digest 2000* at 364-68. The State Department media note about the 2014 plenary is available at www.state.gov/r/pa/prs/ps/2014/04/224380.htm and includes the following:

During the meeting, the government of Ghana announced that it would join the VPs Initiative, becoming the first African government participant. Government participation in the VPs Initiative signals an important commitment to human rights and to supporting a positive business environment for extractive companies. The VPs Initiative also welcomed companies Repsol, PanAust, IAMGold, and NGO LITE-Africa as new members, as well as the Institute for Human Rights and Business, as an observer. Several companies also discussed challenges and best practices related to implementation and verification of their performance under the VPs. These discussions helped to demonstrate how companies work to adhere to their commitments in some of the toughest places

in the world, spurring discussion about how participants can work collaboratively to support these efforts.

3. Principles on Responsible Agricultural Investment

In 2014, the United States participated in negotiations on the Principles for Responsible Agricultural Investment (“RAI”) as part of the UN Committee on World Food Security at the FAO in Rome. The principles are intended to provide guidelines for national regulations, global corporate social responsibility initiatives, and individual contracts relating to investment in agriculture. The U.S. mission to the UN in Rome provided a statement on May 16, 2014 welcoming the negotiations, available at <http://usunrome.usmission.gov/news/ negotiations-principles-responsible.html>. In October 2014, the United States delivered an explanation of its position at the session on the RAI Principles at the Committee on World Food Security. The U.S. explanation of position follows, and is available at http://photos.state.gov/libraries/italy/231771/images/US_EOP_RAI.pdf.

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These principles are voluntary and non-legally binding. We do not view them as changing the interpretation of any instruments referenced therein or the current state of conventional or customary international law, including with regard to countries’ international obligations under any agreements or in any areas including but not limited to trade and investment agreements, intellectual property rights including legal transfer of technology, labor rights, or human rights. We wish to emphasize that the implementation of human rights obligations is the responsibility of states.

Trade in food and agriculture products in a predictable, transparent market is critical to achieving global food security and essential to ensuring long-term success in ending hunger by increasing food availability. The Principles support the view that individual consumer preferences guide what foods are produced, sold, or consumed, and these principles should not be read to suggest otherwise.

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G. INDIGENOUS ISSUES

On May 13, 2014, Raina Thiele, Associate Director of the White House Office of Intergovernmental Affairs and Public Engagement, addressed the UN Permanent Forum on Indigenous Issues in New York. Ms. Thiele’s remarks are available at <http://usun.state.gov/briefing/statements/226313.htm> and excerpted below.

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Thank you, Madam Chair. Before commenting on the UN's activities relating to indigenous peoples, I would like to highlight notable developments within the United States.

The U.S. government is committed to improving the situation of U.S. tribal communities. To that end, we continue to strengthen our government-to-government political relationship with U.S. federally recognized tribes when formulating our broader policy objectives. The White House Tribal Nations Conference—hosted by the President—is now an established annual event, the fifth conference occurring in November 2013. Cabinet secretaries, senior U.S. officials, and tribal leaders gathered to have an open, informed, and constructive discussion in the U.S. Capitol [sic]. To make the meeting as useful as possible, we organized breakout sessions on priority topics that tribal leaders wanted discussed: self-determination and self-governance, healthcare, economic and infrastructure development, education, protecting natural and cultural resources, climate change, natural disaster mitigation, and law enforcement and public safety. We invite you to read the 2013 White House Tribal Nations Conference Progress Report, which is available online and which documents the many tribal-related policies and programs we have in place.

The November 2013 Tribal Nations Conference was the first of these annual meetings where tribal governments were able to speak directly with the gathered members of the White House Native American Affairs Council, which was established by the President in a June 2013 Executive Order. The Council consists of the heads of U.S. government departments, agencies, and offices and meets three times a year, allowing for improved high-level information exchange and coordination among Federal agencies. Its five focus areas—tribal economies, health and nutrition, education for Native American youth, law enforcement and public safety in tribal communities, and natural resource protection and the environment, including climate change—are among the major concerns of indigenous peoples in the United States.

Turning from our domestic actions to the multilateral arena, we are focused on preparations for the September World Conference on Indigenous Peoples. The World Conference is an unprecedented, milestone event—the first time that senior UN and member state representatives will gather together with indigenous representatives at a UN high-level meeting to consider recommendations that indigenous peoples have presented over the years to the Permanent Forum, Expert Mechanism on the Rights of Indigenous Peoples, and other UN meetings devoted to human rights, development, environment, and conservation issues.

We understand that the preparatory process remains in flux. We support the efforts by the President of the General Assembly to reach agreement on the arrangements for the World Conference, including for the negotiation of its outcome document, that are acceptable to all member states and take into account the views of indigenous peoples. We encourage efforts to find a solution that will allow planning to proceed. To achieve a successful World Conference, indigenous peoples must be able to participate meaningfully in the preparatory process and the Conference itself. While there are differing views on what constitutes meaningful participation, we think the arrangements ultimately settled upon must be acceptable to the broader indigenous community, as it wouldn't be productive to proceed with a World Conference on Indigenous Peoples if the main stakeholders were dissatisfied. The United States supports holding the informal interactive hearing called for by the UN General Assembly Resolution as soon as is

practicable and structuring it to allow for an inclusive exchange of views. Elected and traditional indigenous leaders, non-governmental organizations, civil society organizations, academics, and others should all be given the opportunity to offer their observations.

We strongly support the call for a concise, action-oriented outcome document. Conciseness is important because in our experience, documents of this nature that are lengthy and lacking in focus will be diluted to secure consensus. The risk of not gaining consensus also increases with a document that attempts to do too much. The document should be action-oriented and contain steps that member states and the UN system can take in the near future to promote the rights of indigenous peoples and to tangibly improve the situations of indigenous peoples and conditions in their communities. Those steps may include additional work by UN bodies on issues of concern to indigenous peoples, and may also include best practices of member states on those topics. Lastly, we strongly believe that the outcome document needs to be a consensus document in order for the World Conference to meet its potential. We will continue to work with all stakeholders to arrive at a consensus document.

To inform how the United States will approach the World Conference, we are engaging regularly with U.S. indigenous representatives. We held a scoping session in March and formal State Department-hosted U.S. consultations on May 9 with both representatives of U.S. federally recognized tribes and with other U.S. indigenous peoples, groups, and organizations. As we indicated at the May 9 consultations, we are working on setting up other opportunities to consult with U.S. indigenous peoples before the World Conference, possibly in July or August.

Thank you for your attention. The U.S. delegation looks forward to working with member states and indigenous partners during this Permanent Forum on Indigenous Issues session.

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On June 24, 2014, at the 26th session of the HRC, Ambassador Harper delivered a joint statement on behalf of a group of 35 states on “Eliminating Violence against Indigenous Women and Girls.” The group included Albania, Australia, Austria, Belgium, Benin, Bulgaria, Chile, Croatia, Congo, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Guatemala, Iceland, Italy, Lithuania, the former Yugoslav Republic of Macedonia, Mexico, Moldova, Montenegro, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovenia, Spain, St Kitts and Nevis, Sweden, Switzerland, the United Kingdom, and the United States. The joint statement appears below and is available at <https://geneva.usmission.gov/2014/06/24/joint-statement-on-eliminating-violence-against-indigenous-women-and-girls/>.

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As we prepare for the upcoming World Conference on Indigenous Peoples, we express great concern that indigenous women and girls often suffer multiple and intersecting forms of discrimination and poverty that increase their vulnerability to all forms of violence. We also stress the need to seriously address the high and disproportionate rates of violence, which takes many forms, against indigenous women and girls worldwide. Indigenous women and girls have

the same human rights and fundamental freedoms as everyone else, and a common recognition of those rights must underpin efforts to address violence against indigenous women and girls.

Improving access to justice and empowering indigenous peoples are critical to this effort. We recognize that indigenous peoples themselves may well be in the best position to combat violence against indigenous women and girls. They are closer and better able to address the issue when provided with tools and the legal capability to stop the violence. We will strive to, and encourage other states to, where appropriate, enable and empower indigenous peoples to better address these issues themselves by providing resources, adopting legislation and policies, and taking other necessary steps in an effort to stop the cycle of violence that affects them. We also stress the need for coordination and dialogue between state and indigenous justice institutions to improve access to justice for indigenous women and girls and to enhance awareness campaigns, including ones directed at men and boys.

Ending the global scourge of violence against indigenous women and girls will also require comprehensive support services for survivors and improved data collection to illuminate the scope of the problem. It will demand intensified measures to provide accountability for perpetrators and redoubled efforts to prevent abuse. It will also entail improvements in indigenous women's access to birth registration. Respecting and promoting reproductive rights – including the right to make decisions concerning reproduction free of discrimination, coercion and violence, and access to comprehensive sexual and reproductive health services – must be integral to our efforts to end violence against indigenous women and girls.

We believe the topic of violence against indigenous women and girls requires greater attention. We encourage the relevant UN mechanisms to recommend ways to use the UN's existing tools more effectively to prevent and address this serious problem. We also believe the upcoming World Conference on Indigenous Peoples should consider this problem and ways to heighten awareness and respond to this concern throughout the UN system. The meaningful participation of indigenous representatives in the World Conference and its preparatory process will be essential in this regard.

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On September 22, 2014, Ambassador Harper addressed a roundtable of the World Conference on Indigenous Peoples, held at UN Headquarters in New York. The subject of the roundtable was "UN System Action for the Implementation of the Rights of Indigenous Peoples." Excerpts follow from Ambassador Harper's remarks, which can be found in full at <https://geneva.usmission.gov/2014/09/23/the-world-conference-on-indigenous-people-a-call-for-further-action/>.

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As U.S. Ambassador to the Human Rights Council and member of the Cherokee Nation, I am honored to lead the U.S. delegation to this high-level UN General Assembly meeting devoted to advancing indigenous peoples' rights worldwide.

We applaud the joint efforts of member states and indigenous representatives to arrive at a World Conference outcome document containing positive, action-oriented commitments on

behalf of indigenous peoples. The text addresses key priorities of the U.S. government and U.S. tribal leaders, including those discussed during formal United States-hosted consultations.

The document adopted this morning underscores the commitments of member states to advance and uphold the principles and goals of the UN Declaration on the Rights of Indigenous Peoples. We are gratified that the document supports the empowerment of indigenous women and eliminating violence and discrimination against them. Violence against indigenous women and girls has devastating effects on the individuals, their families, and their communities. I have made this one of my highest priorities at the Human Rights Council. To call attention to this worldwide scourge, the United States issued a joint statement on behalf of 35 countries, a number of them represented here today, at the June 2014 Human Rights Council session. Further, we support the outcome document's call to have the Commission on the Status of Women focus on empowering indigenous women.

There are three topics in the outcome document on which further action is especially needed. First, the United States sees great merit in reflecting on how the UN can measure member states' progress in achieving the objectives of the UN Declaration. We welcome specific proposals from member states, indigenous representatives, and the UN in this regard. We look forward to the Secretary-General's recommendations and options on how to use existing UN mechanisms for this purpose. The possibility to modify the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) for this purpose holds promise, and options for amending its mandate or revising its composition should be explored.

Second, the outcome document requests the Secretary-General to present proposals on enhancing indigenous peoples' participation at the UN. At the present time, indigenous governments and other representational institutions can participate in the Permanent Forum on Indigenous Issues (PFII), but only accredited NGOs can participate in any of the other meetings at the United Nations open to civil society observers. The United Nations must establish procedures that recognize tribal leaders and tribal governments for who they are – persons and governments who are distinct from NGO representatives and who represent their own constituencies. The United States looks forward to working with tribal governments, the Secretary-General and other Member States to enable indigenous representative institutions to participate accordingly in UN meetings.

Finally, we need to approach indigenous issues holistically—throughout the UN system. We support the call for an inter-agency effort to derive a plan for a coherent approach—including UN agencies, funds, and programs in field as well as at headquarters—to achieve the ends of the Declaration. The United States will work with the Secretary-General to identify an appropriate existing official within the system to oversee and coordinate these efforts.

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On September 25, 2014, at the 27th session of the HRC, Ambassador Harper delivered a general statement for the United States on the resolution on human rights and indigenous peoples. The United States co-sponsored the resolution, which was adopted by consensus. U.N. Doc. A/HRC/RES/27/13. Ambassador Harper's statement follows and is available at <https://geneva.usmission.gov/2014/09/25/general-statement-on-indigenous-peoples/>.

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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 through actions aimed at advancing indigenous peoples' development.

We welcome the resolution's reference to promoting indigenous peoples' participation in the UN and to have the concerns of indigenous peoples considered in the post-2015 development agenda.

We would like to note our concerns about the lack of inclusiveness surrounding the August 2014 Cochabamba conference, mentioned in OP 7 of the resolution. Because the meeting was announced on very short notice, many member states and indigenous governments and representatives could not participate.

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 that the resolution covers both these topics in various ways.

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At the UN General Assembly's 69th session, Terri Robl delivered remarks on the rights of indigenous peoples. Her remarks are excerpted below and available at <http://usun.state.gov/briefing/statements/233198.htm>.

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Both the World Conference on Indigenous Peoples outcome document and the Secretary-General's report on the Second International Decade of the World's Indigenous Peoples recognize the importance of supporting the principles and goals of the UN Declaration on the Rights of Indigenous Peoples. Doing so is essential to effecting tangible improvements to indigenous persons' lives and their ability to maintain their cultures, lands, and livelihoods. Both documents recommend that all stakeholders—notably member states, indigenous peoples, the UN, and non-governmental organizations—consult and cooperate on this effort.

