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## CHAPTER 7

### International Organizations

#### A. UNITED NATIONS

##### 1. UN General Assembly

The 70<sup>th</sup> UN General Assembly convened in September 2015 in New York. President Obama addressed the UNGA on September 28, 2015. Daily Comp. Pres. Docs. 2015 DCPD No. 00657. His remarks are excerpted below.

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Mr. President, Mr. Secretary-General, fellow delegates, ladies and gentlemen: Seventy years after the founding of the United Nations, it is worth reflecting on what, together, the members of this body have helped to achieve.

Out of the ashes of the Second World War, having witnessed the unthinkable power of the atomic age, the United States has worked with many nations in this Assembly to prevent a third world war: by forging alliances with old adversaries, by supporting the steady emergence of strong democracies accountable to their people instead of any foreign power, and by building an international system that imposes a cost on those who choose conflict over cooperation, an order that recognizes the dignity and equal worth of all people.

That is the work of seven decades. That is the ideal that this body, at its best, has pursued. Of course, there have been too many times when, collectively, we have fallen short of these ideals. Over seven decades, terrible conflicts have claimed untold victims. But we have pressed forward, slowly, steadily, to make a system of international rules and norms that are better and stronger and more consistent.

It is this international order that has ...underwritten unparalleled advances in human liberty and prosperity. It is this collective endeavor that's brought about diplomatic cooperation between the world's major powers and buttressed a global economy that has lifted more than a

billion people from poverty. It is these international principles that have helped constrain bigger countries from imposing our will on smaller ones and advanced the emergence of democracy and development and individual liberty on every continent.

This progress is real. It can be documented in lives saved and agreements forged and diseases conquered and in mouths fed. And yet we come together today knowing that the march of human progress never travels in a straight line, that our work is far from complete; that dangerous currents risk pulling us back into a darker, more disordered world.

Today, we see the collapse of strongmen and fragile states breeding conflict and driving innocent men, women, and children across borders on an epic scale. Brutal networks of terror have stepped into the vacuum. Technologies that empower individuals are now also exploited by those who spread disinformation or suppress dissent or radicalize our youth. Global capital flows have powered growth and investment, but also increased risk of contagion, weakened the bargaining power of workers, and accelerated inequality.

How should we respond to these trends? There are those who argue that the ideals enshrined in the U.N. Charter are unachievable or out of date, a legacy of a postwar era not suited to our own. Effectively, they argue for a return to the rules that applied for most of human history and that predate this institution: the belief that power is a zero-sum game, that might makes right, that strong states must impose their will on weaker ones, that the rights of individuals don't matter, and that in a time of rapid change, order must be imposed by force.

On this basis, we see some major powers assert themselves in ways that contravene international law. We see an erosion of the democratic principles and human rights that are fundamental to this institution's mission; information is strictly controlled, the space for civil society restricted. We're told that such retrenchment is required to beat back disorder, that it's the only way to stamp out terrorism or prevent foreign meddling. In accordance with this logic, we should support tyrants like Bashar al-Asad, who drops barrel bombs to massacre innocent children, because the alternative is surely worse.

The increasing skepticism of our international order can also be found in the most advanced democracies. We see greater polarization; more frequent gridlock; movements on the far right, and sometimes the left, that insist on stopping the trade that binds our fates to other nations, calling for the building of walls to keep out immigrants. And most ominously, we see the fears of ordinary people being exploited through appeals to sectarianism or tribalism or racism or anti-Semitism; appeals to a glorious past before the body politic was infected by those who look different or worship God differently; a politics of "us" versus "them".

The United States is not immune from this. Even as our economy is growing and our troops have largely returned from Iraq and Afghanistan, we see in our debates about America's role in the world a notion of strength that is defined by opposition to old enemies, perceived adversaries: a rising China or a resurgent Russia, a revolutionary Iran or an Islam that is incompatible with peace. We see an argument made that the only strength that matters for the United States is bellicose words and shows of military force, that cooperation and diplomacy will not work.

As President of the United States, I am mindful of the dangers that we face; they cross my desk every morning. I lead the strongest military that the world has ever known, and I will never hesitate to protect my country or our allies, unilaterally and by force where necessary.

But I stand before you today believing in my core that we, the nations of the world, cannot return to the old ways of conflict and coercion. We cannot look backwards. We live in an integrated world, one in which we all have a stake in each other's success. We cannot turn back

those forces of integration. No nation in this Assembly can insulate itself from the threat of terrorism or the risk of financial contagion, the flow of migrants or the danger of a warming planet. The disorder we see is not driven solely by competition between nations or any single ideology. And if we cannot work together more effectively, we will all suffer the consequences. That is true for the United States as well.

No matter how powerful our military, how strong our economy, we understand the United States cannot solve the world's problems alone. In Iraq, the United States learned the hard lesson that even hundreds of thousands of brave, effective troops, trillions of dollars from our Treasury, cannot by itself impose stability on a foreign land. Unless we work with other nations under the mantle of international norms and principles and law that offer legitimacy to our efforts, we will not succeed. And unless we work together to defeat the ideas that drive different communities in a country like Iraq into conflict, any order that our militaries can impose will be temporary.

And just as force alone cannot impose order internationally, I believe in my core that repression cannot forge the social cohesion for nations to succeed. The history of the last two decades proves that in today's world, dictatorships are unstable. The strongmen of today become the spark of revolution tomorrow. You can jail your opponents, but you can't imprison ideas. You can try to control access to information, but you cannot turn a lie into truth. It is not a conspiracy of U.S.-backed NGOs that expose corruption and raise the expectations of people around the globe; it's technology, social media, and the irreducible desire of people everywhere to make their own choices about how they are governed. Indeed, I believe that in today's world, the measure of strength is no longer defined by the control of territory. Lasting prosperity does not come solely from the ability to access and extract raw materials. The strength of nations depends on the success of their people—their knowledge, their innovation, their imagination, their creativity, their drive, their opportunity—and that, in turn, depends upon individual rights and good governance and personal security. Internal repression and foreign aggression are both symptoms of the failure to provide this foundation.

A politics of—and solidarity that depend on demonizing others, that draws on religious sectarianism or narrow tribalism or jingoism, may at times look like strength in the moment, but over time its weakness will be exposed. And history tells us that the dark forces unleashed by this type of politics surely makes all of us less secure. Our world has been there before. We gain nothing from going back.

Instead, I believe that we must go forward in pursuit of our ideals, not abandon them at this critical time. We must give expression to our best hopes, not our deepest fears. This institution was founded because men and women who came before us had the foresight to know that our nations are more secure when we uphold basic laws and basic norms and pursue a path of cooperation over conflict. And strong nations, above all, have a responsibility to uphold this international order.

Let me give you a concrete example. After I took office, I made clear that one of the principal achievements of this body—the nuclear nonproliferation regime—was endangered by Iran's violation of the NPT. On that basis, the Security Council tightened sanctions on the Iranian Government, and many nations joined us to enforce them. Together, we showed that laws and agreements mean something.

But we also understood that the goal of sanctions was not simply to punish Iran. Our objective was to test whether Iran could change course, accept constraints, and allow the world to verify that its nuclear program will be peaceful. For 2 years, the United States and our

partners—including Russia, including China—stuck together in complex negotiations. The result is a lasting, comprehensive deal that prevents Iran from obtaining a nuclear weapon, while allowing it to access peaceful energy. And if this deal is fully implemented, the prohibition on nuclear weapons is strengthened, a potential war is averted, our world is safer. That is the strength of the international system when it works the way it should.

That same fidelity to international order guides our responses to other challenges around the world. Consider Russia's annexation of Crimea and further aggression in eastern Ukraine. America has few economic interests in Ukraine. We recognize the deep and complex history between Russia and Ukraine. But we cannot stand by when the sovereignty and territorial integrity of a nation is flagrantly violated. If that happens without consequence in Ukraine, it could happen to any nation gathered here today. That's the basis of the sanctions that the United States and our partners impose on Russia. It's not a desire to return to a cold war.

Now, within Russia, state-controlled media may describe these events as an example of a resurgent Russia—a view shared, by the way, by a number of U.S. politicians and commentators who have always been deeply skeptical of Russia and seem to be convinced a new cold war is, in fact, upon us. And yet look at the results. The Ukrainian people are more interested than ever in aligning with Europe instead of Russia. Sanctions have led to capital flight, a contracting economy, a fallen ruble, and the emigration of more educated Russians. Imagine if, instead, Russia had engaged in true diplomacy and worked with Ukraine and the international community to ensure its interests were protected. That would be better for Ukraine, but also better for Russia and better for the world, which is why we continue to press for this crisis to be resolved in a way that allows a sovereign and democratic Ukraine to determine its future and control its territory. Not because we want to isolate Russia—we don't—but because we want a strong Russia that's invested in working with us to strengthen the international system as a whole.

Similarly, in the South China Sea, the United States makes no claim on territory there. We don't adjudicate claims. But like every nation gathered here, we have an interest in upholding the basic principles of freedom of navigation and the free flow of commerce and in resolving disputes through international law, not the law of force. So we will defend these principles, while encouraging China and other claimants to resolve their differences peacefully.

I say this recognizing that diplomacy is hard, that the outcomes are sometimes unsatisfying, that it's rarely politically popular. But I believe that leaders of large nations, in particular, have an obligation to take these risks, precisely because we are strong enough to protect our interests if and when diplomacy fails.