In accordance with this recommendation, as well as with Executive Order 13175, the U.S. government holds regular consultations with U.S. tribal leaders on policies affecting their members. During two additional State Department-hosted consultations for U.S. tribal and NGO participants in the lead-up to the World Conference, indigenous participants articulated several priorities for future UN action on indigenous peoples. The United States shares these priorities and is pleased to see them highlighted in the WCIP outcome document as areas for follow-up activity.

First, we must collectively develop more effective ways to prevent and address violence and discrimination against indigenous women and girls. To raise awareness about this topic, the United States delivered a joint statement on behalf of 35 countries at the June 2014 Human Rights Council session. The U.S. Ambassador to the HRC, a member of the Cherokee Nation, also spoke of his personal experience regarding the devastating consequences that violence

against indigenous women and girls has on individuals, their families, and their communities, and his commitment to addressing this issue in the Council and throughout the UN system. The United States therefore welcomes the World Conference outcome document's suggestion that the Commission on the Status of Women examine empowering indigenous women.

Second, because the Declaration is key to advancing the status of indigenous peoples worldwide, the United States sees merit in having the UN monitor and assess member states' progress in achieving the objectives of the Declaration. We welcome specific proposals from member states, indigenous representatives, and the UN in this regard. The World Conference outcome document requests the Secretary-General to formulate recommendations on using existing UN mechanisms to this end, and we look forward to his suggestions. The possibility of modifying the Expert Mechanism on the Rights of Indigenous Peoples for this purpose holds promise, and options for amending its mandate or revising its composition should be explored. We support the outcome document's invitation to the HRC to examine how EMRIP could be made better fit for this purpose.

Third, the existing arrangements for indigenous peoples' participation in the UN are not currently satisfactory. In addition to contributing to the Permanent Forum on Indigenous Issues and EMRIP, which were created especially for indigenous peoples, indigenous representatives want to provide input to UN fora focused on development concerns, including issues involving employment, education, health, the environment, conservation, and cultural and intellectual property. Currently, indigenous organizations can participate in the PFII, but only accredited NGOs can take part in any other UN meetings open to civil society observers. The WCIP outcome document requests the Secretary-General to present proposals on enhancing indigenous peoples' participation at the UN, and the United States will provide its thoughts on this subject going forward.

Fourth, the United States looks forward to continued efforts with other member states to address repatriation of human remains and sacred or culturally significant objects.

We believe that the outcome document of the World Conference, coupled with the elaboration of the post-2015 development agenda, paves the way for a reinvigorated approach to promoting and protecting the rights of indigenous peoples and addressing their needs and concerns. Therefore, we do not agree with the recommendation contained in the Secretary-General's report A/69/271 that a third decade should be established. While we agree with many of the recommendations in that report for recognizing and strengthening indigenous peoples' own forms of governance and ensuring their effective participation at the United Nations, we do not believe that a third decade would be the most productive route to attaining those goals.

Let me close by commenting on the theme of promoting reconciliation between governments and indigenous peoples. As part of our efforts to correct past injustices, the United States has resolved significant historical grievances concerning discrimination and the mismanagement of tribal trust funds, trust lands, and resources such as water rights. The Keepseagle and Cobell Settlements were among the high-profile cases settled. These lawsuits have caused considerable contention between U.S. tribes and the U.S. government, and we now look forward to moving into a new era of partnership with indigenous peoples in the United States.

Thank you for your attention on this important agenda item. The United States looks forward to working with all stakeholders to build upon the achievements of the World Conference.

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

UN Committee Against Torture

On November 12-13, 2014, the United States appeared before the UN Committee Against Torture in Geneva to present its third periodic report on implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 1465 U.N.T.S. 85 (1984). See discussion in section A.2., *supra*, of the letter sent to state, tribal, and local authorities informing them of the CAT presentation, among others. The United States submitted its third, fourth, and fifth periodic reports to the Committee Against Torture (as one document) on August 12, 2013. See *Digest 2013* at 187-90.

The opening statement of Mary McLeod before the Committee on November 12, 2014 and interventions by Ms. McLeod and State Department Counselor on International Law Catherine Amirfar, are excerpted below and available at <https://geneva.usmission.gov/2014/11/12/acting-legal-adviser-mcleod-u-s-affirms-torture-is-prohibited-at-all-times-in-all-places/>. Statements of other members of the U.S. delegation are also available on the website of the U.S. Mission to the UN in Geneva. The opening statement of Tom Malinowski, Assistant Secretary of State for Democracy, Human Rights, and Labor, is available at <https://geneva.usmission.gov/2014/11/12/malinowski-torture-and-degrading-treatment-and-punishment-are-forbidden-in-all-places-at-all-times-with-no-exceptions/>. The opening statement of Ambassador Harper is available at <https://geneva.usmission.gov/2014/11/12/ambassador-harper-opposition-to-torture-is-a-fundamental-american-value/>. And the statement of Deputy Assistant Attorney General David Bitkower of the Criminal Division of the U.S. Department of Justice is available at <https://geneva.usmission.gov/2014/11/12/david-bitkower-justice-department-plays-critical-role-in-upholding-us-obligations-under-convention-against-torture/>.

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The United States is proud of its record as a leader in respecting, promoting, and defending human rights and the rule of law, both at home and around the world. But in the wake of the 9/11 attacks, we regrettably did not always live up to our own values, including those reflected in the Convention. As President Obama has acknowledged, we crossed the line and we take responsibility for that.

The United States has taken important steps to ensure adherence to its legal obligations. We have engaged in ongoing efforts to determine why lapses occurred, and we have taken

concrete measures to prevent them from happening again. Specifically, we have established laws and procedures to strengthen the safeguards against torture and cruel treatment. For example, immediately upon taking office in 2009, President Obama issued Executive Order 13491 on ensuring lawful interrogations. This Executive Order was clear: consistent with the Convention Against Torture and Common Article 3 of the 1949 Geneva Conventions, as well as U.S. law, any individual detained in armed conflict by the United States or within a facility owned, operated, or controlled by the United States, in all circumstances, must be treated humanely and must not be tortured or subjected to cruel, inhuman, or degrading treatment or punishment. The Executive Order directed all U.S. officials to rely only on the U.S. Army Field Manual in conducting interrogations in armed conflict. And it revoked all previous executive directives that were inconsistent with the Order including legal opinions regarding the definition of torture. Executive Order 13491 also created a Special Task Force on Interrogations and Transfer Policies Issues, which helped strengthen U.S. policies so that individuals transferred to other countries would not be subjected to torture.

In addition to these steps, the United States has sought to make its interrogation operations more transparent to the American public and to the world. We have made public a number of investigations of the treatment of detainees in the post 9/11 time-period. We are expecting the public release of the Findings and Conclusions of a detailed congressional investigation into the former detention and interrogation program that was put in place in the immediate aftermath of 9/11. President Obama has made clear that this document should be released, with appropriate redactions to protect national security.

In an effort to ensure that we are doing the utmost to prevent torture and cruel treatment, the United States has carefully reviewed the extent to which certain obligations under the Convention apply beyond the sovereign territory of the United States and is prepared to clarify its views on these issues for the Committee today.

In brief, we understand that where the text of the Convention provides that obligations apply to a State Party in “any territory under its jurisdiction,” such obligations, including the obligations in Articles 2 and 16 to prevent torture and cruel, inhuman or degrading treatment or punishment, extend to certain areas beyond the sovereign territory of the State Party, and more specifically to “all places that the State Party controls as a governmental authority.” We have determined that the United States currently exercises such control at the U.S. Naval Station at Guantanamo Bay, Cuba, and with respect to U.S. registered ships and aircraft. Although the law of armed conflict is the controlling body of law with respect to the conduct of hostilities and the protection of war victims, a time of war does not suspend operation of the Convention Against Torture, which continues to apply even when a State is engaged in armed conflict. The obligations to prevent torture and cruel, inhuman, and degrading treatment and punishment in the Convention remain applicable in times of armed conflict and are reinforced by complementary prohibitions in the law of armed conflict.

There should be no doubt, the United States affirms that torture and cruel, inhuman, and degrading treatment and punishment are prohibited at all times in all places, and we remain resolute in our adherence to these prohibitions.

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On November 13, 2014, the United States responded to questions posed by the committee the previous day. Excerpts follow from those responses. Catherine Amirfar,

Counselor on International Law in the Office of the Legal Adviser at the U.S. Department of State, addressed questions regarding the geographic scope of the Convention. Mary McLeod addressed the applicability of the Convention during armed conflict.

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Counselor on International Law Catherine Amirfar: Messrs. Bruni and Modvig, I will address the questions you posed with respect to the geographic scope of the application of the Convention. So let me start by saying that torture is absolutely prohibited at all times, in all places, no matter what the circumstances. Likewise, cruel, inhuman or degrading treatment or punishment is absolutely prohibited at all times and in all places. And these are legal prohibitions, based on U.S. domestic law, treaties and customary international law.

For example, the prohibition against torture is customary international law binding on all nations everywhere, at all times. Articles 2 and 16 of this Convention require prevention of both torture and cruel, inhuman or degrading treatment or punishment in territory under U.S. jurisdiction. [. . . T]he DTA, or the Detainee Treatment Act of 2005, takes it even further: no individual in the custody or under the physical control of the U.S. Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment. Under the DTA, the prohibitions apply at all times, and in all places, not just to territory under U.S. jurisdiction. In the context of armed conflict, the Geneva Conventions prohibit torture and cruel treatment as well. President Obama issued Executive Order 13491 to ensure humane treatment and compliance with the treaty obligations of the United States, including this Convention and the Geneva Conventions. Any individual detained in any armed conflict who is in the custody or under the effective control of the United States or detained within a facility owned, operated, or controlled by the United States, in all circumstances, must be treated humanely and must not be tortured or subjected to cruel, inhuman, or degrading treatment or punishment. Taken together, these make clear that these prohibitions are categorical and unequivocal. They bind the United States and its officials at all times, everywhere.

There exists the separate question under the Convention of the geographic reach of the articles specifically referring to “territory under [a state’s] jurisdiction.” Since its last presentation, the United States has carefully reviewed the extent to which such obligations under the Convention apply beyond the sovereign territory of the States Parties. The United States understands that where the text of the Convention provides that obligations apply to a State Party in “any territory under its jurisdiction,” such obligations extend to “all places that the State Party controls as a government authority.” We believe this is the proper interpretation of the Convention and is consistent with the position taken by both the U.S. Executive Branch during the ratification of the Convention and by the U.S. Senate, in considering whether to provide advice and consent to ratify the Convention. This language clearly covers the sovereign territory of the United States. In addition, we believe that it covers other places the United States “controls as a governmental authority.” We have concluded the United States currently exercises such control at the U.S. Naval Station at Guantanamo Bay, Cuba, and over all proceedings conducted there, and with respect to U.S.-registered ships and aircraft.

I should note that with respect to the obligation in Article 16 to prevent cruel, inhuman or degrading treatment or punishment, that provision also explicitly extends to “territory under [a

state's] jurisdiction.” As this Committee is aware, the United States submitted a reservation with respect to that provision to ensure that existing U.S. constitutional standards would satisfy U.S. obligations under that Article. Let me be clear that this reservation to Article 16 does not introduce any limitation on the geographic applicability of that article. The obligations in Article 16 apply beyond the sovereign territory of the United States to any territory under its jurisdiction in line with the interpretation I have just outlined.

Now, with respect to the application of the Convention at Guantanamo, in our last presentation to the Committee, the United States stated that Article 15 of the Convention is a treaty obligation and that the United States had to abide by that obligation in the Combatant Status Review Tribunals (also known as CSRTs) and Administrative Review Boards (also known as ARBs), which were administrative procedures established to review the status of law of war detainees at Guantanamo Bay. CSRTs and ARBs are no longer conducted, but the United States reaffirms its obligation to abide by Article 15 in the Periodic Review Board processes, which is a current discretionary, administrative process for the review of law of war detainees at Guantanamo, as well as in the military commissions.

In that regard, the Military Commissions Act of 2009 mandates that "no statement obtained by the use of torture or cruel, inhuman, or degrading treatment... shall be admissible in a military commission ... except against a person accused of torture or such treatment as evidence that the statement was made." Implementing this exclusionary rule in the context of reviewing or prosecuting individuals detained in armed conflict complements and reinforces the prohibition on torture and the fair trial guarantees mandated by the law of armed conflict.

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Acting Legal Adviser Mary McLeod: Mr. Modvig, I now turn to your question about the applicability of the Convention during armed conflict. In terms of our international law obligations, during situations of armed conflict, the law of armed conflict is the *lex specialis* and, as such, is the controlling body of law with regard to the conduct of hostilities and the protection of war victims. Moreover, as the United States has already recognized, a time of war does not suspend the operation of the Convention Against Torture, which continues to apply even when a State is engaged in armed conflict. Article 2(2) of the Convention specifically provides that neither “a state of war [n]or a threat of war ... may be invoked as a justification for torture.” In addition, the law of armed conflict and the Convention contain many provisions that complement one another and are in many respects mutually reinforcing. For example, the obligations to prevent torture and cruel, inhuman or degrading treatment or punishment in the Convention remain applicable in times of armed conflict and are reinforced by complementary prohibitions in the law of armed conflict. Whether you are looking at human rights law or the law of armed conflict, the prohibition against torture and cruel treatment is categorical. There are no gaps.

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In closing, there can be no question that the clear position of the United States is that torture and cruel, inhuman, and degrading treatment or punishment are legally prohibited everywhere and at all times. There can also be no question that these prohibitions continue to apply even when the United States is engaged in armed conflict. These prohibitions exist under domestic and international law, including human rights law and the law of armed conflict. The

United States remains dedicated to enforcing these prohibitions to ensure that there are no gaps, that there are no loopholes, in order to fulfill a primary purpose of the Convention—to recognize the inherent dignity of persons and right to be free from torture and cruel, inhuman, and degrading treatment or punishment.

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I. JUDICIAL PROCEDURE, PENALTIES, AND RELATED ISSUES

1. Death Penalty

The United States abstained on the resolution on the death penalty at the 26th session of the HRC. U.N. Doc. A/HRC/26/2. The resolution was adopted on June 26, 2014 by a vote of 29 to 10, with 8 abstentions. The U.S. explanation of vote, delivered by Ambassador Harper, is excerpted below and available at <https://geneva.usmission.gov/2014/06/26/u-s-explanation-of-vote-human-rights-council-resolution-on-the-death-penalty/>.

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The United States is disappointed that it was not able to join consensus on this resolution.

We had hoped for a balanced and inclusive resolution that would better reflect the position of states that continue to apply the death penalty lawfully.

In particular, we cannot agree with the slant of this resolution in favor of a moratorium or abolition, nor with the generality expressed that use of the death penalty inevitably leads to violations of human rights.

We are deeply troubled whenever an individual subject to the death penalty is denied the procedural and substantive protections to which he or she is entitled, but we cannot accept the implication that such a denial of legal protections follows from use of the death penalty.

For this reason we supported the amendment that would have removed this problematic language.

International law does not prohibit capital punishment when imposed and carried out in a manner that is consistent with a state's international obligations.

We therefore urge all governments that employ the death penalty to do so in conformity with their international human rights obligations.

With respect to the imposition of the death penalty for offenses committed by persons below eighteen years of age, the United States Supreme Court has barred as unconstitutional the use of the death penalty in such circumstances.

We would likewise encourage all States to do the same, but interpret the references in the resolution to related provisions of the ICCPR and the Convention on the Rights of the Child as addressed to those States Parties who have accepted such obligation under those conventions.

As to the question of abolition of the death penalty or moratoriums on its use, the United States' position is equally well known.

The ICCPR, its Second Optional Protocol and other relevant conventions leave this question to be decided through the domestic democratic processes of each individual Member State.

We believe that these domestic processes may be enhanced by open debate on all sides of the issue and that this resolution can contribute to such debate.

For that reason we have chosen to abstain rather than oppose this resolution, despite its flaws.

It is our hope that the biennial high-level panels to be convened on the death penalty, as well as the Secretary General's 2015 supplement to his quinquennial report on capital punishment, will address all aspects of the issue with due consideration to national perspectives, given the wide divergence of views regarding its abolition or continued use both within and among nations.

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At the 69th session of the UN General Assembly, the United States again voted against the resolution calling for a moratorium on the use of the death penalty. U.N. Doc. A/RES/69/186. The resolution was adopted on December 18, 2014 by a vote of 117 for, 37 against and 34 abstentions. The U.S. explanation of vote on the resolution follows, and is also available at <http://usun.state.gov/briefing/statements/234391.htm>.

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There is wide divergence of views—both within and among nations—on the abolition of, or a moratorium on, the continued use of the death penalty. While we appreciate that this resolution sets forth policy objectives shared by advocates of an abolition of this form of punishment, we believe that the ultimate decision regarding these issues must be addressed through the domestic democratic processes of individual Member States and be consistent with their obligations under international law. This is the premise underlying Article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol to that Covenant, which is available to those States choosing to abolish this form of punishment. This premise is also reflected in the proposed amendment, which we support.

Capital punishment is not prohibited by international law. As set out in Article 6 of the Covenant, to which the United States is a party, the death penalty may be imposed for the most serious crimes in accordance with the law in force at the time of the commission of the crime and when carried out pursuant to a final judgment rendered by a competent court and not contrary to the provisions of the Covenant, including the exacting procedural safeguards under Articles 14 and 15. U.S. and international law are also relevant to the manner in which the death penalty is carried out. The Eighth Amendment of the U.S. Constitution prohibits methods of execution that would constitute cruel and unusual punishment.

These and other protections are guaranteed by the U.S. Constitution and criminal statutes at both the federal and state levels. In recent years, the United States Supreme Court has further narrowed both the class of individuals on whom the death penalty may be imposed and the types of offenses that may be subject to the death penalty.

Just as the United States is committed to complying with its international obligations, we strongly urge other countries that employ the death penalty to do so only in full compliance with international law.

The United States also urges all States, and particularly the supporters of this resolution, to focus their attention toward addressing and preventing human rights violations that may result from the improperly imposed application of capital punishment. We strongly urge this body and Member States to ensure that capital punishment is not applied in an extrajudicial, summary or arbitrary manner. Capital defendants must be provided a fair trial before a competent, independent, and impartial tribunal established by law, with full due process guarantees. Moreover, through their legal processes, States should carefully evaluate both the class of defendants subject to the death penalty, as well as the crimes for which it may be imposed, in order to ensure that the use of capital punishment comports with their international obligations. Methods of execution designed to inflict undue pain or suffering must be strictly prohibited.

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2. Arbitrary Detention

On September 10, 2014, U.S. Ambassador-at-Large for War Crimes Issues Stephen Rapp addressed the 27th session of the HRC during a clustered interactive dialogue with the working group on arbitrary detention with respect to the working group's preliminary efforts to develop draft principles and guidelines concerning the right to challenge the lawfulness of detention before a court, as contemplated in HRC resolution 20/16.

Ambassador Rapp's statement is excerpted below and available at

<https://geneva.usmission.gov/2014/09/12/united-states-engages-with-working-group-on-arbitrary-detention/>.

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The United States welcomes this opportunity to engage the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence. We express deep appreciation for Mr. de Greiff's reporting on prosecutorial prioritization strategies in the aftermath of gross human rights violations and serious violations of international humanitarian law. We also welcome the chance to engage the Working Group on Arbitrary Detention. We appreciate the Working Group's progress on preliminary draft principles and guidelines concerning the right to challenge the lawfulness of detention before a court.

* * * *

With respect to the Working Group's preliminary draft principles and guidelines, the United States strongly supports the right of detained persons to challenge the lawfulness of detention before a court and to obtain a judicial decision without delay. This right is reflected in the U.S. Constitution and has historical roots dating to the Magna Carta.

As the report details, legal systems vary in how they protect the rights of detainees and provide remedies when detainee rights are violated.

With this backdrop in mind, the United States encourages the Working Group to maintain the draft's appropriately high level of generality, rather than to attempt to articulate international obligations not accepted by all member nations. The United States will continue to review this preliminary draft and looks forward to contributing to this important work as it continues over the next year.

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In further response to the efforts of the Working Group on Arbitrary Detention to develop a set of basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty to bring proceedings before a court, the United States submitted its preliminary observations to the Working Group on November 12, 2014. These include some preliminary concerns regarding the methodology and scope of the working group's preliminary draft principles, pertaining in particular to views expressed regarding territorial scope, applicability in situations of armed conflict, and derogation authority under Article 4 of the International Covenant on Civil and Political Rights. The United States' Observations are excerpted below (with footnotes omitted) and available in full at www.state.gov/s/l/c8183.htm.

The preliminary draft principles to which these Observations respond were included in a background paper issued by the Working Group for a stakeholders' consultation held September 1-2, 2014, in Geneva. The background paper is available at www.ohchr.org/Documents/Issues/Detention/BPConsultation2014.pdf.

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Preliminary Concerns Regarding Methodology and Scope

Before commenting on the Working Group's preliminary draft principles, we would offer the following general comments

Methodology. ... Bearing in mind that the particular means of domestic implementation has been left to the domestic law and processes of each State, the United States appreciates the high level of generality reflected in the Working Group's draft.

Recommendation: ... [I]t would be useful for the Working Group to provide a set of basic principles and guidelines that reflects the actual practice of States in implementing these rights domestically, where it can be established that such State practice is consistent and commonly accepted by all States. It would be less helpful, and likely counter-productive to reaching consensus among States, for the Working Group to draw upon non-binding observations, recommendations and deliberations of treaty bodies and of the Working Group itself, many of which are highlighted in the Working Group's documentation thus far.

Territorial Scope. References have been made to the application of rights related to deprivation of liberty, particularly under ICCPR Article 9, in relation to detentions occurring outside the territory of a State. The U.S. position is well-known concerning the territorial scope

of ICCPR obligations, and by extension corresponding rights set forth in the Universal Declaration of Human Rights. The long-held U.S. position is that the ICCPR applies only to individuals who are *both* within the territory of a State Party *and* within that State Party's jurisdiction. Universality in the recognition of these rights should not be confused with the territorial application by States. Differing views among States Parties and within the international community will not be resolved in the context of basic principles and guidelines, and silence will only complicate drafting of each principle. *See* Observations of the United States of America on the Human Rights Committee's Draft General Comment 35, June 10, 2014 (hereinafter "U.S. Observations on Draft General Comment 35"), and previous U.S. Observations cited therein.*

Recommendation: The best approach to treat differing views of States Parties on the scope of the ICCPR would be to restate the agreed language contained in ICCPR Article 2(1), which refers to "all individuals within [a State's] territory and subject to its jurisdiction."

The Law of Armed Conflict. In all situations of armed conflict, the United States is deeply committed to complying with its obligations under the law of armed conflict (also referred to as international humanitarian law or the law of war), and all other applicable international and domestic law. In this regard, it is important to clarify that the United States has not stated that the Covenant ceases to apply in wartime. Indeed, a time of war does not suspend the operation of the Covenant to matters within its scope of application. However, the United States does not agree with the analysis or conclusions set forth in several paragraphs of the Working Group's Report regarding the applicability of Article 9 in situations of armed conflict, for the reasons set forth in the U.S. Observations to Draft General Comment 35. In particular, although the United States acknowledges that difficult questions arise regarding the applicability of international human rights law in situations of armed conflict, the Working Group's analysis does not accord sufficient weight to the well-established principle that international humanitarian law, as the *lex specialis* of armed conflict, is the controlling body of law with regard to the conduct of hostilities and the protection of war victims.

It is noteworthy that the Working Group report refers to the Commentary of the International Committee of the Red Cross, which recognizes that Article 75, paragraph 4 of Additional Protocol I to the Geneva Conventions of 1949 reproduces most of the fair trial guarantees provided for in international human rights instruments. Although the United States is not a Party to Additional Protocol I, we have stated that Article 75 sets forth fundamental guarantees for persons in the hands of opposing forces in an international armed conflict, and thus is important to the international legal framework. Accordingly, the United States has affirmed that we will choose out of a sense of legal obligation to treat the principles set forth in Article 75 as applicable to any individual detained in an international armed conflict, and expect all other nations to adhere to these principles as well. The Working Group report omits mention, however, that Article 75 does not include a right to challenge the legality of detention under the law of war. Rather, as the Commentary to paragraph 4 of Article 75 indicates, paragraph 4 is intended to ensure certain fundamental procedural guarantees to individuals in the power of a Party to the conflict who do not benefit from more favorable treatment under the 1949 Conventions or Protocol I and have been charged and convicted with a criminal offense related to the armed conflict. *See* ICRC Commentary para. 3081.

* Editor's note: the U.S. observations on Draft General Comment 35 are discussed in section A.2.b, *supra*.

Recommendation: The Working Group should acknowledge that difficult questions arise regarding the applicability of international human rights law in situations of armed conflict, and that the well-established principle that international humanitarian law, as the *lex specialis* of armed conflict, is the controlling body of law with regard to the conduct of hostilities and the protection of war victims.

Derogation. The Working Group relies on its Deliberation No. 9 issued in 2012 stating that the prohibition against arbitrary detention and the right of anyone detained to challenge the legality of detention are non-derogable under both treaty law and customary international law, also citing the views of other human rights mechanisms, including the Human Rights Committee. The United States does not agree with this conclusion for the reasons set forth in the U.S. Observations to Draft General Comment 35. The United States shares the Working Group's objective of discouraging derogation of ICCPR rights to the extent possible, but believes that the text of ICCPR Article 4, and specifically the omission of Article 9 from the list of articles deemed non-derogable in Article 4(2), is sufficiently clear and should not be the subject of further elaboration in any basic principle or guideline on remedies and procedures, as envisioned by the Human Rights Council. ...

Recommendation: The Working Group should refrain from stating categorically that Article 9 is non-derogable and should recognize that international humanitarian law provides the *lex specialis* in non-international armed conflicts as well as international armed conflicts....

Preliminary United States Comments on Draft Principles

A. GENERAL PRINCIPLES

Draft Principle 1. Liberty...

USG Comment: We recommend that this principle also reference arbitrary detention. It is not clear why this principle would only focus on the unlawful prong of Article 9(1) without also addressing arbitrary detention. Arbitrary detention is generally unlawful in most legal systems.

Draft Principle 2. Universality...

USG Comment: As discussed above, the use of the term universality should not be confused with the territorial scope of these rights or expand the obligation of States in granting habeas relief beyond actions by governmental authorities. A better approach would be to say: "Any individual within a State's territory and subject to its jurisdiction who is deprived of liberty by or on behalf of a governmental authority at any level within that State has the right to bring proceedings before court to challenge the lawfulness of the deprivation of liberty." In reference to "all forms of deprivation of liberty," it is important to differentiate between conduct by state actors and non-state actors and to also bear in mind that there are inevitable differences in domestic legal frameworks, in terms of how States regulate decisions to detain, conditions of detention (such as solitary confinement or restraint devices), and alternatives to custody, such as monitoring devices. Consensus may prove difficult if such sweeping terms are used in basic principles that should be common to all States. That said, the United States generally agrees that the right under Article 9(4) to challenge the legality of detention through *habeas corpus* proceedings before a court or through other means applies to any form of detention by official action or pursuant to official authorization with the proviso that any such detention occurs within the scope of application of the ICCPR.