I also believe that to move forward in this new era, we have to be strong enough to acknowledge when what you're doing is not working. For 50 years, the United States pursued a Cuba policy that failed to improve the lives of the Cuban people. We changed that. We continue to have differences with the Cuban Government. We will continue to stand up for human rights. But we address these issues through diplomatic relations and increased commerce and people-to-people ties. As these contacts yield progress, I'm confident that our Congress will inevitably lift an embargo that should not be in place anymore. Change won't come overnight to Cuba, but I'm confident that openness, not coercion, will support the reforms and better the life the Cuban people deserve, just as I believe that Cuba will find its success if it pursues cooperation with other nations.

Now, if it's in the interest of major powers to uphold international standards, it is even more true for the rest of the community of nations. Look around the world. From Singapore to

Colombia to Senegal, the facts show that nations succeed when they pursue an inclusive peace and prosperity within their borders and work cooperatively with countries beyond their borders.

That path is now available to a nation like Iran, which, as of this moment, continues to deploy violent proxies to advance its interests. These efforts may appear to give Iran leverage in disputes with neighbors, but they fuel sectarian conflict that endangers the entire region and isolates Iran from the promise of trade and commerce. The Iranian people have a proud history and are filled with extraordinary potential. But chanting “Death to America” does not create jobs or make Iran more secure. If Iran chose a different path, that would be good for the security of the region, good for the Iranian people, and good for the world.

Of course, around the globe, we will continue to be confronted with nations who reject these lessons of history, places where civil strife and border disputes and sectarian wars bring about terrorist enclaves and humanitarian disasters. Where order has completely broken down, we must act, but we will be stronger when we act together.

In such efforts, the United States will always do our part. We will do so mindful of the lessons of the past, not just the lessons of Iraq, but also the example of Libya, where we joined an international coalition under a U.N. mandate to prevent a slaughter. Even as we helped the Libyan people bring an end to the reign of a tyrant, our coalition could have and should have done more to fill a vacuum left behind. We’re grateful to the United Nations for its efforts to forge a unity Government. We will help any legitimate Libyan Government as it works to bring the country together. But we also have to recognize that we must work more effectively in the future, as an international community, to build capacity for states that are in distress, before they collapse.

And that’s why we should celebrate the fact that later today the United States will join with more than 50 countries to enlist new capabilities—infantry, intelligence, helicopters, hospitals, and tens of thousands of troops—to strengthen United Nations peacekeeping. These new capabilities can prevent mass killing and ensure that peace agreements are more than words on paper. But we have to do it together. Together, we must strengthen our collective capacity to establish security where order has broken down and to support those who seek a just and lasting peace.

Nowhere is our commitment to international order more tested than in Syria. When a dictator slaughters tens of thousands of his own people, that is not just a matter of one nation’s internal affairs, it breeds human suffering on an order of magnitude that affects us all. Likewise, when a terrorist group beheads captives, slaughters the innocent and enslaves women, that’s not a single nation’s national security problem, that is an assault on all our humanity.

I’ve said before, and I will repeat: There is no room for accommodating an apocalyptic cult like ISIL, and the United States makes no apology for using our military, as part of a broad coalition, to go after them. We do so with a determination to ensure that there will never be a safe haven for terrorists who carry out these crimes. And we have demonstrated over more than a decade of relentless pursuit of Al Qaida, we will not be outlasted by extremists.

But while military power is necessary, it is not sufficient to resolve the situation in Syria. Lasting stability can only take hold when the people of Syria forge an agreement to live together peacefully. The United States is prepared to work with any nation, including Russia and Iran, to resolve the conflict. But we must recognize that there cannot be, after so much bloodshed, so much carnage, a return to the prewar status quo.

Let’s remember how this started. Asad reacted to peaceful protests by escalating repression and killing that, in turn, created the environment for the current strife. And so Asad

and his allies cannot simply pacify the broad majority of a population who have been brutalized by chemical weapons and indiscriminate bombing. Yes, realism dictates that compromise will be required to end the fighting and ultimately stamp out ISIL. But realism also requires a managed transition away from Asad and to a new leader and an inclusive Government that recognizes there must be an end to this chaos so that the Syrian people can begin to rebuild.

We know that ISIL, which emerged out of the chaos of Iraq and Syria, depends on perpetual war to survive. But we also know that they gain adherents because of a poisonous ideology. So part of our job, together, is to work to reject such extremism that infects too many of our young people. Part of that effort must be a continued rejection by Muslims of those who distort Islam to preach intolerance and promote violence, and it must also be a rejection by non-Muslims of the ignorance that equates Islam with terror.

This work will take time. There are no easy answers to Syria. And there are no simple answers to the changes that are taking place in much of the Middle East and North Africa. But so many families need help right now; they don't have time. And that's why the United States is increasing the number of refugees who we welcome within our borders. That's why we will continue to be the largest donor of assistance to support those refugees. And today we are launching new efforts to ensure that our people and our businesses, our universities, and our NGOs can help as well, because in the faces of suffering families, our Nation of immigrants sees ourselves.

Of course, in the old ways of thinking, the plight of the powerless, the plight of refugees, the plight of the marginalized did not matter. They were on the periphery of the world's concerns. Today, our concern for them is driven not just by conscience, but should also be driven by self-interest. For helping people who have been pushed to the margins of our world is not mere charity, it is a matter of collective security. And the purpose of this institution is not merely to avoid conflict, it is to galvanize the collective action that makes life better on this planet.

The commitments we've made to the sustainable development goals speak to this truth. I believe that capitalism has been the greater creator of wealth and opportunity that the world has ever known. But from big cities to rural villages around the world, we also know that prosperity is still cruelly out of reach for too many. As His Holiness Pope Francis reminds us, we are stronger when we value the least among these and see them as equal in dignity to ourselves and our sons and our daughters.

We can roll back preventable disease and end the scourge of HIV/AIDS. We can stamp out pandemics that recognize no borders. That work may not be on television right now, but as we demonstrated in reversing the spread of Ebola, it can save more lives than anything else we can do.

Together, we can eradicate extreme poverty and erase barriers to opportunity. But this requires a sustained commitment to our people so farmers can feed more people, so entrepreneurs can start a business without paying a bribe, so young people have the skills they need to succeed in this modern, knowledge-based economy.

We can promote growth through trade that meets a higher standard. And that's what we're doing through the Trans-Pacific Partnership, a trade agreement that encompasses nearly 40 percent of the global economy, an agreement that will open markets, while protecting the rights of workers and protecting the environment that enables development to be sustained.

We can roll back the pollution that we put in our skies and help economies lift people out of poverty without condemning our children to the ravages of an ever-warming climate. The same ingenuity that produced the Industrial Age and the Computer Age allows us to harness the

potential of clean energy. No country can escape the ravages of climate change. And there is no stronger sign of leadership than putting future generations first. The United States will work with every nation that is willing to do its part so that we can come together in Paris to decisively confront this challenge.

And finally, our vision for the future of this Assembly, my belief in moving forward rather than backwards, requires us to defend the democratic principles that allow societies to succeed. Let me start from a simple premise: Catastrophes, like what we are seeing in Syria, do not take place in countries where there is genuine democracy and respect for the universal values this institution is supposed to defend.

I recognize that democracy is going to take different forms in different parts of the world. The very idea of a people governing themselves depends upon governing—government giving expression to their unique culture, their unique history, their unique experiences. But some universal truths are self-evident: No person wants to be imprisoned for peaceful worship; no woman should ever be abused with impunity or a girl barred from going to school; the freedom to peacefully petition those in power without fear of arbitrary laws. These are not ideas of one country or one culture. They are fundamental to human progress. They are a cornerstone of this institution.

I realize that in many parts of the world there is a different view: a belief that strong leadership must tolerate no dissent. I hear it not only from America's adversaries, but privately, at least, I also hear it from some of our friends. I disagree. I believe a government that suppresses peaceful dissent is not showing strength; it is showing weakness, and it is showing fear. History shows that regimes who fear their own people will eventually crumble, but strong institutions built on the consent of the governed endure long after any one individual is gone.

That's why our strongest leaders, from George Washington to Nelson Mandela, have elevated the importance of building strong, democratic institutions over a thirst for perpetual power. Leaders who amend constitutions to stay in office only acknowledge that they failed to build a successful country for their people. Because none of us lasts forever. It tells us that power is something they cling to for its own sake, rather than for the betterment of those they purport to serve.

I understand democracy is frustrating. Democracy in the United States is certainly imperfect. At times, it can be dysfunctional. But democracy—the constant struggle to extend rights to more of our people, to give more people a voice—is what allowed us to become the most powerful nation in the world.

It's not simply a matter of principle; it's not an abstraction. Democracy—inclusive democracy—makes countries stronger. When opposition parties can seek power peacefully through the ballot, a country draws upon new ideas. When a free media can inform the public, corruption and abuse are exposed and can be rooted out. When civil society thrives, communities can solve problems that governments cannot necessarily solve alone. When immigrants are welcomed, countries are more productive and more vibrant. When girls can go to school and get a job and pursue unlimited opportunity, that's when a country realizes its full potential.