Draft Principle 3. Codification...

USG Comment: The United States agrees, consistent with ICCPR Article 9, that any deprivation of liberty must be on grounds established by law and in accordance with procedures established by law and that this would require the existence of laws and procedure in order to challenge the deprivation of liberty. This does not, however require codification. Rather ICCPR Article 2(2) only requires States to take the necessary steps to give effect to the rights recognized in the Covenant, where such laws or measures do not already exist. We appreciate that this draft principle is framed as a recommendation rather than a requirement. A better approach, however, would be to “encourage” States to codify these rights to the extent they do not already exist in domestic law or practice.

Draft Principle 4. Non-derogability...

USG Comment: Derogation is not an appropriate subject for basic principles and guidelines on remedies and procedures. The arguments advanced by the Working Group for restricting a State’s derogation authority with respect to Article 9 go beyond the plain text of Article 4, are not generally agreed upon, and will not be resolved through a process intended to develop basic principles commonly shared by States.

B. PRINCIPLES RELATING TO COURT PROCEEDINGS**Draft Principle 5. The ‘court’: ... should be a court of law. ...**

USG Comment: This principle is not grounded in the text of Article 9(4), which requires that a court reach its decisions “without delay” but is silent on how quickly any ordered release must occur. It also fails to take into account practical considerations that may arise in arranging the release of an individual, including when such release may require diplomatic coordination to facilitate repatriation. It also fails to take account that detention determined to be unlawful may not continue to be unlawful where certain conditions are met, for example, a new trial correcting flaws in a prior proceeding. Such “conditional release” orders would not involve immediate release, nor would immediate release necessarily be appropriate.

Draft Principle 6. Ability to bring proceedings before the court...

USG Comment: The phrasing of this principle is unclear. Article 9 is explicit that the right to challenge the lawfulness of detention belongs to the person deprived of liberty. This draft appears to suggest that other persons may bring actions to challenge a detention’s lawfulness as well. Although individual States, including the United States, may offer mechanisms for others to bring a challenge on behalf of a detained person who is incapacitated or otherwise unable to act on his or her own behalf, there are generally domestic law limitations on who would have standing to do so and whether any limitations on the detainee’s ability to contact such individuals would be appropriate, limitations that are not governed by international law. If this is the intended focus of this principle, it would be better framed as a recommended best practice common among States and should delineate the permissible circumstances and relationship between the person bringing the action and the person detained for the consideration of other States.

Draft Principle 7. Multiple challenges...

USG Comment: This is another area that is not required by international law and best left to the individual legal systems of States to address. Not every lawful ground for deprivation of liberty requires multiple or periodic review, particularly where the circumstances have not or are unlikely to change. The United States does not agree that Article 9 would require multiple or periodic review for every type of deprivation of

liberty. Entitlement to pursue a succession of *habeas* proceedings after “an appropriate period of time” finds no support in the text of Article 9(4) and would at best be a recommendation better left for domestic legal processes to address. Passage of time alone, without any change in circumstances, would not, in itself, justify re-litigation of the legal basis for detention. ICCPR Article 9 leaves to individual States Parties to decide the appropriate legal framework within their own constitutions and laws to give effect to and implement these rights. This is not to say that duration limitations, individualized determinations, and reassessments over time would not be reasonable and appropriate recommendations for States Parties to consider, to the extent they are legally available and appropriate in individual circumstances. But these would be better cast as recommended best practices rather than basic principles applicable in all circumstances.

Draft Principle 8. Appearance before the court...

USG Comment: The United States does not believe that this principle is grounded in the ICCPR text insofar as it mandates that an individual be brought physically before a court. Article 9(4) does not contain such an explicit requirement. In the course of *habeas* proceedings, a court in the United States with jurisdiction may order the actual or virtual presence of the individual, where appropriate. A better approach may be to frame this principle as a recommendation rather than a legal requirement.

Draft Principle 9. Standard of review...

USG Comment: The U.S. would not agree that a court’s ability to review the factual basis of the lawfulness of detention would be unconstrained, or that the only limit on such review would be based on the reasonableness of a prior determination. In the United States there are a variety of possible constraints on a court’s review of the factual basis of detention, including statutory limits in the criminal context, evidentiary presumptions, and constraints imposed by the use of classified or privileged information. For example, when a detained immigrant challenges his or her detention in federal district court, that court may only review the lawfulness of present detention, not the underlying basis for the immigrant’s removal order. Similarly, in the criminal context, courts do not have the unfettered ability to review the factual basis of a detained criminal’s conviction.

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C. PRINCIPLES RELATING TO REMEDIES

Draft Principle 11. Release and compensation...

USG Comment: The United States suggests deleting “unconditional” for the reasons stated with respect to Draft Principle 5, as there may be circumstances in which some form of conditional release may be lawful and appropriate. If a court finds an unlawful deprivation of liberty, it may impose certain conditions for release, such as supervision or monitoring, or may remand the case to an administrative court for further review. This is commonly the case in immigration detention cases. Further, the United States understands the enforceable right to compensation within the scope of application of the ICCPR to mean the provision of effective and enforceable mechanisms by which a victim of an unlawful arrest or detention may seek and, where justified, obtain compensation from either the responsible individual or the appropriate governmental entity. Entitlement to compensation may be subject to the reasonable requirements of domestic law.

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3. Extrajudicial, Summary, or Arbitrary Executions

At the 69th session of the UN General Assembly, the United States joined consensus, after several years of abstaining in the past, on the resolution on extrajudicial, summary, or arbitrary executions. U.N. Doc. A/RES/69/182. The resolution was adopted on December 18, 2014. The U.S. explanation of position on the resolution follows.

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We wish to join the sponsors of the text in condemning extrajudicial, summary or arbitrary executions against all persons, irrespective of their status. We also thank the cosponsors for their flexibility in accommodating some of our concerns regarding distinctions between international human rights law and international humanitarian law that have previously caused us to abstain on this resolution. ...[T]here are not one, but two bodies of law that regulate unlawful killings of individuals by governments—international human rights law and international humanitarian law. As noted by the resolution, these two bodies of law are complementary and mutually reinforce one other and set forth two legal frameworks on this issue. 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 and we read this text on that basis.

We of course 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 and investigate suspected cases in accordance with international obligations. We also note that the text discusses the Standard Minimum Rules, which are non-binding and apply only to penal institutions. 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 ESAs targeting members of vulnerable groups, particularly members of the LGBT community and those targeted on account of their gender identity.

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4. Integrity of the judicial system

At the 25th session of the Human Rights Council, the United States voted against a Russian Federation-sponsored resolution entitled “Integrity of the Judicial System.” U.N. Doc. A/HRC/RES/25/4. The resolution was adopted on March 27, 2014 by a vote of 27 in favor, 1 against, and 19 abstentions. Deputy Assistant Secretary Schriefer delivered the U.S. explanation of vote, excerpted below and available at:

<https://geneva.usmission.gov/2014/03/27/eov-on-resolution-integrity-of-the-judicial-system/>.

* * * *

The United States remains fully committed to the goals of promoting and strengthening the integrity of the judicial system in every nation. Within the United States, we have long had an independent judiciary that is supported by laws, regulations, and ethical codes that work in concert to ensure the judiciary remains impartial, competent, and not subject to improper influences. Moreover, our military tribunals follow established judicial procedures and applicable international law and are integrated into the civilian judicial system through the opportunity for appeal and judicial review at the highest levels of our independent judiciary.

We must highlight several major concerns with respect to the text of the resolution. Despite the resolution's overarching goal of promoting the integrity of the judicial system throughout the world, sensible requests to expand the focus of the text beyond military tribunals to the broader issues related to judicial independence and separation of powers have been refused. These requests included small wording revisions proposed by the United States and others to correct problematic language describing the relationship between military and civilian tribunals. The refusal to seriously consider these revisions calls into question whether the lead sponsor was negotiating in good faith. Furthermore, despite many states' concerns about the program budget implications, the resolution mandates a large, expensive consultation that will cost the UN more than \$290,000, even though it is unnecessary and does not address the interests of many states because of its very narrow focus. After first offering to fund the cost of the consultation, the lead sponsor has rescinded this offer and refuses to consider less expensive alternatives.

Finally, we must note that we are surprised to see the main sponsor a resolution touting the rule of law immediately following its blatant violation of international law and of Ukrainian sovereignty and territorial integrity.

For these reasons we cannot support this resolution. We will call a vote, and vote no.

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J. FREEDOM OF ASSEMBLY AND ASSOCIATION

At the 25th session of the HRC, Deputy Assistant Secretary Schriefer delivered a statement on the resolution on the protection of human rights in the context of peaceful protest. U.N. Doc. A/HRC/RES/25/38. Ms. Schriefer's statement is excerpted below and available at <https://geneva.usmission.gov/2014/03/28/the-right-to-peacefully-is-an-essential-enabler-of-other-rights-and-freedoms/>.

* * * *

United States strongly supports this resolution L. 20 on peaceful protests. We will vote yes on the resolution and will vote no on the amendments. We ask others to join us in this vote.

As the lead sponsor of the annual resolution on Freedom of Association and Assembly, which is a consensus resolution, we view the ability to protest peacefully as an essential enabler of other rights and freedoms. Peaceful protests are often an important form of political expression—a form which is also sometimes politically divisive.

The amendments proposed today would restrict the ability to make such political expression and could have serious negative consequences for the enjoyment of these fundamental freedoms.

For example, the most insidious of the proposed amendments is L 50, which would restrict the ability of those to conduct peaceful protests for reasons of National Security.

National security is too often interpreted overly broadly and is used as a pretext to restrict protests which are essentially political in nature. ...

... We find such restrictions incompatible with support for freedom of assembly, freedom of expression and other rights protected by the International Covenant on Civil and Political Rights and the Universal Declaration.

As a result, the United States will vote against these amendments and in favor of the resolution on peaceful protests. We urge others to join us.

* * * *

K. FREEDOM OF EXPRESSION

1. General

a. Protection of Journalists

At a panel discussion on safety of journalists at the 26th session of the HRC, on June 11, 2014, Ambassador Harper delivered the U.S. intervention, including the following:

The United States thanks High Commissioner Navi Pillay and the panel members for their comments today. It is critically important to ensure full respect for the rights to freedom of opinion and expression, as well as the other human rights, of all journalists and other media professionals. We agree in particular with the need for states to make firm political commitments to protect those fundamental freedoms, as well as take clear and effective legislative measures to prevent threats and attacks against journalists, and accountability in all cases of attack. While we do not agree with all of the legal analysis in the report, including the characterization of freedom of expression as a collective right, we value the attention the report draws to the importance of protecting journalists.

The United States raises media freedom issues in our dealings with governments at all levels. We push for the release of imprisoned journalists and call for justice when media professionals are killed with impunity. We also have an annual Free the Press campaign that coincides with World Press Freedom Day to highlight particular cases of imprisoned journalists. We provide direct

assistance and training to journalists in challenging places, including in conflict areas, and we support independent media in closed societies around the world.

b. Freedom of opinion and expression

On March 27, 2014, at the 25th session of the HRC, the United States introduced a resolution that was adopted by consensus by the Council on “Freedom of opinion and expression,” in order to renew the mandate of the special rapporteur on freedom of opinion and expression. U.N. Doc. A/HRC/RES/25/2. Deputy Assistant Secretary Schriefer delivered introductory remarks on the draft resolution, which are excerpted below and available at <https://geneva.usmission.gov/2014/03/27/human-rights-council-adopts-u-s-led-resolution-on-freedom-of-opinion-and-expression/>.

* * * *

The United States is pleased to introduce for adoption Resolution L.2/rev.1 on “Freedom of Opinion and Expression: mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.”

This resolution has 72 co-sponsors. As the resolution on this topic adopted by the Council did three years ago, the current resolution would extend the mandate of the Special Rapporteur for another period of three years.

Given the importance of the right to freedom of opinion and expression, the resolution recognizes that the effective exercise of this right is a critical component for the enjoyment of other human rights and fundamental freedoms, and that it constitutes a fundamental pillar of any democratic society.

Welcoming the work of the Special Rapporteur, the resolution urges all States to cooperate with and assist the Special Rapporteur in carrying out this important mandate, including by considering favorably requests for visits and by implementing recommendations.

An amendment to the text, L43, has been tabled by South Africa and others. It is acceptable to us. We thus accept the resolution tabled as L.43 and incorporate it as a revision into the text of the resolution under consideration. Thus the PP3 reads as follows.

Recalling Human Rights Council resolutions 5/1, on the institution-building of the Council, and 5/2 on the code of conduct for special procedures mandate holders of the Council, of 18 June 2007, and stressing that the mandate holder shall discharge his/her duties in accordance with those resolutions and the annexes thereto.

We urge the Council to adopt this resolution extending the mandate of the Special Rapporteur by consensus.

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2. Internet Freedom

On April 28, 2014, Secretary Kerry delivered remarks via video conference at the Freedom Online Coalition Conference held in Tallinn, Estonia. Secretary Kerry’s remarks

are excerpted below and available at

www.state.gov/secretary/remarks/2014/04/225290.htm. The members of the Freedom Online Coalition, including the United States, adopted “Recommendations for Freedom Online,” or the “Tallinn Agenda,” available at www.freedomonlinecoalition.com/wp-content/uploads/2014/04/FOC-recommendations-consensus.pdf.