That is what I believe is America's greatest strength. Not everybody in America agrees with me, but that's part of democracy. I believe that the fact that you can walk the streets of this city right now and pass churches and synagogues and temples and mosques, where people worship freely; the fact that our Nation of immigrants mirrors the diversity of the world—you can find everybody from everywhere here in New York City—the fact that, in this country,

everybody can contribute, everybody can participate, no matter who they are or what they look like or who they love, that's what makes us strong.

And I believe that what is true for America is true for virtually all mature democracies. And that is no accident. We can be proud of our nations without defining ourselves in opposition to some other group. We can be patriotic without demonizing someone else. We can cherish our own identities—our religion, our ethnicity, our traditions—without putting others down. Our systems are premised on the notion that absolute power will corrupt, but that people—ordinary people—are fundamentally good; that they value family and friendship, faith and the dignity of hard work; and that with appropriate checks and balances, governments can reflect this goodness. I believe that's the future we must seek together. To believe in the dignity of every individual, to believe we can bridge our differences and choose cooperation over conflict—that is not weakness, that is strength. It is a practical necessity in this interconnected world.

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The people of our United Nations are not as different as they are told. They can be made to fear, they can be taught to hate, but they can also respond to hope. History is littered with the failure of false prophets and fallen empires who believed that might always makes right, and that will continue to be the case. You can count on that. But we are called upon to offer a different type of leadership, leadership strong enough to recognize that nations share common interests and people share a common humanity and, yes, there are certain ideas and principles that are universal.

That's what those who shaped the United Nations 70 years ago understood. Let us carry forward that faith into the future, for it is the only way we can assure that future will be brighter for my children and for yours.

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On September 17, 2015, Bathsheba Nell Crocker, Assistant Secretary of State for International Organization Affairs, delivered remarks at the Carnegie Endowment for International Peace in Washington, DC on U.S. priorities at the 70th UNGA. Her remarks are excerpted below and available at <http://www.state.gov/p/io/rm/247018.htm>.

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...[I]nternal and external stresses are challenging relations among member states, they're challenging the UN system ability to evolve and reform, and they're challenging the UN's ability to address issues ranging from the high politics to humanitarian emergencies. The evolving refugee crisis is a sign of this.

Internal stresses that limit the UN's ability to perform are well known and include management and reform issues, inefficiencies, lack of transparency, mismanagement, sexual exploitation and abuse by peacekeepers, and a stubborn clinging to outdated issues like the anti-Israel bias.

External stresses are equally troubling, and threaten to chip away at the UN's credibility. An unfortunate trend in recent years suggests that some member states have an inconsistent

dedication to the UN's central purpose, with examples of politicization of UN bodies, and particularly those bodies with historically technical or humanitarian missions.

Evidence of this trend includes the UN humanitarian agencies being denied access to populations in need or to critical logistical facilities, and more broadly, a humanitarian system that is badly stretched at a time of historic highs of major humanitarian emergencies; attacks on UN peacekeepers in missions in Africa and peacekeeping missions being denied resupply by host governments; special envoys of the UN secretary-general being accused of political bias as a means of justifying denial of access, and humanitarian coordinators being expelled; efforts to politicize technical bodies that need to be apolitical in order to work, and indeed bodies that have been so apolitical throughout their decades of existence that they literally have no practice of voting and are now being uncomfortably forced into it. For example, Middle East political realities too often find traction, even in lesser-known entities such as ... the UN Committee on the Peaceful Uses of Outer Space, where Israel's application for membership was recently blocked.

This trend is disturbing. It threatens to undermine the assumed neutrality of the UN and UN agencies, and this in turn undercuts their value, in some cases their ability to function, and their credibility, which is at the end of the day the UN's most valuable currency. At its worst, it creates the circumstances where the denial of access and support can be used as a weapon against vulnerable populations.

But in the world of today, where needs are outpacing the system's capabilities, we need to reaffirm a broad commitment to the founding ideals of the UN. These challenges surface, I think, the need for us to make the case in New York later this month for the continued worthwhile pursuit of this shared enterprise. And we are structuring our engagement to focus on four key objectives: locking in renewed commitment to UN peacekeeping, engaging a broader range of actors on countering ISIL and violent extremism, and advancing goals on climate and sustainable development. All of these are instructive examples of our continued reliance as the U.S. on the multilateral system to advance our objectives, of our commitment to strengthening and updating that system, and of our leadership across it.

We approach UNGA this year in the shadow of the worst refugee crisis since the end of World War II. In a way, it is a sad example of how not dealing effectively across the four themes I just noted, plus weaknesses in the humanitarian network, have all come together to produce this massive movement of people. We will use UNGA this year for important high-level discussions on that crisis.

And our engagement at UNGA this year, like last, aims to use this venue more strategically to seize the advantage of diplomatic opportunities and use multilateral meetings and speeches to push U.S. priorities deliberately. Last year, we advanced our priorities on big issues of the day, including ISIL, Iraq, Ebola, and climate. President Obama, for example, chaired a UN Security Council session on foreign terrorist fighters, which resulted in a UN Security Council resolution that laid out a new policy and legal framework for dealing with that crisis and imposed obligations on member states; senior-level interactions between the P5+1 and Iran propelled the nuclear negotiations; Secretary Kerry hosted an Ocean Conference that resulted in meaningful commitments by member states; the first resolution in the new General Assembly last year focused on the crisis of Ebola, and there was a Security Council resolution on the same issue; the Vice President last year hosted a summit on strengthening UN peacekeeping at which 30 countries came together and made new commitments to that exercise; and there was Security Council action on CVE and events focused on the destruction of cultural heritage and property.

Some of these things will certainly recur this year, with our strong intent again being to employ UNGA thoughtfully and strategically, with definitive action anticipated on several fronts. And in that context, I will briefly discuss the four thematic priorities we will take into this year's UNGA: peace and security, global development, climate change, and countering violent extremism.

... 2015 marks the expiration of the Millennium Development Goals, or the so-called MDGs, which registered some significant successes, focusing largely on eliminating poverty, hunger, and disease. And the MDGs reveal the benefits of a common approach to development goals. For example, extreme poverty has been cut by more than half since 2000, per capita incomes in the developing world have more than doubled, and malnutrition rates have been cut by 40 percent.

... [M]ore than 150 world leaders—and the pope—are expected at the launch of the UN Sustainable Development Summit, at which member states will endorse the so-called 2030 Agenda for Sustainable Development—an ambitious, inclusive development framework that serves as the successor to the MDGs. The 2030 agenda, it must be said, is much larger than the MDG agenda, which included eight goals. The 2030 agenda includes 17 goals—the so-called Sustainable Development Goals—and 169 targets.

For the United States, this summit serves as a point of departure. U.S. development priorities are included in the 2030 agenda, including ending extreme poverty, the role of women and girls, inclusive economic growth, good governance and accountable institutions, and environment and sustainability. And importantly, the agreement breaks the age-old development mold. It reflects the creative input of all member states and of impacted civil society experts, academics, and implementers who all came together—it wasn't just donors this time—to influence the shape of this new agenda. It connects crucial issues that have too often been addressed in isolation, bringing environmental issues together with development issues, and it also includes thoughtful treatment of issues not always brought ...in development circles, like peace and security and governance. Because of its broad inclusivity, the agenda has global legitimacy, and it presents a real opportunity to tackle these challenges more effectively in the coming decade.

Together with the agreement reached this summer in Addis on financing for development, the 2030 agenda enshrines a new model of development that is as much about the right policy-enabling environments and mobilizing domestic and private resources as it is about official development assistance.

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Turning now to peace and security, today's challenges show the demand for nimble, effective UN peace operations. It has, in fact, never been greater. We have today over 120,000 blue helmets serving in 16 peacekeeping missions from Haiti to the Congo. And they are deploying and operating in ever more difficult circumstances.

In that context, on September 28th President Obama, the secretary-general, and several other heads of state and government will host a high-level summit on peacekeeping, at which a significant number of countries are expected to attend. Over the last year, the United States has used the momentum generated by the Vice President's summit on peacekeeping at last year's UNGA to encourage new commitments from member states to expand the pool of resources available to peacekeeping operations. And we anticipate that this year, participating nations will

announce significant new commitments during the summit, as well as make political-level commitments both to important doctrinal issues like protection of civilians, and to much needed reforms in UN peacekeeping operations, including those spelled out in a report by the high-level panel on peace operations that was released over the summer.

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On climate, of course, the big ticket issue this year will be the UN Framework Convention on Climate Change meeting in Paris in December, at which we and many other nations are determined to reach an ambitious, inclusive, and durable agreement designed to combat this urgent challenge. In advance of that meeting, events this year at UNGA and interactions will serve to galvanize the highest-level political support as we head toward Paris.

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And finally, on countering violent extremism, which remains at the top of the President's agenda, and the UN is a key platform for the United States to strengthen multilateral cooperation to counter terrorism. At UNGA this year, we will be looking to strengthen global initiatives to counter ISIL, foreign terrorist fighters, and violent extremism. We will convene a Leaders' Summit on Countering ISIL and Violent Extremism on September 29th in New York to highlight strides made against ISIL this year, as well as progress made since the February White House Summit on Countering Violent Extremism. The summit and various related side events will also serve as fora to announce new commitments to support these efforts.

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The United States is at the forefront of efforts to drive positive evolution in the management cultures of the UN, and there have been some encouraging results. We have improved budget transparency and accountability, stronger investigation tools, progress on whistleblower protection and internal review mechanisms and audit transparency, but there is much, much more to be done in this effort. And the slow-footed response on the issue of sexual exploitation and abuse only makes clear how much more work there is to be done.

We mark 70 years of the UN this year, and in doing so it's important to pause and consider the institution's role in global affairs. For the United States, this role is clear. And while the system's weaknesses and failings demand action, we should tackle them in the interest of strengthening an indispensable partner. As we gear up for UNGA, we are looking at a series of events that will showcase steadfast, clear-eyed, and instrumental U.S. leadership, a commitment we are also demanding of others. The conflicts and crises of today are, of course, many, and we need the UN as a credible bulwark against these global challenges. ...

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## **2. Ambassador Power's Congressional Testimony**

On June 16, 2015, Ambassador Samantha Power, U.S. Permanent Representative to the UN, testified before the House Foreign Affairs Committee on the importance of the UN

to U.S. interests. Her testimony is excerpted below and available at <http://usun.state.gov/remarks/6564>.

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As the members of this Committee know, we are living in a time of daunting global crises. In the last year alone, Russia continued to train, arm, and fight alongside separatists in eastern Ukraine; a deadly epidemic spread across West Africa; and monstrous terrorist groups seized territory across the Middle East and North Africa, committing unspeakable atrocities. These are the kinds of threats that the United Nations exists to prevent and address. Yet it is precisely at the moment when we need the UN most that we see the flaws in the international system, some of which have been alluded to already.

This is true for the conflict in Ukraine—in which a permanent member of the UN Security Council is violating the sovereignty and territorial integrity that it was entrusted with upholding. It is true of the global health system that—despite multiple warnings of a spreading Ebola outbreak, including those from our own CDC—was slow to respond to the epidemic. And it is true of UN peacekeepers, who too often stand down or stand by when civilians they are responsible for protecting come under attack. Thus leaving populations vulnerable and sometimes open to radicalization.

Representing our nation before the United Nations, I have to confront these and other shortcomings every day. Yet though I am clear-eyed about the UN's vulnerabilities, the central point I want to make to this Committee is that America needs the United Nations to address today's global challenges. The United States has the most powerful set of tools in history to advance its interests, and we will always lead on the world stage. But we are more effective when we ensure that others shoulder their fair share and when we marshal multilateral support to meet our objectives. Let me quickly outline five ways we are doing that at the UN.

First, we are rallying multilateral coalitions to address transnational threats. Consider Iran. In addition to working with Congress to put in place unprecedented U.S. sanctions on the Iranian government, in 2010 the Obama Administration galvanized the UN Security Council to authorize one of the toughest multilateral sanctions regimes in history. The combination of unilateral and multilateral pressure was crucial to bringing Iran to the negotiating table, and ultimately, to laying the foundation whereby we were able to reach a framework agreement that would, if we can get a final deal, effectively cut off every pathway for the Iranian regime to develop a nuclear weapon.

Consider our response to the Ebola epidemic. Last September, as people were dying outside hospitals in West Africa, hospitals that had no beds left to treat the exploding number of Ebola patients, the United States chaired the first-ever emergency meeting of the UN Security Council dedicated to a global health issue. We pressed countries to deploy doctors and nurses, to build clinics and testing labs, and to fill other gaps that ultimately helped bend the outbreak's exponentially rising curve. America did not just rally others to step up, we led by example, thanks also very much to the support of this Congress, deploying more than 3,500 U.S. Government civilian and military personnel to Liberia, which has been Ebola-free since early May.

Second, we are reforming UN peacekeeping to help address the threats to international peace and security that exist in the 21<sup>st</sup> century. There are more than 100,000 uniformed police

and soldiers deployed in the UN's sixteen peacekeeping missions around the world—that is a higher number than in any time in history—with more complex responsibilities also than ever before. The United States has an abiding strategic interest in resolving the conflicts where peacekeepers serve, which can quickly cause regional instability and attract extremist groups, as we have seen in Mali. Yet while we have seen peacekeepers serve with bravery and professionalism in many of the world's most dangerous operating environments, we've also seen chronic problems, too often, as mentioned, including the failure to protect civilians.

We are working aggressively to address these shortfalls. To give just one example, we are persuading more advanced militaries to step up and contribute soldiers and police to UN peacekeeping. That was the aim of a summit that Vice President Biden convened at the UN last September, where Colombia, Sweden, Indonesia and more than a dozen other countries announced new troop commitments; and it is the message I took directly to European leaders in March, when I made the case in Brussels that peacekeeping is a critical way for European militaries to do their fair share in protecting our common security interests, particularly as they draw down in Afghanistan. This coming September, President Obama will convene another summit of world leaders to build on this momentum and help catalyze a new wave of commitments and generate a new set of capabilities for UN peacekeeping.

Third, we are fighting to end bias and discrimination at the UN. Day in and day out, we push back against efforts to delegitimize Israel at the UN, and we fight for its right to be treated like any other nation—from mounting a full-court diplomatic press to help secure Israel's permanent membership into two UN groups from which it had long and unjustly been excluded, to consistently and firmly opposing one-sided actions in international bodies. In December, when a deeply unbalanced draft resolution on the Israel-Palestinian conflict was hastily put before the Security Council, the United States successfully rallied a coalition to join us in voting against it, ensuring that the resolution failed to achieve the nine votes of Security Council members required for adoption. We will continue to confront anti-Israel bias wherever we encounter it.

Fourth, we are working to use UN tools to promote human rights and affirm human dignity, as we did by working with partners to hold the first-ever Security Council meeting focused on the human rights situation in North Korea in December. We used that session to shine a light on the regime's horrors...

Fifth, we are doing everything within our power to make the UN more fiscally responsible, more accountable, and more nimble—both because we have a responsibility to ensure American taxpayer dollars are spent wisely, and because maximizing the efficiency of our contributions means saving more lives and better protecting the world's most vulnerable people. Since the 2008 to 2009 fiscal year, we have reduced the cost-per-peacekeeper by 18 percent, and we are constantly looking for ways to right-size missions in response to conditions on the ground, as we will do this year through substantial drawdowns in Côte d'Ivoire, Haiti, and Liberia, among other missions.

Let me conclude. ...

Some may view the expectation that America can help people overcome their greatest challenges and secure their basic rights as a burden. In fact, that expectation is one of our nation's greatest strengths, and one we have a vested interest in striving to live up to—daunting as it may feel in the face of so many crises. But we cannot do it alone, nor should we want to. That is why it is more important than ever that we use the UN to rally the multilateral support needed to confront today's myriad challenges.

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### 3. UNESCO

On November 6, 2015 Deputy Secretary of State Antony J. Blinken delivered the U.S. National Statement at UNESCO in Paris. His remarks are excerpted below and available at <http://www.state.gov/s/d/2015/249260.htm>.

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Mister President of the General Conference, Madam Director-General, distinguished delegates, it is an honor to represent the United States at the 38<sup>th</sup> session of the General Conference during UNESCO's 70<sup>th</sup> anniversary.

I'm grateful for this opportunity to affirm our candidacy for reelection to UNESCO's Executive Board and to reiterate our nation's belief in the undeniably important role that UNESCO plays in upholding our collective peace and security.

Seventy years ago, out of the rubble of war and the pain of unfathomable national loss, our predecessors made one of the wisest decisions in human history. With the gift of foresight and the courage of hope, they resisted the impulse to concentrate power in the hands of the victors. Instead, they built an international system of institutions, norms, and rules dedicated to the peace, stability, and prosperity for every nation.

They stood up a force of blue helmets to protect civilians. They created organizations to safeguard public health, defend human rights, and respond to humanitarian crises. And they founded UNESCO to preserve the common spirit of our humanity while cherishing its diversity of traditions, cultures, and faiths.

Taken together, these institutions have given life to a global order that provides still to this day the best and sometimes the only means to prevent conflict, energize progress, and allow countries to resolve their differences diplomatically and peacefully.

As an integral pillar of this order, UNESCO stands on the frontlines of some of our toughest challenges equipped with some of our most powerful weapons: the lasting impact of a quality education, the skepticism of a free press, the expertise of our cultural preservationists, and the latest tools to sustainability manage our precious resources.

Across all of these critical issues, the United States is deeply engaged as a leader and partner with UNESCO. We were very pleased to join many of you earlier this afternoon to elevate the role of education in preventing and countering violent extremism—a role that received ringing endorsement by more than 85 co-sponsors during the session of the Executive Board. I was also proud to highlight a new UNESCO and US-led education initiative to equip students with the skills to embrace inclusion and resist violent extremism, and I encourage all UNESCO members to join this effort.

Wherever our values are under greatest threat, we see UNESCO's work making a difference—from preserving cultural heritage in Syria and Iraq to protecting the safety of journalists and the free flow of information to fighting for a quality education for all our children.

We are honored to be a partner in these initiatives. At the 197<sup>th</sup> Executive Board last month, we were proud co-sponsors of several important resolutions, including...

...highlighting UNESCO's work to combat climate change in advance of the Paris Climate Conference...

...advancing freedom of expression, supporting equal access to education, and protecting cultural heritage in Ukraine...