* * * *

The fact is that now we face a choice about how we organize ourselves as societies and how we manage this movement of information and control over it and search engines and access. All of these things are critical. And the choice is really a choice between those who demand dignity and respect for rights versus those who are prepared to deny it. The stand that we are now taking for Ukraine, for instance, for Estonia, and for our allies in Central and Eastern Europe, I hope signals which side the United States is on, despite the fact that people have had questions about the policies with respect to access and information on the internet.

But I want to remind you: The stakes in this very different world are as real today in the virtual world as in the visible world, the tangible world. And we need to continue to stand as we have for open markets, for open societies, and for an open internet. And I want to underscore the word “open” because open and inclusive, with respect to the internet, really matters. It matters that you can interact and debate with people who live in different countries. It matters that you can spread ideas and connect with people, whoever they may be, who want to share those ideas. And it matters that you can blog about an election campaign, organize on Facebook, use Twitter to hold your government accountable. I mean, all of these things make all the difference in today’s world. And imagine if I couldn’t talk to you today simply because my government had shut down or censored the internet, or your government, or anybody in between was able to get between us in this transmission.

Now, I know it’s almost impossible to fathom for those people who live in a free world that that would actually happen. We can sit around with our friends, we debate an issue, and even Google an answer in the course of a dinner conversation to bolster our argument. But here’s something important for everybody to think about: All the facts in the world available in real time won’t make a whit of difference if people don’t have access, if there isn’t a guarantee that everybody is able to access that information. And for millions of people today, that is the reality of the challenge that they face.

All you have to do is read the headlines and you can discern an absolutely unmistakable pattern.

The places where we face some of the greatest security challenges today are also the places where governments set up firewalls against basic freedoms online.

* * * *

... And when we stand up for freedom of expression anywhere and everywhere that it’s threatened, including with our friends and our allies, that makes all the difference in the world. That’s why we called on Turkey to unblock its citizens’ access to Twitter and remove other barriers to free expression on the internet. There is no question in anybody’s mind that this

freedom of access is a fundamental kind of right and it is going to be fundamental to people everywhere who are going to demand that because they recognize that through it comes a kind of accountability that you can't have necessarily otherwise.

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So ultimately, what we're really talking about here tonight are two opposing visions. We believe in an open and inclusive internet with input from all and equal access to all. And we believe in giving people a voice from the bottom up. The authoritarian vision sees a free, open, inclusive internet as a threat to state power. So what do these states do? They use their power to threaten the internet, and it's about controlling information and access to it from the top down. For them, it's about creating a fragmented internet that divides us rather than unites us, that minimizes the voice of people and maximizes their ability to cloud the truth.

So my friends, that is absolutely what is at stake here – two different visions, two different futures. And that's why the work of the Freedom Online Coalition is so critical. It's so important. And the question now is: Where do we go from here?

Well, first, we need to affirm the simple truth that we all have a stake in how the internet is governed. Governments do have an important role. We acknowledge that. So do businesses, students, teachers, scientists, civil society leaders. Our principle is clear: If you have an interest in how the internet works, you get to play a role in how it's governed. That's what global, multi-stakeholder internet governance is all about.

As the Net Mundial conference in Brazil reaffirmed just last week, which you referred to, governments, civil society, academia, and the private sector have to work together to manage the global digital environment. States must also work hand in hand with the private sector to protect and advance international cyber security. We all need to work together on efforts to reduce conflict and defend against cyber attacks on our digital infrastructure or intrusion into our businesses, into our lives.

But let me be clear—as in the physical space, cyber security cannot come at the expense of cyber privacy. And we all know this is a difficult challenge. But I am serious when I tell you that we are committed to discussing it in an absolutely inclusive and transparent manner, both at home and abroad. As President Obama has made clear, just because we can do something doesn't mean that we should do it. And that's why he ordered a thorough review of all our signals intelligence practices. And that's why he then, after examining it and debating it and openly engaging in a conversation about it, which is unlike most countries on the planet, he announced a set of concrete and meaningful reforms, including on electronic surveillance, in a world where we know there are terrorists and others who are seeking to do injury to all of us.

So our reforms are based on principles that we believe are universally applicable. First, rule of law—democracies must act according to clear, legal authorities, and their intelligence agencies must not exceed those authorities. Second, legitimate purpose—democracies should collect and share intelligence only for legitimate national security reasons and never to suppress or burden criticism or dissent. Third, oversight—judicial, legislative or other bodies such as independent inspectors general play a key role in ensuring that these activities fall within legal bounds. And finally, transparency—the principles governing such activities need to be understood so that free people can debate them and play their part in shaping these choices. And we believe these principles can positively help us to distinguish the legitimate practices of states governed by the rule of law from the legitimate practices of states that actually use surveillance

to repress their people. And while I expect you to hold the United States to the standards that I've outlined, I also hope that you won't let the world forget the places where those who hold their government to standards go to jail rather than win prizes.

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3. Privacy

a. *U.S. Submission to OHCHR on Right to Privacy in the Digital Age*

As discussed in *Digest 2013* at 199-200, the United States has supported resolutions in the UN General Assembly reaffirming that privacy rights and the right to freedom of expression extend to on-line activity. At the end of 2013, in resolution 68/167, the General Assembly requested that the High Commissioner for Human Rights prepare a report on the right to privacy in the digital age. The United States responded to a February 2014 request from the Office of the High Commissioner for Human Rights ("OHCHR") for input from member states on privacy in the digital age. Excerpts follow from the U.S. submission on the right to privacy in the digital age. The submission in its entirety is available at www.ohchr.org/Documents/Issues/Privacy/United%20States.pdf.

* * * *

While recent unauthorized disclosures and other allegations of the United States' intelligence activities have garnered attention and influenced the debate on privacy in the digital age, the United States has long recognized that unchecked surveillance programs can be abused, and that privacy and civil liberties need to be integral considerations for all law enforcement and intelligence practices. It is also essential to acknowledge the necessary role that intelligence and law enforcement activities play in protecting our national security and the security of our partners and allies and furthering the investigation and prosecution of criminal activity. As technology has advanced, lawful and appropriate government access to certain electronic communications has become more—not less—important to furthering those objectives. We recognize that a rule of law framework with transparent laws and effective and meaningful oversight (which can take different forms) is essential to ensure that electronic surveillance authorities are not abused, such as by being undertaken for the purpose of suppressing criticism or dissent or disadvantaging people based on their ethnicity, race, gender, or religion. Efforts to increase transparency about electronic surveillance activities—without unduly constraining important law enforcement and intelligence activities—will help ensure respect for privacy and civil liberties.

The right to protection of the law from arbitrary or unlawful interference with privacy is enshrined in the International Covenant on Civil and Political Rights (ICCPR) and protected under the U.S. Constitution and U.S. laws. The OHCHR's survey and UN General Assembly Resolution 68/167 use the shorthand "right to privacy." Article 17 of the ICCPR states that "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy..." and that

“[e]veryone has the right to the protection of the law against such interference...” We read the use of “right to privacy,” or “privacy rights,” to be describing what is laid out in Article 17 of the ICCPR, which is not an absolute right to privacy but rather is a right to protection against unlawful or arbitrary interferences with privacy. The United States understands this requirement to mean that, to be consistent with Article 17, an interference with privacy must be in accordance with transparent laws and must not be arbitrary. Some commentators have indicated that an interference under Article 17 has to be essential or necessary and be the least intrusive means to achieve a legitimate objective. Such a test goes beyond the text of Article 17, which only prohibits unlawful or arbitrary interferences, and is not supported by the travaux of the treaty. Because the ICCPR applies to governmental action, Article 17 applies to state actors, not to non-state actors. However, recognizing the impact that companies and other non-state actors can have on one’s privacy, particularly in the digital age, we have included information about protections against non-state interferences with privacy in this response. The United States also notes its longstanding position that the ICCPR only applies to individuals who are both within the territory of the State Party and within that State Party’s jurisdiction in line with Article 2(1) of the ICCPR.

With this understanding of the parameters of Article 17, we will first discuss our framework regarding electronic methods of criminal investigation, then discuss protections in place with regards to electronic surveillance for intelligence purposes, and finally note policies and statutes that protect against non-state actor interference with privacy.

The United States notes that protection from unlawful or arbitrary interference with privacy is grounded in the Fourth Amendment of the U.S. Constitution and is also implemented by federal statutes. In addition, state and local laws and regulations provide myriad protections in this regard and states have rigorous processes in place to ensure that investigative activities are undertaken consistent with the Constitution.

The Fourth Amendment protects persons from unreasonable searches and seizures by the Government at both state and federal levels and protects the privacy of correspondence. The U.S. Supreme Court has defined search under the Fourth Amendment to be a government infringement of a person’s reasonable expectation of privacy. *Rakas v. Illinois*, 439 U.S. 128, 240-49 (1978). A person’s reasonable expectation of privacy is the linchpin of the Fourth Amendment. Where there exists a reasonable expectation of privacy, the Constitution generally does not permit government violation of that reasonable expectation without probable cause to believe that a crime is occurring or that evidence of crime will be found. Furthermore, except in limited, well-defined circumstances, officers must obtain a search warrant, which must be authorized by a neutral and detached magistrate, before they can conduct a search or seizure that impinges upon a reasonable expectation of privacy. When officers seek a warrant, the Fourth Amendment requires that they must make a showing of probable cause before a neutral and detached magistrate, not an agent or arm of the investigating authority.

With regard to governmental use of electronic methods of criminal investigation, there are a number of specific statutory protections in place to avoid arbitrary interference with privacy. At the federal level, the U.S. Congress as early as 1934 recognized that there could be substantial privacy infringement through use of electronic devices to track the movements of persons or things and to intercept private communications. Such devices now include wiretaps and datataps (accessing the content of voice or data communications in real time), pen registers, and trap and trace devices (which can, among other things, record telephone numbers called from a particular phone and the numbers of telephones from which calls are made to a particular

phone, respectively), and surreptitiously installed microphones. Note that there is a difference in constitutional and statutory protections afforded to “content” that is collected using devices, such as wiretaps, as opposed to non-content that is collected using devices, such as pen registers.

In 1968 Congress enacted the Wiretap Act, which has been subsequently modified to accommodate technological advances, to regulate the use of electronic audio listening. 18 U.S.C. sections 2510-21 (Title III of the Omnibus Crime Control and Safe Streets Act of 1968- Wiretapping and Electronic Surveillance, Pub. L. No. 90-351, 82 Stat. 212). The Wiretap Act bans the use of certain electronic techniques by private citizens and requires government officials to obtain a court order before utilizing electronic techniques, such as wiretaps. Under the Wiretap Act, intercepting the content of communications is generally a two-step process. First, federal law enforcement must obtain internal approval to seek a court order authorizing interception from specified senior officials within the DOJ; state and local law enforcement must obtain similar approval from senior state or local prosecuting officials.

Once they have obtained internal approval, federal agents must then apply for and obtain an order from a federal court to intercept wire, oral, or electronic communications unless there is an emergency involving immediate danger of death or serious bodily injury to any person or when conspiratorial activities threaten national security interests or are characteristic of organized crime. In such emergency situations, law enforcement must obtain the approval of high-level officials within the DOJ, or, for state and local governments, a high-level prosecutor, before beginning emergency interception. Furthermore, the government must obtain a court order authorizing and approving the emergency interception within 48 hours after interception occurs or begins to occur.

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Congress enacted the Electronic Communications Privacy Act (ECPA) in 1986 to address, among other matters, (i) access to stored wire and electronic communications and transactional records (the Wiretap Act applied to telephone calls) and (ii) the use of pen registers and trap and trace devices (See Titles II and III of ECPA, Pub. L. No. 99-508, 100 Stat. 1848). Title II of ECPA generally prohibits unauthorized access to or disclosure of stored wire and electronic communications, absent certain statutory exceptions. Title II of ECPA also provides for legal process that law enforcement must use to compel the production of such stored communications and transactional records. The pen register and trap and trace provisions of ECPA prohibit the installation or use of a pen register or trap or trace device, except as provided in the statute. Except in narrow, specified emergencies, law enforcement may not install a pen register or a trap and trace device without a prior court order.

After the September 2001 terrorist attacks, Congress passed the USA PATRIOT Act, which did several things that affected electronic methods. It updated federal anti-terrorism and criminal laws to bring them up to date with the modern technologies actually used by terrorists. It also provided terrorism investigators with important tools that were previously available in organized crime and drug trafficking investigations. ...

With regards to electronic surveillance for intelligence purposes, in furtherance of our core values, U.S. intelligence collection programs and activities are subject to stringent and multilayered oversight mechanisms. We note at the outset that we understand that, in the wake of the unauthorized disclosures and other allegations of U.S. intelligence surveillance activities, some have raised human rights concerns, including privacy concerns, in the United States and in other countries. It is a bedrock concept that U.S. intelligence collection activities are authorized

pursuant to a rule of law framework. Such activities occur pursuant to the U.S. Constitution and, within that democratic constitutional structure, a variety of statutes and other authorities, such as Executive Orders. It is essential to reiterate that all of the collection activities of U.S. intelligence agencies are carried out pursuant to a valid foreign intelligence or counterintelligence purpose; as a democratic nation, this is a requirement we take very seriously. Our intelligence priorities are set annually through an interagency process through which the leaders of our nation tell the intelligence community what information they need in the service of the nation, its citizens, and its interests. Further, the United States does not collect intelligence to suppress dissent, to provide a competitive advantage to U.S. companies or commercial sectors commercially, or to disadvantage any person on the basis of categories like ethnicity, race, gender, sexual orientation, or religious belief.