...and recommending the admission of Kosovo as a member of this organization. The constitution of UNESCO is clear on this issue, there is an undeniable path for Kosovo membership in the organization, a path which is not diverted and not blocked by United Nations Security Council resolution 1244. This is not a question of recognition or non-recognition. Countries that do not recognize Kosovo have supported its membership in specialized UN agencies including the World Bank and the IMF. Our co-sponsorship of the resolution conveys our strong belief that Kosovo should be welcomed by the General Conference as a full member.

A founding member of UNESCO, we remain committed to its ideals and aspirations. As a candidate for the Executive Board, the United States renews that promise, reiterates our determination to restore full funding for the organization, and pledges our continued, determined leadership.

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The goals we've set for ourselves—from fighting climate change to achieving universal access to education to fighting violent extremism—are only possible if we work together to utilize these shared gifts, so that our collective efforts to make the world a little bit healthier, a little bit wealthier, a little bit wiser are empowered by the talents of all of our citizens. This is the *raison d'être* not only of UNESCO—but of all those who have high hopes and big dreams for the future.

On behalf of Secretary Kerry, it is my honor and privilege to reaffirm our position as a proud candidate for the executive board. I extend my sincere appreciation to this institution, its leadership, and its mission of peace.

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The United States was reelected to the UNESCO Executive Board. Secretary Kerry issued a press statement on November 11, 2015, saying, "I am very pleased the United States has been reelected to the Executive Board of [UNESCO]." His press statement is available at <http://www.state.gov/secretary/remarks/2015/11/249414.htm>, and also includes the following:

As other countries' representatives underscored with me in Paris, U.S. leadership is essential if the organization is to successfully carry out its mission.

I am determined to restore U.S. funding to UNESCO, and hopeful that Congress will act to provide the Administration the authority needed to waive the current legislative restrictions that prohibit U.S. contributions to the organization.

To our partners in UNESCO, the United States pledges to continue to work closely with you to address the urgent challenges we all face, including

countering violent extremism, expanding educational opportunities for women and girls, stimulating groundbreaking scientific research, protecting and preserving the world's cultural heritage, conserving ocean health, and promoting freedom of the press and protection of journalists.

#### 4. U.S. Support for Israel at the UN

On November 24, 2015, Ambassador David Pressman, Alternate Representative to the UN for Special Political Affairs, delivered the U.S. explanation of vote on a UN General Assembly resolution concerning the situation in the Middle East. Ambassador Pressman expressed the U.S. view that actions targeting Israel at the UN do not advance the Middle East peace process. For further discussion of the Middle East peace process and activities of the Quartet in 2015, see Chapter 17. Ambassador Pressman's statement is excerpted below and available at <http://usun.state.gov/remarks/7010>.

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Mr. President, the United States remains profoundly troubled by the repetitive and disproportionate number of one-sided General Assembly resolutions designed to condemn Israel—a total of 18 this year. This one-sided approach damages the prospects for peace by undermining trust between parties and the kind of international support critical to achieving peace. All parties to the conflict have responsibilities for ending it, and we are disappointed that UN members continually single out Israel without acknowledging the responsibilities and difficult steps that must be taken on all sides.

It is manifestly unjust that the United Nations—an institution founded upon the idea that all nations should be treated equally—is so often used by Member States to treat Israel unequally.

Of these annual resolutions, three are particularly troubling: the resolution on the “Division for Palestinian Rights of the Secretariat;” the resolution on the “Committee on the Exercise of the Inalienable Rights of the Palestinian People;” and the resolution on the “Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories.” These resolutions renew mandates for UN bodies established decades ago, wasting valuable resources and reinforcing the systemic UN bias against Israel. All Member States should evaluate the effectiveness of supporting and funding these bodies.

The United States remains firmly committed to advancing a two-state solution. We continue to urge all sides to take steps to stop the violence, improve conditions on the ground in the West Bank and Gaza, and move the diplomatic process forward.

This means reversing current trends where terrorism, violence, settlements, and demolitions are increasingly creating a one-state reality and imperiling the viability of a two-state solution. It means resuming the Oslo transition to greater Palestinian civil responsibility.

We believe that doing so will enhance security and stability for the Israelis and Palestinians alike.

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I would like to reiterate that the United States has consistently opposed every effort to delegitimize Israel or undermine its security at the United Nations and we will continue to do so with vigor.

Our continued opposition to the resolution on “Israeli Settlements in the Occupied Palestinian Territory, including Jerusalem, and the Occupied Golan,” however, should not be understood to mean that we support settlement activity. On the contrary, we view Israeli settlement activity as illegitimate and counterproductive to the cause of peace.

During the past year, we have been deeply concerned by Israel’s advancement of plans for thousands of additional housing units in the West Bank and East Jerusalem. We have made clear that such action only draws condemnation from the international community, poisons the atmosphere, and undermines the prospects for peace.

While the United States unequivocally rejects Israeli settlements in territories occupied in 1967, this does not justify the repetitive and one-sided General Assembly resolutions facilitating the condemnation of Israel. These resolutions set back our collective efforts to advance a peaceful resolution to the conflict between the Israelis and Palestinians, and they damage the institutional credibility of the United Nations.

Biased resolutions will not advance peace; only hard choices made in the context of bilateral negotiations will do that. The cause of peace would be well-served by more balance and less bias in the General Assembly of the United Nations.

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On December 13, 2015, Ambassador Power delivered remarks on the meaning of U.S. partnership to Israel at the UN. Her remarks are excerpted below and available at <http://usun.state.gov/remarks/7043>.

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But today, I want to focus first on a different kind of “defense” relationship. I’m referring to our efforts to defend Israel at the United Nations, and to fight every day for something that no nation should actually have to fight for: the ability to be treated just like any other country. That’s the objective. It shouldn’t be hard. Now, the UN is an institution that celebrates in its charter “the equal rights of nations large and small.” And yet, as you know well, unfortunately the UN has been a place where Israel is not always treated fairly. Just a few weeks ago, we marked the 40th anniversary of one of most infamous of those moments, the moment when a huge majority in the UN General Assembly voted to declare Zionism as “a form of racism.” Seventy-two nations voted for that resolution 40 years ago, more than double the number that voted against it.

While that deplorable resolution was revoked 16 years later by an overwhelming majority of UN Member States—including many of those who had originally voted for it—bias against

Israel at the UN does persist. Member States have sought to use the Security Council, the General Assembly, the Human Rights Council, and other UN institutions as platforms to try to delegitimize the country. And when they do, the United States pushes back. Consider the UN Human Rights Council, which has only one permanent agenda item devoted to a single country: that's Israel. Think about the absurdity of that for the moment given the state of the world. The one country in the world with a standing agenda item is not Syria, which gasses its people and barrel bombs them without mercy. It is Israel.

Before the United States rejoined the Human Rights Council in 2009, more than half of all country-specific resolutions it adopted focused on Israel. That is many more resolutions than are dedicated to North Korea, for example—and North Korea is a country where the UN estimates that between 80 and 120,000 people are being held in gulags in which they are routinely tortured, raped, starved, and worked to death. Since the U.S. has become a member of the Human Rights Council, we've helped cut the proportion of Israel-focused resolutions in half—to one-quarter of all resolutions. And that is still far too high, but I think a measurable improvement that results largely from our efforts.

We also fight relentlessly for Israel's full and equal participation in UN bodies. Again, this shouldn't be hard, but it is stunningly difficult. While membership in these groups may sound bureaucratic, ...these are the places where actual UN policies are hammered out, and where key UN leadership posts are determined. They're also a symptom of a phenomenon. For years Israel was the *only* UN Member State that was excluded from being in a regional body at the UN in Geneva; it was an orphan. And in New York, though its voting record coincided with other countries in a like-minded human rights caucus, Israel was shut out. ... In January 2014, after a sustained, full court diplomatic press, we helped secure for Israel permanent membership in what's called the "Western European and Others Group"—the group that the United States also belongs to; in February 2014 we secured Israel's membership in that like-minded human rights caucus from which it should have never been excluded.

Just this past fall, we have secured Israel's inclusion in the Committee on the Peaceful Uses of Outer Space, COPUOS (for people interested in the acronym: COPUOS). This is a body that has a global scope, and includes a full range of countries—from those with massive space programs to those with none at all. Now, the practice with COPUOS—over the course of 57 previous sessions—had been to consider membership candidates as a single slate by consensus. Yet when Israel was one of the six countries put forward as a block in June, a group of Arab states insisted that each candidate be voted on separately at the next meeting. So, no more "clean slate." In other words—breaking with convention in order to deny Israel's membership. We got to work, spending months methodically persuading other countries to co-sponsor a resolution that would ensure Israel was able to join COPUOS. We worked the phones; we cornered countries' representatives at the UN in strange places; U.S. ambassadors around the world made the case in nations' capitals. And last week, 155 countries voted for the block of six new COPUOS members, including Israel. And here's the even better news: not a single country opposed the vote. ...

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This surge in hate is why it is so important that—in January of this year—we joined Israel and the European Union in sponsoring the first-ever meeting on anti-Semitism in the UN. And it took place in the very same chamber where the "Zionism is racism" resolution was passed

40 years before. More than 50 countries and organizations came together to condemn this horrific problem, and pledged to take concrete and urgent steps to confront it. Implementation and follow through was key, but this is the role the UN can and must play.

Now, the other area in which the United States has been a partner to Israel is in our efforts to achieve a lasting peace between Israel and the Palestinians, as well as between Israel and its Arab neighbors. President Obama's commitment to achieving a two-state solution has been unwavering. And it has been driven by his deeply held conviction—as he said in Jerusalem in March of 2013, and has repeated consistently since—that, as he puts it, “peace is necessary, just, and possible.” We believe that to this day, and we remain committed to Israel's future as a secure, democratic, and Jewish state. And we are committed to an independent and viable Palestinian state, where Palestinians can live with freedom and with dignity.

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... President Obama has called on both sides to demonstrate, in words and actions, a genuine commitment to a two-state solution. It is why, at the UN and in other international fora, we will continue to support efforts that will strengthen stability and security in the region, and oppose efforts that we believe would undermine a two-state solution. It is why we will continue to support the UN Relief and Works Agency, the UN agency that helps Palestinian refugees and to which the United States is the largest donor, while working to improve its operations; it's why we'll continue to contribute to UN-led reconstruction efforts in Gaza; and speak up for Israel's right to defend itself. And it is why we remain committed to diplomacy and will continue to participate actively in the Quartet. When the ministers who make up the Quartet—from the EU, Russia, the UN, and the United States—met during this year's UN General Assembly in September in New York, they proposed immediate and concrete steps, including increasing Palestinian civil authority and strengthening the Palestinian economy; steps that would resume the transition envisaged by the Oslo accords without undermining Israel's security. If taken, steps like these could begin to reduce tension, rebuild a baseline of trust, and lay the foundation for the bigger, more complex decisions that will need to be made down the road. These steps can also help make Israelis and Palestinians believe that a political process has a chance of eventually fulfilling their legitimate aspirations to two states, for two peoples, in security and in peace.

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## **B. PALESTINIAN MEMBERSHIP IN INTERNATIONAL ORGANIZATIONS**

On January 8, 2015, the Department of State spokesperson provided an answer to a taken question regarding Palestinian efforts to accede to the Rome Statute of the International Criminal Court. The answer follows and is available at <http://www.state.gov/r/pa/prs/ps/2015/01/235695.htm>.

As we have said previously, we have made clear our opposition to Palestinian action in seeking to join the Rome Statute of the International Criminal Court.

This step is counter-productive, will damage the atmosphere with the very people with whom Palestinians ultimately need to make peace, and will do nothing to further the aspirations of the Palestinian people for a sovereign and independent state.

The view of the United States is that the Palestinians have not yet established a state. Neither the steps that the Palestinians have taken, nor the actions the UN Secretariat has taken in performing the Secretary-General's functions as depositary for the Rome Statute, warrant the conclusion that the Palestinians have established a "state," or have the legal competences necessary to fulfill the requirements of the Rome Statute. The United States does not believe that the Palestinians are eligible to become a party to the Rome Statute or any of the other treaties at issue, or that the United States is in treaty relations with the Palestinians under any of the treaties that they are seeking to join.

As the UN spokesperson said last April, and as the United Nations specifically confirmed yesterday, the treatment of such documents by the depositary is "an administrative function performed by the Secretariat as part of the Secretary-General's responsibility as depositary," and it is for states to resolve "any legal issues raised by instruments circulated by the Secretary-General."

Ultimately, the parties can only realize their aspirations, including the desire of Palestinians for statehood, through direct negotiations with each other. The United States will continue to work to advance the interest we share in bringing about a lasting peace between the Israelis and Palestinians.

On January 16, 2015, the ICC Prosecutor announced her decision to open a preliminary examination into the "situation in Palestine," in response to the January 1, 2015 declaration submitted by the Palestinians under article 12(3) of the Rome Statute accepting the jurisdiction of the ICC over alleged crimes committed "in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014." See ICC website at [https://www.icc-cpi.int/Pages/item.aspx?name\\_pr1083](https://www.icc-cpi.int/Pages/item.aspx?name_pr1083). The U.S. Department of State issued a press statement on the ICC Prosecutor's decision on January 16, 2015, below, and also available at <http://www.state.gov/r/pa/prs/ps/2015/01/236082.htm>.

We strongly disagree with the ICC Prosecutor's action today. As we have said repeatedly, we do not believe that Palestine is a state and therefore we do not believe that it is eligible to join the ICC. It is a tragic irony that Israel, which has withstood thousands of terrorist rockets fired at its civilians and its neighborhoods, is now being scrutinized by the ICC. The place to resolve the differences between the parties is through direct negotiations, not unilateral actions by either side. We will continue to oppose actions against Israel at the ICC as counterproductive to the cause of peace.

### C. INTERNATIONAL COURT OF JUSTICE

On February 6, 2015, Judge Joan Donoghue began her second term as a member of the International Court of Justice. The United States strongly supported Judge Donoghue's candidacy during the 2014 elections in the UN General Assembly and Security Council. Judge Mohamed Bennouna of Morocco also began his second term, and Judges James Crawford of Australia, Kirill Gevorgian of Russia, and Patrick Robinson of Jamaica were all seated as new members of the Court.

On November 5, 2015, Ms. Cassandra Q. Butts, Senior Advisor for the U.S. Mission to the UN, delivered remarks on the International Court of Justice at the 70th UN General Assembly. Ms. Butts's remarks are excerpted below and available in full at <http://usun.state.gov/remarks/6969>.

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The United States would like to congratulate President Abraham on his election to the presidency earlier this year. We also congratulate Judges Joan Donoghue and Mohamed Bennouna on their re-election, and Judges James Crawford, Kirill Gevorgian, and Patrick Robinson on their election as new members of the Court.

We would like to thank President Abraham for his leadership of the Court over much of the past year, and for his recent report regarding the activities of the Court between August 2014 and July 2015. In reviewing the report, we are again struck by how productive the Court continues to be. Over the course of the year, the Court issued two judgements and nine orders, and held public hearings in two cases. In addition, the Court remained seized of a number of other matters, with twelve cases in total on the Court's list.

We commend the Court's increasing ability to respond promptly and efficiently to requests put before it, particularly in light of the Court's growing caseload, as well as the growing factual and legal complexity of its cases, and we appreciate that the Court has set for itself a particularly demanding schedule of hearings and deliberations. We believe these efforts will continue to bolster the confidence in the Court, and often provide States the opportunity to resolve disputes before they escalate. This year, as in years past, the Court has taken up a considerable range of topics including genocide, boundary disputes, the use of force, and the interpretation of international agreements, among others. It is the result of such efforts that we continue to see states turn to the Court to resolve their disputes peacefully.

We also want to remark upon the Court's continued public outreach to educate key sectors of society—law professors and students; judicial officials and government officials and the general public—on the work of the Court and to increase understanding of the ICJ's work. We appreciate the efforts the Court has made to increase accessibility and transparency, including by making its recordings available to watch live and on demand on UN Web TV. All of these efforts complement and expand the efforts of the United Nations to promote the rule of law globally and to promote a better understanding of public international law.

As we approach the 70th anniversary of the Court's inaugural session at the Peace Palace, we have a unique opportunity to reflect on the Court's important role and on the impressive legal jurisprudence the Court has developed. The International Court of Justice was established under Article 92 of the UN Charter as the principal judicial organ of the United Nations, and in its nearly seven decades of work since then, has contributed immeasurably to the peaceful settlement of disputes and to the development and understanding of international law.

The preamble of the Charter underscores the determination of its drafters "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." This goal lies at the core of the Charter system, and in particular of the Court. The United States is pleased to join others today in celebrating and applauding nearly 70 years of the Court's work.

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## **D. INTERNATIONAL LAW COMMISSION**

### **1. ILC Member Sean Murphy's Candidacy for Re-election**

In October 2015, the United States nominated Professor Sean D. Murphy of the George Washington University Law School for re-election to the ILC. In conjunction with the campaign to re-elect Professor Murphy, Secretary of State John F. Kerry signed a letter announcing the nomination. The text of the letter is excerpted below.

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I am pleased to inform you that the United States has nominated Professor Sean Murphy for re-election to the International Law Commission. Elections for the Commission will be held in the fall of 2016, and I seek your support for Professor Murphy's re-election.

Professor Murphy has been a distinguished international lawyer for more than 25 years. He has been a professor of international law at George Washington University Law School since 1998 where he is tenured as the Patricia Roberts Harris Research Professor of Law. Before joining George Washington University, he served with distinction for eleven years as an attorney in the Office of the Legal Adviser of the Department of State, including as the Legal Counselor at the U.S. Embassy in The Hague. He has been a visiting professor at universities across the world and is the author of prominent works on international law, including influential casebooks on public international law and U.S. foreign relations law. He is a frequent commentator in the media and a prominent voice among American lawyers and scholars on a wide range of legal issues.

During his first term on the International Law Commission, Professor Murphy contributed to the Commission's work in a number of areas. Most notably, the Commission added an important topic he proposed, "Crimes against Humanity," to its active agenda in 2014 and appointed him Special Rapporteur for the topic.

The International Law Commission is of great importance to all of us who value the codification and development of international law. In addition to his service on the Commission, Professor Murphy has been an influential ambassador for it. His tireless efforts to describe the

Commission and its work, by speaking publicly and writing extensively about the Commission's history and current topics, have raised the Commission's profile in the United States.