First, it is important to note that certain intelligence collection activities have long been overseen by the Foreign Intelligence Surveillance Court (FISC), as well as by Congress and oversight entities in the Executive Branch in order to ensure such activities meet applicable constitutional requirements and, accordingly, that privacy and civil liberties concerns are addressed. Intelligence collection overseas is also regulated and is carried out to meet foreign intelligence and counterintelligence objectives and not indiscriminately invade the privacy of foreign national. The 1978 Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. 1801 et seq., regulates, among other things, electronic surveillance and physical searches as defined by the statute. Titles I and III of FISA allow DOJ to obtain orders from the FISC if, *inter alia*, there is probable cause to believe that the target of the electronic surveillance or the physical search is a foreign power or an agent of a foreign power. 50 U.S.C. 1805 (a)(2)(A) and 1823(a)(3)(A). FISA also permits other types of surveillance activities, such as the installation and use of pen register and trap and trace devices. 50 U.S.C. 1842. FISA also permits the Attorney General to authorize the emergency employment of electronic surveillance and/or physical search if the Attorney General reasonably determines that an emergency situation exists, and he/she subsequently makes an application to the FISC within seven (7) days of the emergency authorization. 50 U.S.C. 1805(e) and 1824(e)(1). By law, FISA and chapters 119, 121, and 206 of title 18 (Title III of the Omnibus Crime Control and Safe Streets Act of 1968 and titles II and III of ECPA) are the exclusive means by which electronic surveillance, as defined in that act, and the interception of domestic wire, and oral or electronic communications, may be conducted, 50 U.S.C. 1809.

As noted, the FISC plays an important role in overseeing certain government collection activities conducted pursuant to FISA. It not only authorizes these activities, but it also plays a continuing and active role in ensuring that they are carried out appropriately. Moreover, if at any time the government discovers that an authority or approval granted by the FISC has been implemented in a manner that did not comply with the Court's authorization or approval, or with applicable law, the government must immediately notify the FISC and appropriate corrective measures must be taken. The FISC consists of 11 independent federal judges who must ensure that these critical foreign intelligence surveillance activities are authorized consistent with the rule of law. This court uses an *ex parte* process similar to the one that the government has long followed in seeking permission from other federal courts in ordinary criminal investigations to engage in wiretapping, pen register, and trap and trace surveillance, or to conduct searches. This longstanding process has been codified for decades in statutes and has been upheld repeatedly by U.S. courts.

It is important to note that electronic surveillance initially authorized by the FISC may later be subject to an adversarial process. For example, should the government use information

obtained from electronic surveillance authorized under FISA against a defendant in a criminal prosecution, and if the defendant was either the target of the electronic surveillance or a person whose communications or activities were subject to electronic surveillance, then the government generally must notify both the defendant and the court of that fact. The defendant can then challenge the legality of the surveillance. See 50 U.S.C. § 1806(c)-(h). In this context, numerous judicial decisions have upheld the legality of surveillances authorized by the FISC.

In addition to this legal framework under FISA and the FISC, the Office of the Director of National Intelligence (DNI) has a dedicated Civil Liberties Protection Officer who actively oversees intelligence programs. Independent agency Inspectors General also review intelligence operations. The National Security Agency (NSA), moreover, has an internal compliance officer, whose job includes developing processes that all NSA personnel must follow to ensure that NSA is complying with the law, and its own Civil Liberties Protection Officer. The U.S. intelligence community is required to report to Congress on its programs and activities, where there are vigorous debates on these issues.

As is now well known, the signals intelligence programs disclosed and declassified last year are conducted with the approval—and under the supervision—of the independent FISC. This fact notwithstanding, the Obama Administration undertook a broad-ranging and unprecedented review of U.S. signals intelligence programs in the latter half of 2013 and early 2014. The review process drew on input from key stakeholders, including the President’s Review Group on Intelligence and Communications Technologies (established by the President in August 2013), Congress, the tech community, civil society, foreign partners, the Privacy and Civil Liberties Oversight Board, and others. The review examined how, in light of new and changing technologies, we can use our intelligence capabilities in a way that optimally protects our national security, while respecting privacy and civil liberties, maintaining the public trust, supporting our foreign policy, and reducing the risk of unauthorized disclosures. In January 2014, President Obama announced several reforms and issued a Presidential Policy Directive on signals intelligence activities.

To that end, the United States is undertaking a series of concrete and substantial reforms to increase transparency of our signals intelligence collection programs, and to implement additional protections for individuals’ privacy regardless of nationality. As stated in Presidential Policy Directive 28, appropriate safeguards shall apply to personal information of all individuals, regardless of nationality, collected from signals intelligence activities. To that end, the President directed that the personal information of non-U.S. persons collected through signals intelligence shall be retained or disseminated only if the retention or dissemination of comparable information of U.S. persons would be permissible. Signals intelligence collected in bulk may only be used for a specified set of purposes, which the DNI has made public.

In January, 2014, the President announced that he was “ordering a transition” that will end the “bulk metadata program as it currently exists, and establish a new mechanism that preserves the capabilities we need without the government holding this bulk metadata.” The President announced two immediate changes to that program. First, under the program, the government “will only pursue phone calls that are two steps,” rather than the previous three steps, removed from a selector (query term) associated with a terrorist organization. Second, during this transition period, queries can be made “only after a judicial finding or in case of a true emergency.” The President also announced that he had instructed the Intelligence Community and the Attorney General to “develop options for a new approach that can match the capabilities and fill the gaps that the Section 215 program was designed to address without the

government holding this metadata itself” and to report to the President by March 28, 2014. On March 27, 2014, the President further announced that, having considered the options presented to him by the Intelligence Community and the Attorney General, he will seek legislation to replace the Section 215 bulk telephony-metadata program. Under that replacement approach announced by the President, telephone companies would retain the bulk telephony metadata for the length of time they independently do today, and the government would obtain query results from that data pursuant to individual orders from the FISC. The President also reiterated “the importance of maintaining the capabilities” of the Section 215 program, and announced that the government would seek reauthorization of the program (with the President’s two changes in January) by the FISC because the necessary legislation for the change announced in March is not yet in place.

The United States has in place a number of other statutes that protect privacy interests regarding collection of information in other contexts. The Privacy Act incorporates all of the Fair Information Practice Principles (FIPPs) that have long been a cornerstone of international instruments relating to informational privacy, including but not limited to the Organization for Economic Co-operation and Development (OECD) Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data. The Privacy Act requires federal agencies to provide public notice of its information collections, including the purpose and intended uses of those collections, and prevents them from using or disclosing information collected for one purpose for an incompatible purpose, unless excepted by the Act. It also requires government agencies, subject to certain exemptions, to “maintain in [their] records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order of the President.” 5 U.S.C. 552a (e)(1). The Computer Matching and Privacy Protection Act of 1988 specifically addresses the use by federal agencies of computer data. The Act regulates the computer matching of federal data for federal benefits eligibility or recouping delinquent debts. The government may not take adverse action based on such computer checks without giving individuals an opportunity to respond.

In addition, there are other U.S. laws that govern aspects of privacy. The E-Government Act of 2002 requires federal government agencies to conduct privacy impact assessments for electronic information systems and collections and, in general, make them publicly available. The Homeland Security Act of 2002 requires the appointment of a Chief Privacy Officer at the Department of Homeland Security. The Implementing Recommendations of the 9/11 Commission Act of 2007 requires similar appointments at other federal agencies. Additional guidance to federal agencies concerning implementation of privacy regulation comes from the Office of Management and Budget (OMB).

The United States also has a variety of statutes and policies in place that protect individuals’ privacy with respect to non-state actors. In 2012, the White House issued a blueprint for privacy in the information age to give consumers clear guidance on what they should expect from those who handle their personal information, and set expectations for companies that use personal data. The Privacy Blueprint contains four key elements: 1) a Consumer Privacy Bill of Rights based on the FIPPs; 2) a call for government-convened multistakeholder processes to apply the FIPPs to particular business contexts; 3) support for effective enforcement by the Federal Trade Commission (FTC) and State Attorneys General; and 4) a commitment to the international interoperability of commercial privacy regimes.

The Blueprint recognizes that the existing consumer data privacy framework in the United States is flexible and effectively addresses many consumer data privacy challenges in the digital age. This framework consists of sectoral federal privacy laws, state laws that enhance the

federal regime, industry best practices, vigorous enforcement by the FTC, executive agencies, and state prosecutors, and a network of chief privacy officers and other privacy professionals who develop privacy practices that adapt to changes in technology and business models and create a growing culture of privacy awareness within companies. However, federal data privacy statutes apply only to particular types of data (such as electronic communications) or specific sectors, such as healthcare, education, communications, and financial services or, in the case of online data collection, children. Because some personal data collected from individuals is not subject to comprehensive federal statutory protection, the Administration set forth the Consumer Privacy Bill of Rights to promote more consistent responses to privacy concerns across the wide range of environments in which individuals have access to networked technologies and in which a broad array of companies collect and use personal data. The Consumer Privacy Bill of Rights states clear baseline protections for consumers, providing for: 1) individual control; 2) transparency; 3) respect for context; 4) security; 5) access and accuracy; 6) focused collection; and 7) accountability. The document is based on the time-honored FIPPs, but applies the principles to the interactive and highly networked world we live in today, adapting them to the dynamic environment of the commercial Internet. The White House called for stakeholders from industry, civil society, and the technical community to apply the Consumer Privacy Bill of Rights to specific business contexts through voluntary, enforceable codes of conduct. Such practices and frameworks have played a crucial role in advancing consumers' interests, particularly when they include robust accountability mechanisms and are subject to FTC enforcement.

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b. *U.S. Intervention at HRC Panel on Privacy in the Digital Age*

On Friday, September 12, 2014, David Sullivan delivered the intervention of the United States at the panel discussion convened at the 27th session of the HRC on the "Promotion and Protection of the Right to Privacy in the Digital Age." The U.S. intervention is excerpted below and available at <https://geneva.usmission.gov/2014/09/12/promotion-and-protection-of-the-right-to-privacy/>.

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We believe it is important to keep several principles in mind as we engage in these discussions. First, the foundation for this discussion must be the text of Article 17 of the ICCPR. The United States encourages discussion of those limiting principles expressly stated in Article 17—namely, legality and arbitrariness. With this in mind, we would be interested in the panelists' views on effective oversight of surveillance programs; on how to encourage transparency while recognizing the need for secrecy in some instances; and on the legitimate reasons for collecting and sharing information. We also welcome discussion of the meaningful distinctions and implications for privacy between collection of data and use of data, as well as between use of meta-data versus content, a topic which others have already touched on today.

Second, we agree that the privacy concerns of all individuals should be taken into consideration, regardless of nationality. However, many nations make legal distinctions between nationals and non-nationals in a variety of circumstances. When it comes to signals intelligence, we are exploring how to apply privacy protections enjoyed by U.S. persons to non-U.S. persons abroad. It is important to note that we are considering these steps as a matter of policy and that we have significant concerns regarding the expansive views expressed in the Report on the extraterritorial application of the ICCPR.

Finally, it is important to keep in mind the principle, affirmed by the Human Rights Council, that the rights that people have offline must also be protected online. Although technological developments deserve particular attention, discussions of privacy have implications both online and offline. Therefore, ongoing work on privacy should take account of the various ways it is protected and infringed upon around the world, not simply in the context of surveillance.

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c. *UN General Assembly Resolution on Privacy in the Digital Age*

On December 18, 2014, the UN General Assembly adopted by consensus a resolution on the right to privacy in the digital age. U.N. Doc. A/RES/69/166. The U.S. explanation of position on the draft resolution was delivered by Kelly L. Razzouk, Senior Human Rights Adviser, on November 25, 2014. Ms. Razzouk's statement is excerpted below and available at <http://usun.state.gov/briefing/statements/234418.htm>.

* * * *

We join consensus on today's resolution because the human rights it reaffirms—privacy rights and the right to freedom of expression, peaceful assembly, and association including their exercise online—as set forth in the International Covenant on Civil and Political Rights (the ICCPR) and protected under the U.S. Constitution and U.S. laws—are pillars of democracy here in the United States and globally.

The resolution recognizes the harassment and human rights abuses that human rights defenders face including through arbitrary interference with privacy. It is imperative that these individuals can use the Internet freely to promote human rights worldwide. We are pleased that further discussion on this topic will include the arbitrary use of surveillance to intimidate, harass and at times arrest individuals who are lawfully exercising their human rights. Communications should not be monitored in order to suppress criticism or dissent, or to put people at a disadvantage based on their ethnicity, race, gender, sexual orientation, or religion. We also welcome the resolution's recognition that concerns about security may justify the gathering of certain sensitive information, in a manner consistent with international human rights obligations.

We reaffirm our explanation of position that was provided when we joined consensus on this text last year. We also reaffirm those human rights instruments that we have long affirmed, in particular the ICCPR. We understand this resolution to be consistent with longstanding U.S. views regarding the ICCPR, including Articles 2, 17, and 19, and interpret it accordingly.

Further, we reiterate that the appropriate standard applied under Article 17 of the ICCPR as to whether an interference with privacy is permissible is whether it is lawful and not arbitrary and welcome the resolution's reference to this key concept. An interference with privacy must be reasonable given the circumstances. Article 17 does not impose a standard of necessity and proportionality.

We hope that further work on this topic can touch on other areas relating to privacy rights, beyond the digital environment and beyond surveillance.

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L. FREEDOM OF RELIGION

1. U.S. Domestic Developments

a. Designations under the International Religious Freedom Act

On July 18, 2014, Secretary Kerry designated Burma, China, Eritrea, Iran, Democratic People's Republic of Korea, Saudi Arabia, Sudan, Turkmenistan, and Uzbekistan as "countries of particular concern" under § 402(b) of the International Religious Freedom Act of 1998 (Pub. L. No. 105–292), as amended. The nine states were so designated "for having engaged in or tolerated particularly severe violations of religious freedom." 79 Fed. Reg. 57,171 (Sept. 24, 2014). All the states had previously been designated except Turkmenistan. The presidential actions designated for each of those countries by the Secretary are listed in the Federal Register notice.

b. U.S. annual report on international religious freedom

On July 28, 2014, the Department of State released the 2013 International Religious Freedom Report, and transmitted the report to Congress 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 state.gov/religiousfreedomreport/. Secretary Kerry's remarks at the rollout of the 2013 report are available at www.state.gov/secretary/remarks/2014/07/229857.htm. Tom Malinowski Assistant Secretary for the Bureau of Democracy, Human Rights, and Labor also delivered remarks on the release of the report, which are available at www.state.gov/r/pa/prs/ps/2014/07/229861.htm. A State Department fact sheet summarizing key developments discussed in the 2013 report is available at www.state.gov/r/pa/prs/ps/2014/07/229853.htm.

2. Human Rights Council

On March 11, 2014, the United States participated in a discussion with the special rapporteur on freedom of religion or belief. The U.S. statement, delivered by Lisa

Brodey, is excerpted below and available at

<https://geneva.usmission.gov/2014/03/12/discussion-with-the-special-rapporteurs-on-freedom-of-religion-or-belief-and-on-human-rights-and-counter-terrorism/>.

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We strongly agree with the Special Rapporteur's observation that political authoritarianism is among the enabling factors for the spread of religious hatred, and that addressing religious hatred requires a climate of free communication and public discourse based on freedom of expression and freedom of religion.

Unfortunately, states with the greatest instances of religious hatred often react by further restricting the freedoms of expression and religion through measures such as incitement or blasphemy laws, which only further entrench authoritarianism and intolerance. We echo the Special Rapporteur's call for the repeal of blasphemy laws and other restrictions on the freedoms of religion and expression.

We appreciate the Special Rapporteur's detailed explanation of the Rabat Plan of Action, including the emphasis it places on preventive actions such as interfaith dialogue, speaking out against intolerance, and outreach to members of religious communities. HRC Resolution 16/18 also focuses on promoting such measures.

Nonetheless, many states still advocate for restrictions on speech, often justified under ICCPR Article 20(2). The Special Rapporteur's report helpfully highlights the counter-productive nature of such restrictive policies. The report further details the many ways in which other provisions of the ICCPR, as well as the language of Article 20(2) itself, limit the permissible scope of such restrictions.

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M. RULE OF LAW AND DEMOCRACY PROMOTION

1. U.S. Statements at the UN

On February 19, 2014, Ambassador Rosemary DiCarlo, U.S. Deputy Permanent Representative to the UN, delivered remarks at a Security Council debate on the rule of law. Ambassador DiCarlo's remarks follow.

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Thank you, Mr. President. The United States thanks Lithuania for taking the initiative to hold this thematic debate on the rule of law. We welcome this debate on this vitally important issue. We also thank the Secretary-General for his briefing.

Respect for the rule of law is critical for the establishment of stable, secure, and democratic post-conflict societies. But it takes hard work, sustained over a long period of time, to build a culture of respect for the rule of law in a post-conflict context. And it takes the support of

the international community. As a result, it is important for us to consider what tools the United Nations and the Security Council can use to help foster the rule of law in nations emerging from conflict.

In the wake of conflict, UN involvement often comes in the form of peacekeeping operations. And peacekeeping operations are particularly well positioned to spearhead the strengthening of rule of law institutions. Peacekeeping missions should always include rule of law experts who can serve on the front lines of supporting national justice and accountability efforts.

For example, UNOCI in Cote d'Ivoire assisted the Government of National Reconciliation in restoring civilian policing presence throughout the country. With rule of law expertise, UNOCI helped restructure the internal security services, assisted the parties in the implementation of temporary and interim security measures in the northern part of the country, and participated in the new "Mixed Gendarme Brigades" and the Integrated Command Center. In Haiti, MINUSTAH's rule of law investment in the Haitian National Police has already yielded a larger force more capable of ensuring security, and ongoing support continues to move Haiti down the road toward self-sufficiency in this regard.

Against this backdrop, peacekeeping missions also can play an important role in supporting national and international efforts to bring to justice those responsible for war crimes, crimes against humanity, and genocide, including through support for apprehension of fugitives. In addition to peacekeeping, there is also a significant role for development programs to make contributions to the rule of law. For example, UNDP administers a rule of law program in Darfur to raise awareness of human rights and rule of law. It is also working with local leaders, organizations and authorities to help end violations of international human rights law. The goal is to restore people's confidence in both rule of law institutions and to gradually build a culture of rule of law and justice in the region.

In the Democratic Republic of the Congo, the UN—specifically UNDP—has assisted in the creation of mobile courts that have helped the country's justice system tackle the challenge of sexual and gender-based violence in the conflict-ridden east.

While it is important to consider the individual tools that are available, it is also important that the UN's rule of law activities take a holistic, integrated and balanced approach. The Secretary-General's institutional reforms in this respect are especially welcome. The strategic role of the Rule of Law Coordination and Resources Group chaired by the Deputy Secretary-General and the UN's Global Focal Point arrangement on the rule of law—where the Department of Peacekeeping Operations works with the UN Development Program—could help enhance coordination and lead to concrete results on the ground. We are encouraged that these UN entities are joining forces to develop and implement common police, justice and corrections programs. We hope that these efforts will remove the disconnect that sometimes exists between New York and the field. In this context, we understand that the Global Focal Point is now coordinating on rule of law issues in Mali and look forward to the outcome of this work.

Ultimately, national ownership is essential in successfully advancing the rule of law in a host country. The government, at all levels, must buy into the core tenets of the rule of law. This includes the central principle that governments are accountable to the law and that no person is above the law. Only through a commitment to the rule of law at the highest levels, a commitment which the people of a country understand, can rule of law permeate through all levels of society.

We support the United Nations doing its part in promoting the rule of law, and encourage it to foster a culture of accountability in all of its work.

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On October 10, 2014, Stephen Townley addressed the Sixth Committee (Legal) Session at the 69th General Assembly on Agenda Item 82: The Rule of Law at the National and International Levels. Mr. Townley's remarks are excerpted below and available at <http://usun.state.gov/briefing/statements/232953.htm>.

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Thank you, Mr. Chairman. The United States welcomes this opportunity to follow up on the 2012 high-level meeting of the General Assembly on the rule of law, as well as to discuss this year's particular topic: national practices in strengthening the rule of law through access to justice.

We welcome the Secretary General's report on strengthening and coordinating UN rule of law activities and were pleased that consideration of the report was deferred until this session of the General Assembly to permit its fuller analysis. We agree that rule of law is, as the report suggests, multifaceted, cutting across the UN, and we are interested to exchange views on the most appropriate institutional means for the General Assembly and its Committees to address the topic. We would also stress at the outset that any modalities for addressing rule of law must take into account the broad range of legitimate stakeholders. These stakeholders include not only UN components, but also civil society players, such as national bar associations, businesses, and academics.

That said, during the pendency of that discussion, we also believe that we should seek tangible, step-by-step progress in the various UN and UN-related forums where rule of law is currently discussed, whether formally or informally.

Thus, for instance, at the international level, we welcomed the issuance on August 7, 2014, by the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia of the verdict in Case 002/01. This marked an important step forward in efforts to secure justice and accountability for the people of Cambodia. But much more work remains to be done as the ECCC begins the second phase of Case 002; and the UN's effort to support the ECCC requires bolstering.

We all know the essential role of good governance and open and accountable institutions in ensuring inclusive and sustainable development. We welcome the recognition in the report of the Open Working Group on Sustainable Development Goals that "[g]ood governance and the rule of law at the national and international levels are essential for sustained, inclusive and equitable economic growth, sustainable development and the eradication of poverty and hunger." It is also critical to highlight the importance of access to justice without discrimination, so that all people, including vulnerable individuals and members of vulnerable groups, can enjoy full exercise of their rights and the benefits of development. We have heard member states from every region recognize the importance of these issues to development and we look forward to their prominence in the post-2015 development agenda.

At the national level, I am pleased to report that we have made progress on implementing our pledges from the 2012 high-level meeting over the course of the past year. While there is no formal reporting process on such pledges, we hope we can all seize appropriate opportunities to

discuss the steps we each have taken. A number of our pledges related to improvements in addressing domestic violence, and I'd like to speak to our work on that issue since we made our pledges.

Just last month, the United States commemorated the twentieth anniversary since the passing of our landmark Violence Against Women Act, including by issuing a presidential proclamation on the subject. In March 2013, the law was reauthorized. Its protections were extended, as that Proclamation makes clear, to "make Native American communities safer and more secure and help ensure victims do not face discrimination based on sexual orientation or gender identity when they seek assistance. . . [and to] provide our law enforcement officials with better tools to investigate rape and increase access to housing so no woman has to choose between a violent home and no home at all. And . . . [the] Administration continues to build on the foundation of this legislation, launching new initiatives to reduce teen dating violence and to combat sexual assault on college campuses."

These are just a few of the forums where rule of law-related issues are currently discussed. We hope we can seize the opportunities those discussions present.

With this approach of step-by-step progress in mind, I would like to turn to the specific topic for this year's Sixth Committee discussion: national practices in strengthening the rule of law through access to justice. In particular, I would like to address the role of civil legal aid in access to justice in this, the 40th anniversary of the bipartisan passage and signing of the Legal Services Corporation Act, which is "the single largest funder of civil legal aid for low-income Americans, providing help and hope to countless individuals and families who are too often overlooked – and too often underserved."

We are proud to have supported the adoption of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems by the General Assembly, which was also one of our pledges from the 2012 high-level meeting, and efforts geared at their implementation, such as the conference on the topic in Johannesburg, South Africa this past June. Providing legal aid in criminal cases can help ensure the most vulnerable have adequate representation and that we continue our collective pursuit of equal justice for all. But legal aid can and should go beyond the criminal justice system. Civil legal aid to low-income individuals can make an enormous difference, both to the lives of the individuals and to the communities in which they live, by, for instance, promoting access to health and housing, education and employment, and fostering family stability and community well-being. To give a few examples, civil legal services can be provided to veterans to help them secure benefits for which they are eligible, or to prevent elder abuse and domestic violence, or to help keep children in school or remove barriers to employment for people with criminal records.

In particular, I'd like to focus on the example of domestic violence, a topic I have already addressed in connection with the follow-up to our pledges. . . .

The U.S. Violence Against Women Act provides for funding for civil legal aid to victims. Among the ways civil legal aid can help are: (1) preventing future violence by facilitating obtaining, renewing and enforcing protective orders in court; (2) securing or modifying child custody orders so that a mother and her children can legally and safely leave the batterer; or (3) resolving identity theft and other forms of financial exploitation perpetrated by abusers against survivors of domestic violence. Civil legal aid can thus help mitigate the terrible consequences of domestic violence. In fact, as Vice President Biden has remarked, "[r]esearch tells us that effective legal representation is the single most important factor in whether victims are able to escape this domestic violence cycle."

But U.S. work on civil legal aid for victims of domestic violence is just one example of the role such programs can play. While – like many of you, I’m sure – there are limits to what the U.S. government can fund and provide, we believe for these reasons that it is critical to highlight the value of civil legal aid in access to justice. We would also be interested to hear more from others about their approaches in this area.

In conclusion, we look forward to continuing to follow up the 2012 high-level event, both in discussing how to take rule of law forward at the UN, but also in how we can make step-by-step progress, starting, perhaps, with issues like civil legal aid.

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2. Civil Society

On March 11, 2014, the United States delegation participated in a Human Rights Council panel on the promotion and protection of civil society space. Due to the Council’s time constraints, Head of Delegation Paula Schriefer could not deliver the statement for the United States. The prepared statement on the importance of the promotion and protection of civil society space is excerpted below and available at <https://geneva.usmission.gov/2014/03/12/governments-that-create-space-for-civil-society-reap-democratic-dividends/>.

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The evidence is clear. Governments that create and protect space for citizens to pursue the rights to freedom of peaceful assembly and of association reap democratic dividends. An environment where civil society flourishes fosters dialogue, strengthens pluralism, and enhances tolerance and respect for dissenting views. We celebrate the diversity of civil society organizations, each hoping to improve the world in its own way. Civil society organizations can also be key contributors to economic development; a state that restricts their operations hinders its own overall progress.

The United States meets regularly and often with civil society organizations at home and overseas. These dialogues are invaluable. We improve our overall understanding of an issue by talking with those who know best the situation on the ground. We also strengthen our ability to address foreign policy goals. One good example illustrates the point. Secretary Kerry met with disabled persons’ organizations to raise awareness regarding the Convention on the Rights of Persons with Disabilities. In addition, he talked to domestic and international groups on the margins of the UN High Level Dialogue on Disability and Development in September. We also convened a civil society dialogue with African NGOs to improve the Action Plan for the African Decade of Persons with Disabilities.

In September, on the margins of the General Assembly, President Obama convened a meeting with the international community to urge like-minded governments and civil society to work together to protect civil society. We are working to make progress on this objective, including multilaterally through the U.N. system, the Community of Democracies, and the Open

Government Partnership. We continue our strong support for the work of the U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association.