I am confident Professor Murphy has the commitment and vision to help guide the Commission in its important work in the years ahead. His knowledge, temperament, and dedication to the development of international law make him an outstanding choice for this important position. I strongly support his re-election, and I hope you will support his candidacy in the 71<sup>st</sup> session of the General Assembly.

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## 2. ILC's Work at its 67<sup>th</sup> Session

On November 3, 2015, the United States provided a statement at the 70th UN General Assembly Sixth Committee on the Report on the Work of the International Law Commission ("ILC") at its 67<sup>th</sup> session. The November 3 statement addresses the topics of most-favored-nation clauses; the protection of the atmosphere; and chapter 12 of the ILC's report regarding other decisions and conclusions. The U.S. statement is excerpted below and available

at <https://papersmart.unmeetings.org/media2/7654634/united-states-of-america.pdf>.

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### **Most-Favored-Nation Clause**

With respect to the topic of the Most-Favored-Nation Clause, ...we believe the report can serve as a useful resource for governments and practitioners who have an interest in this information.

We support the Study Group's decision not to prepare new draft articles or to revise the 1978 draft articles, and instead to include a summary of conclusions in the final report, which were adopted by the Commission. We also agree with the conclusion that the interpretation of most-favored-nation clauses is to be undertaken on the basis of the rules for the interpretation of treaties as set out in the Vienna Convention on the Law of Treaties. Each MFN clause is the product of a specific treaty negotiation and can differ considerably in its language, structure, and scope from MFN clauses that appear in other treaties. Each MFN clause is also dependent on other provisions in the specific treaty in which it is located and thus, while there is value in generally studying such clauses, they resist uniform meaning.

### **Protection of the Atmosphere**

With respect to the topic of "Protection of the Atmosphere," Mr. Chairman, we continue to be concerned about the direction it appears to be taking.

Our original concerns, which have only intensified as this topic has progressed, run along two main lines.

First, we did not believe that the topic was a useful one for the Commission to address. Various long-standing instruments already provide general guidance to States in their development, refinement, and implementation of treaty regimes, and, in many instances, very specific guidance tailored to discrete problems relating to atmospheric protection. As such, we were concerned that any exercise to extract broad legal rules from environmental agreements

concluded in particularized areas would not be feasible and might potentially undermine carefully negotiated differences among regimes.

Second, we believed that such an exercise, and the topic more generally, was likely to complicate rather than facilitate ongoing and future negotiations and thus might inhibit State progress in the environmental area.

Accordingly, we opposed inclusion of this topic on the Commission's agenda. Our concerns were somewhat allayed when the Commission adopted an understanding in 2013... But we have been disappointed. Both the first and second reports evinced a desire to recharacterize the understanding and to take an expansive view of the topic. And while we had concerns with many aspects of the draft guidelines provisionally adopted by the Commission this summer, the most serious concerns draft guideline 5, paragraph 1, which purports to describe States' obligations to cooperate with respect to the protection of the atmosphere. We do not believe this provision reflects customary international law and we believe it should be reconsidered.

Looking forward, we are particularly concerned by the Special Rapporteur's proposed long-term plan of work. If it were to be followed, the work would continue to stray outside the scope of the understanding and into unproductive and even counterproductive areas. For these reasons, we call upon the Commission to suspend or discontinue its work on this topic.

***Other decisions and conclusions...***

We...note the addition of the topic of *jus cogens* to the Commission's active agenda. We are pleased with the selection of Dire Tladi as the Special Rapporteur...

We urge the Commission...to focus clearly and carefully on treaty practice, notably under the rules reflected in the Vienna Convention on the Law of Treaties, and on other State practice that illuminates the nature and content of *jus cogens*, the criteria for its formation, and the consequences flowing therefrom. ...

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On November 6, 2015, Assistant Legal Adviser Todd Buchwald delivered remarks on behalf of the United States at the 70th UN General Assembly Sixth Committee on the Report of the ILC on the Work of its 67th Session. He discussed the work of the ILC on multiple subjects, including: the identification of customary international law; crimes against humanity; and subsequent agreements and subsequent practice in relation to the interpretation of treaties. Mr. Buchwald's remarks on customary international law and crimes against humanity are excerpted below and available at <http://usun.state.gov/remarks/6968>. His remarks on subsequent practice are excerpted in Chapter 4.

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Mr. Chairman, with respect to the topic "Identification of customary international law," the United States thanks the Special Rapporteur, Sir Michael Wood, for yet another very impressive report. As with Sir Michael's previous work, the third report makes substantial contributions to

this important topic. We also thank the Drafting Committee for the Draft Conclusions provisionally adopted this year based upon his work.

While we believe that the Special Rapporteur and Drafting Committee have very successfully addressed many aspects of this important topic, the United States has some remaining concerns. We would like to comment on our primary concern and mention two others today.

Mr. Chairman, the United States remains particularly concerned about Draft Conclusion 4 and its discussion of the role of the practice of international organizations in contributing to the formation or expression of customary international law. We are concerned that it may be interpreted to mean that the practice of international organizations may serve as directly relevant practice, i.e., play the same role as State practice, in the formation and identification of customary international law, at least in some circumstances.

We have two points regarding that conclusion.

First, the United States does not believe that the case law or that the views expressed by States themselves have generally recognized that the actions of international organizations “as such”—in other words, as distinct from the practice of their member States—contributes directly to the formation of customary rules. The report of the Special Rapporteur provides very little support for this proposition, notwithstanding the existence of international organizations for more than a century. Therefore, we believe that the treatment of the role of international organizations in paragraph 2 of Draft Conclusion 4 needs to be reconceived in order to avoid misleading users of the final product, including the judges and lawyers who may not be particularly well-versed in public international law and for whom the Draft Conclusions are largely intended.

In our view, international organizations can play important, indirect roles in the process by which the practice of States generates custom, including as the fora in which State practice and *opinio juris* may develop or be articulated and, in many fields, as the key actors to which States respond in ways that may generate State practice or evidence of *opinio juris*. This, however, is not the same thing as saying that the practice of the international organization itself constitutes practice that should be counted along with State practice when determining the existence of a customary rule.

One possible exception to this division of roles between States and international organizations may be the European Union, and perhaps other organizations that might now or in the future exercise similar competences. However, even if such organizations “as such” contribute directly to the formation of custom in some areas, we do not believe that such a limited, exceptional role for certain international organizations supports the broad language of paragraph 2 of Draft Conclusion 4.

Second, if the International Law Commission believes that it is important to address the role of international organizations in the identification of customary rules, the United States believes that it would be better for the role of international organizations to be considered separately from that of States. By addressing international organizations separately, the Commission would be able to recognize and address the fact that international organizations include a great variety of entities, with differing roles, competences, and practices. Doing so would also allow the Commission to identify the specific cases in which the Commission believes that the practice of international organizations is directly relevant for the purposes of the creation of customary rules and explain how their practice would be “counted.” For example, it could consider whether the practice of one or more international organizations could result in the

creation of a new customary rule despite there being insufficient State practice, or whether the practice of international organizations could block the creation of a customary rule even when State practice in favor is otherwise sufficient. The United States believes that a discussion of a role for the practice of international organizations in the creation and identification of custom needs to address these issues to avoid the suggestion that international organizations are like States in these respects.

Mr. Chairman, before we conclude, we would like to make two additional points. The first involves the tenor of the Draft Conclusions as a whole. Our concern here is that the Draft Conclusions—by inviting readers to find evidence of customary international law in a wide variety of sources—may be understood to suggest that customary international law is easily created or inferred. We do not believe that it is the case and, therefore, hope that the commentary will underscore that only when the strict requirements for extensive and virtually uniform practice of States, including specially affected States, accompanied by *opinio juris* are met is customary international law formed.

Similarly, we continue to be concerned that the draft conclusion on “particular custom” does not adequately articulate when such custom is and is not created. We hope that will be clarified in the commentary or future revisions of the draft conclusions.

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Mr. Chairman, on the topic of “crimes against humanity,” the United States is following the Commission’s work with great interest. Special Rapporteur Sean Murphy has brought tremendous value to bear in the Commission’s work on this topic, including the difficult questions that this topic implicates.

The commentary’s description of the lineage of the concept of crimes against humanity—from the Charter of the International Military Tribunal at Nürnberg through Yugoslavia and Rwanda Tribunals to the ICC—is a sober reminder of the importance of this topic. It is also a testament to the important role the development of the concept of “crimes against humanity” has played in the pursuit of accountability for some of the most horrific episodes of the last hundred years.

As the description of this topic noted, the widespread adoption of certain multilateral treaties regarding serious international crimes—such as the 1948 Convention on the Prevention and Punishment of the Crime of Genocide—has made a valuable contribution to international law, and the United States believes that careful consideration and discussion of draft articles for a convention on the prevention and punishment of crimes against humanity could also be valuable. As we have previously noted, this topic’s importance is matched by the difficulty of some of the legal issues that it implicates . . . We are continuing to study the ILC’s work carefully, as it presents a number of complex issues, on which we are still developing our views. . . .

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On November 11, 2015, Mark Simonoff, Minister Counselor for the U.S. Mission to the UN, delivered remarks at the 70th UN General Assembly Sixth Committee on the Report of the ILC on the Work of its 67th Session. His remarks cover several topics, including: protecting the environment in relation to armed conflict; immunity of State officials from foreign criminal jurisdiction; and provisional application of treaties. Mr.