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On September 17, 2014, the U.S. delegation to the 27th session of the Human Rights Council participated in a general debate on human rights bodies and mechanisms. Kirsten Pappas delivered the statement by the U.S. delegation emphasizing the need for all states to foster an enabling environment for civil society. The U.S. statement is excerpted below and available at <https://geneva.usmission.gov/2014/09/22/u-s-encourages-all-states-to-create-an-enabling-environment-for-civil-society/>.

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We want to emphasize the importance of states' commitment to creating an enabling environment for civil society and encourage all states to work together and with relevant regional, UN, and civil society mechanisms in this effort. We all suffer when civil society actors are retaliated against for cooperating with this Council, special procedures mandate holders, the working group of the Universal Periodic Review, or any UN body.

Civil society actors play a number of tremendously important roles in the functioning of the Human Rights Council and its subsidiary bodies. Whether we are speaking about an NGO that conducts an outreach campaign to call states' attention to an urgent human rights situation somewhere in the world, an activist who travels here to Geneva to share his/her experiences with delegations and humanize the challenges a particular population is facing, or a watchdog organization that guards institutional norms and processes, civil society is essential to our work.

When civil society organizations are not permitted to share their point of view or feel they must censor themselves out of fear of what might happen to their staff, the Council's work and its credibility suffer.

The Secretary General outlines forty cases in sixteen countries of alleged reprisals against civil society actors in his 2014 annual report on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights. These cases of reprisals are alleged to be in response to individuals' interactions with the Office of the High Commissioner for Human Rights, the Human Rights Council, special procedures mandate holders, human rights treaty bodies, the universal periodic review mechanism, and/or one of several commissions of inquiry established by this Council.

As the Secretary General notes himself, the allegations vary in their nature, but include "a wide range of violations," against individual members of civil society, including those involving "threats, travel bans, and arbitrary detention to torture and, sadly, death." Communications about these allegations from UN human rights experts and special procedures mandate holders to eleven of the sixteen states named in the report have gone unanswered.

The United States believes that the member states of the Human Rights Council have a responsibility to defend the individuals and organizations that interact with the Council and its

mechanisms. Today we call upon those states that have failed to respond to communications to do so immediately.

We regret that consideration of Human Rights Council resolution 24/24 was not concluded during the 68th General Assembly. We support resolution of this issue as soon as possible. We reiterate our view that HRC resolutions are self-executing, in the sense that the General Assembly does not need to approve or endorse them.

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On September 26, 2014 at the 27th session of the HRC, Ambassador Harper delivered a statement for the United States delegation as co-sponsor of a resolution on civil society space. The resolution was adopted by consensus on September 26, 2014. U.N. Doc. A/HRC/RES/27/31. Ambassador Harper's statement is excerpted below and available at <https://geneva.usmission.gov/2014/09/26/debate-on-resolution-on-civil-society-space/>.

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The United States is proud to co-sponsor the Human Rights Council's second resolution on creating and maintaining, in law and in practice, a safe and enabling environment for civil society. This timely resolution underscores the important role civil society plays both in the promotion and protection of human rights, democracy, and the rule of law, and in providing expertise and advocacy within the UN system. It acknowledges that strong, vibrant civil societies are critical to having strong, successful countries. It acknowledges that governments are more responsive and effective when citizens are free to organize and work together across borders. We recognize the importance of states' commitments to creating an enabling environment for civil society and encourage all states to work together and with relevant regional, UN, and civil society mechanisms in this effort.

The United States thanks Ireland and the other core group members—Chile, Japan, Sierra Leone, and Tunisia—for the open and transparent negotiations they facilitated, and notes the spirit of flexibility and compromise that the core group demonstrated in those negotiations.

The United States regrets the decision by some states not to negotiate in good faith.

Mr. President, it is important that we rebut the erroneous narrative that some delegations have put forward, claiming that the process of negotiating this resolution was somehow irregular or unfair. That could not be further from the truth.

In fact, the process of negotiations led by the core group has been extremely open and transparent. They held some ten hours of informals in which dozens of states participated. It took some three meetings just to read through the text one time.

After tabling, the sponsors continued to engage in broad consultations and willingness to make amendments to the text. The process was open and balanced.

We will not allow the inaccurate narrative to be used to undermine the work and credibility of this Council.

For all the reasons we have stated, the United States will oppose the amendments before us today and vote in favor of the text. We urge all Council members to do the same.

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On September 23, 2014, President Obama issued a memorandum to U.S. executive departments and agencies on “Deepening United States Government Efforts To Collaborate With and Strengthen Civil Society.” Daily Comp. Pres. Docs. 2014 DCPD No. 00696 pp. 1-4 (Sept. 23, 2014). The presidential memorandum directs agencies engaged abroad to “take actions that elevate and strengthen the role of civil society; challenge undue restrictions on civil society; and foster constructive engagement between governments and civil society.” The presidential memorandum was intended to follow up on commitments made in a Joint Statement on the Promotion and Protection of Civil Society, concluded at the UN General Assembly, as well as the U.S. “Stand with Civil Society” initiative, launched in 2013. The White House issued a fact sheet on September 23, 2014 in conjunction with issuance of the presidential memorandum, which is available at www.whitehouse.gov/the-press-office/2014/09/23/fact-sheet-us-support-civil-society.

N. OTHER ISSUES

1. Right to Development Resolution at the Human Rights Council

On September 25, 2014, the UN Human Rights Council adopted a resolution entitled “The right to development.” U.N. Doc. A/HRC/RES/27/2. The United States voted against the resolution. The U.S. explanation of vote, delivered by Ambassador Harper, appears below and is available at <https://geneva.usmission.gov/2014/09/25/explanation-of-vote-right-to-development/>.

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International development is a critical component of United States foreign policy. Still, we have still long-standing concerns about the notion of the right to development.

We have participated actively in the Working Group on the Right to Development in an effort to promote better implementation of development goals and to harmonize the various interpretations of the right to development.

This unbalanced resolution, which includes controversial and divisive language from General Assembly resolutions on this topic, does not reflect these differing viewpoints. We therefore request a vote on this resolution and will vote NO.

We have specific concerns about a number of the provisions in this resolution.

It calls for an additional two-day informal inter-sessional meeting of the Working Group without an agreement in place on how to make progress in those discussions.

It does not mention the importance of considering specific, measurable indicators of development in addition to criteria and sub-criteria in order to advance the goals of the Working Group.

It focuses inappropriately on institutions in discussing the right to development. These discussions, in our view, should focus on aspects of development that relate to human rights,

universal rights that are held and enjoyed by individuals, and the obligations States owe to their citizens in that regard.

Also of concern to us is that the resolution dictates how the UN's specialized agencies should incorporate the topic of the right to development and inappropriately singles out the World Trade Organization for negative treatment.

We also cannot endorse language in the resolution that would prejudge intergovernmental negotiations and dictate a central role for the right to development in the post-2015 development agenda.

As we have noted previously, we are not prepared to join consensus on the possibility of negotiating a binding international agreement on the right to development.

We intend, however, to continue our constructive engagement with others on the topic of the right to development in the next session of the Working Group.

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2. Remotely Piloted Aircraft Resolution

On March 27, 2014, Deputy Assistant Secretary Schriefer delivered the U.S. explanation of vote on the resolution on "Ensuring use of remotely piloted aircraft or armed drones in counter-terrorism and military operations in accordance with international law, including international human rights and humanitarian law." U.N. Doc. A/HRC/25/L.32. As explained by Ms. Schriefer, the United States voted against the resolution. The resolution was adopted by a vote of 27 in favor, 6 against, with 14 abstentions. U.N. Doc. A/HRC/25/22. The U.S. explanation of vote is excerpted below and available at <https://geneva.usmission.gov/2014/03/28/eov-on-resolution-on-the-use-of-remotely-piloted-aircraft-or-armed-drones-in-counter-terrorism-and-military-operations/>.

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While there is no question that the Human Rights Council plays an important role in promoting respect for human rights in the context of our collective efforts to counter terrorism, the United States has serious concerns about this resolution. We do not believe that the examination of specific weapons systems is a task for which the Human Rights Council is well suited, and we do not support efforts to take this body in that direction, much less in a resolution that in many key respects does little more than to duplicate work that is ongoing both under the auspices of the Council and in other venues.

With respect to our own counterterrorism operations, as we have stated publicly at the highest levels of our government, the United States is committed to ensuring that our actions, including those involving remotely piloted aircraft, are undertaken in accordance with all applicable domestic and international law and with the greatest possible transparency, consistent with our national security needs. At the international level, we have engaged in discussions about RPAs in the context of broader discussions about human rights and counterterrorism, and we are open to further such discussions. As you know, the United States is a traditional co-sponsor of the Human Rights Council and UN General Assembly counter-terrorism resolutions, which have both, in their most recent iterations, addressed issues relating to remotely piloted aircraft in

operative paragraphs. We have hosted Special Rapporteur Ben Emmerson in Washington and discussed issues related to RPAs with him. And more broadly, we have been thoroughly engaged in the Swiss-ICRC Initiative on Compliance with International Humanitarian Law, which we hope will provide a non-politicized forum in which experts, including military experts, can discuss law of war issues and exchange best practices.

But we do not support the text put forward today. For all its expertise on matters relating to human rights, this Council is not an arms control forum, and does not have the expertise to venture into areas that should be addressed in those settings. This resolution takes the Council too far in this direction.

We also wish to call attention to the broader context in which we are having this discussion. While we do not discount the importance of today's topic—which, as noted, is addressed in other Council and General Assembly resolutions, and on which two Special Rapporteurs have already reported and at least one of them is still working—we note that there is a broad range of other important topics in the realm of human rights and counter-terrorism that would benefit from the Council's increased focus. These include the use of force against peaceful protesters and the suppression of civil society or opposition voices on the pretext of countering terrorism; the labeling of human rights defenders as terrorists; and the detention of such individuals without minimum due process guarantees. We hope that in moving beyond this resolution we can also refocus the Council's attention on this critically important set of issues, which fall squarely within this Council's competency and expertise, and which the international community looks to this body to address.

In this context, and for the reasons noted, we will vote against this resolution and we urge others to do the same.

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3. HRC Resolution on Firearms

The United States abstained on a resolution on the regulation of civilian acquisition, possession, and use of firearms at the 26th session of the Human Rights Council. The resolution was adopted on June 26, 2014, by a vote of 44 in favor, 0 against, and 3 abstentions. U.N. Doc. A/HRC/RES/26/16. Ambassador Harper delivered a U.S. explanation of vote, excerpted below and available at <https://geneva.usmission.gov/2014/06/26/domestic-firearms-regulation-is-a-matter-wholly-within-the-sovereign-powers-of-a-nation/>.

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[L]et me first affirm the United States' unwavering commitment to the protection of innocent civilian life against all forms of violence.

The United States has supported innumerable resolutions in support of this commitment in this and other bodies and we agree that domestic regulatory action can help deter the criminal

misuse of firearms, as evidenced by our existing domestic national laws regulating firearms possession and use.

Nevertheless, we do not believe that a State's regulation of the purely domestic acquisition, possession and use of firearms is an appropriate topic for international attention.

Domestic firearms regulation is a matter wholly within our sovereign powers as a nation, and as a result we do not believe the Human Rights Council—or any other international body—is the proper forum for this discussion.

Additionally, we do not regard the domestic actions contemplated by this resolution to be required by international human rights obligations.

As a general rule, a State's human rights obligations would not extend to regulating the acquisition, possession or use of firearms by private persons or non-state actors.

Rather we recognize that these measures, as contemplated by this resolution, fall within the sovereign responsibility that each government owes to its population through its domestic constitutional and legal processes.

We maintain that it is the sovereign and exclusive right of any state to regulate and control conventional arms within its territory, pursuant to its own legal or constitutional system.

In the United States, the Second Amendment to our Constitution protects an individual right to keep and bear arms.

The United States already has many laws and regulations to control firearms, at the national, state and local levels, consistent with our Constitution.

We do not interpret this resolution as giving any international body or its representatives a legitimate voice in the domestic regulation of firearms, a sovereign right that must be exercised by each State.

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4. Putative Right to Peace

The United States voted against a resolution on “promotion of the right to peace” at the 27th session of the Human Rights Council. The resolution was adopted on September 25, 2014, by a vote of 33 in favor, 9 against, and 5 abstentions. U.N. Doc. A/HRC/RES/27/17. Ambassador Harper delivered a U.S. explanation of vote, excerpted below and available at <https://geneva.usmission.gov/2014/09/25/explanation-of-vote-right-to-peace/>.

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First, the United States welcomes the efforts of Costa Rica in trying to find a consensus on this difficult issue. While we voted against the establishment of the Working Group, we have participated constructively in its first two sessions, and we will continue to do so in the final session called for by this resolution. We hope that there can still be a constructive path forward in affirming the relationship between human rights and peace.

However, as we have stated previously, the United States does not agree with attempts to develop a collective “right to peace” that would in any way modify or stifle the exercise of existing human rights.

The text before the Council today does not address our concerns and, therefore we must call a vote and vote against this resolution.

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Cross References

Nationality and Citizenship, **Chapter 1.A.**

Visa restrictions on human rights abusers in Venezuela, **Chapter 1.C.4.a.**

Asylum, refuge, and migrant protection issues, **Chapter 1.D.**

UN General Assembly action on North Korea's human rights record, **Chapter 3.C.2.f.**

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

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

Service of process and attempt to compel a foreign sovereign to intervene, **Chapter 10.A.3.**

Internet governance, **Chapter 11.F.5.**

Corporate Responsibility Regimes, **Chapter 11.G.5.**

Sanctions, including relating to human rights violators, **Chapter 16.A.**

Atrocities prevention, **Chapter 17.C.2.**

International humanitarian law, **Chapter 18.A.3.**

Detainees, **Chapter 18.C.**