Simonoff's remarks are excerpted below and available at <http://usun.state.gov/remarks/6976>. See Chapter 4 for excerpts from Mr. Simonoff's remarks on provisional application of treaties.

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Thank you, Mr. Chairman. Concerning the topic "Protection of the environment in relation to armed conflict," we greatly appreciate the diligent and thoughtful work of Special Rapporteur Marie Jacobsson, the drafting committee, and the rest of the Commission. We noted with interest the draft introductory provisions and principles that have been completed by the drafting committee. Nevertheless, we have substantial concern with the content and phrasing of a number of the draft principles, as well as the direction in which they appear to be orienting this project.

We have a general concern that most of the draft principles are phrased in mandatory terms, purporting to provide what "shall" be done, despite the fact that the principles go beyond existing legal requirements of general applicability.

Relatedly, we are troubled by the presence among the principles of rules extracted from certain treaties that we do not believe reflect customary law. For example, draft principle II-4 repeats a prohibition in Additional Protocol I, AP I, on attacks against the natural environment by way of reprisals that we do not believe exists as a matter of customary international law. To the extent the rule is offered to encourage normative development, we remain in disagreement with it, consistent with the objections we have stated on other occasions.

We are also concerned that the draft principles appear to suggest that the Commission will address questions about the concurrent application, in situations of armed conflict, of bodies of international law other than international humanitarian law. For example, draft principle II-1 refers to "applicable international law *and, in particular, the law of armed conflict.*" Our consistent view has been that the Commission should avoid such questions, and it would appear appropriate to do so in that all of the draft principles are drawn from the law of armed conflict.

Other draft principles could benefit from further refinement or adjustment.

For example, concerning draft principle I-(x) we have concerns about the inclusion of the phrase "or otherwise" insofar as it may be taken to suggest that a designation to which one side has not consented may nevertheless have legal effects. For example, even though a State may remove its military objectives from an area in order to reduce the likelihood that an opposing State, during armed conflict, would conduct attacks in the area or view such an area as a military objective, a unilateral designation would not create obligations for an opposing State to refrain from capturing the area or placing military objectives inside it during armed conflict.

We also recommend omitting "cultural importance" as a basis for designating an area, as that reference is beyond the scope of these principles as specified in the introduction. Further, in connection with draft principle II-5, we suggest clarifying that States that are not Party to an agreement would not be bound by its provisions, especially if a non-Party is the State in whose territory the area is located. Similarly, in connection with draft principle II-5, we suggest clarifying that if a designated area contains a military objective, the entire "area" would not necessarily forfeit protection from being made the object of attack.

With respect to draft principle II-2, we do not believe it is useful or correct to state that all of the law of armed conflict "shall be applied" to the natural environment. Whether a

particular rule of the law of armed conflict is applicable with respect to the natural environment may depend on the context, including the contemplated military action. To the extent draft principle II-2 is intended merely to confirm the applicability of existing law, the principle seems too vague and ambiguous to accomplish that purpose. We hope the principle is *not* intended to modify the applicability of existing law.

We also recommend that draft principle II-3 be eliminated or revised—perhaps with the addition of a caveat such as “where appropriate—in that environmental considerations will not in all cases be relevant in applying “the principle of proportionality and the rules on military necessity” in the context of *jus in bello*. More fundamentally, it is unclear to us exactly what is meant by the phrase “environmental considerations” and the requirement that such considerations be “taken into account.”

Lastly, we recommend using the term “natural environment” rather than “environment” for clarity.

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Mr. Chairman, turning to the topic of Immunity of State Officials from Foreign Criminal Jurisdiction...

We note that the new draft article 6, paragraph 1, limits immunity *ratione materiae* to acts performed in an official capacity. This provision is sensible in light of the draft articles provisionally adopted by the Commission last year, in particular draft article 5, which provides that State officials acting as such enjoy immunity from the exercise of foreign criminal jurisdiction, and draft article 2(e), which defines “State official” as an individual who either represents the State or exercises State functions. In its comments last year, the United States noted that draft articles 2(e) and 5 appeared to express a broad view of immunity *ratione materiae*, subject to exceptions and procedural requirements

By contrast, the new draft article 6, as narrowed by the new definition in draft article 2(f), limits the reach of immunity *ratione materiae*. In particular, draft article 2(f) defines the phrase “an act performed in an official capacity” to mean “any act performed by a State official in the exercise of State authority.” This definition results in a narrower scope of immunity than would exist if the definition turned solely on whether the official's conduct could be attributed to a State, a factor analyzed in the Special Rapporteur's report. Both the definition in draft article 2(f) and exceptions to immunity are important and difficult issues that merit ongoing and careful consideration, and we look forward to the work of the Special Rapporteur and the Commission on them as this topic moves forward.

Draft article 6, paragraphs 2 and 3, provide that immunity *ratione materiae* subsists even after the individuals concerned have ceased to be State officials, and that individuals who formerly enjoyed immunity *ratione personae* continue to enjoy immunity as to their official acts. Both articles are consistent with the treaty-based immunities of diplomats, consular officers, and UN officials, who continue to enjoy residual immunity for their official acts even after they have left their respective offices.

The other major areas yet to be addressed are exceptions to immunity and procedural aspects of immunity. The Special Rapporteur proposes to address in her next report the issue of limits and exceptions to immunity, which she accurately noted is the most politically sensitive issue to be addressed in this project. ...

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### 3. ILC's Work on Crimes Against Humanity

On February 10, 2015, the U.S. Mission to the UN responded to an invitation to states to submit their views on the topic of crimes against humanity, one of the topics on the agenda of the ILC. U.N. Doc. A/69/118 (2014). Excerpts follow from the response of the United States. The full text of the response is available at <http://www.state.gov/s/l/c8183.htm>.

\* \* \* \*

The United States is pleased to respond to the International Law Commission's request to provide relevant information regarding domestic legislation and decisions of national courts regarding crimes against humanity.

The International Law Commission requested information on whether the State's national law at present expressly criminalizes "crimes against humanity" as such. The United States does not expressly criminalize "crimes against humanity" as such. There are several U.S. laws criminalizing conduct that may in some circumstances amount to crimes against humanity, namely a criminal prohibition on torture, *see* 18 U.S.C. § 2340A; a criminal prohibition on war crimes, *see* 18 U.S.C. § 2441; and a criminal prohibition on genocide, *see* 18 U.S.C. § 1091. However, these statutes do not criminalize all conduct that *might* amount to crimes against humanity, and some of the constituent acts of crimes against humanity as defined in certain international texts are not found in U.S. domestic law. There are also a host of other statutes with extraterritorial application that might apply depending on the circumstances (e.g., terrorism offenses, statutes dealing with international violent crime, etc.), and there are state-level criminal laws that may address several of the acts falling within the scope of crimes against humanity but do not necessarily apply to acts committed outside the United States.

The International Law Commission also requested information on the text of the relevant criminal statute(s). The relevant statutes are:

#### **Torture Statute, 18 U.S.C. § 2340**

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#### **War crimes statute, 18 U.S.C. § 2441**

\* \* \* \*

#### **Genocide Statute, 18 U.S.C. § 1091**

\* \* \* \*

The International Law Commission also requested information on under what conditions the State is capable of exercising jurisdiction over an alleged offender for the commission of a crime against humanity (e.g. when the offense occurs within its territory or when the offense is by its national or resident). As reflected in the statutory language above, the torture statute provides for jurisdiction where the alleged offender is a national of the United States, or the alleged offender is present in the United States, regardless of the nationality of the victim or alleged offender. The war crimes statute gives rise to jurisdiction where the alleged offender or victim is a member of the U.S. military and/or a U.S. national. The genocide statute provides for jurisdiction where the offense is committed in whole or in part in the United States or if the alleged offender is a U.S. national, a lawful permanent resident of the United States, a stateless person whose habitual residence is in the United States, or is present in the United States.

The International Law Commission also requested information on decisions of the State's national courts that have adjudicated crimes against humanity. Because there is no explicit criminal prohibition on crimes against humanity, as such, in the United States, U.S. courts have not adjudicated prosecutions for crimes against humanity.

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#### **4. ILC's Work on Protection of the Atmosphere**

Also on February 10, 2015, the United States responded to the ILC's request for relevant information "on domestic legislation and the judicial decisions of the domestic courts" regarding protection of the atmosphere. Excerpts follow from the U.S. response, which is available in full at <http://www.state.gov/s/l/c8183.htm>.

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The United States is pleased to respond to the International Law Commission's request to provide relevant information regarding domestic legislation and judicial decisions of domestic courts on protection of the atmosphere. This response provides examples of U.S. legislation and judicial decisions that relate to this topic. The United States has sought to provide examples that fall within the scope of the International Law Commission's work on this topic. The examples below do not constitute an exhaustive list of relevant U.S. legislation or judicial decisions. Further, in most instances such U.S. legislation is not adopted and such judicial decisions are not issued based on a belief that they are required by U.S. obligations under international law. Rather, such U.S. legislation is typically the product of political choices made within the United States as to how best to address environmental problems affecting the United States and such judicial decisions are in implementation of that legislation. In some instances, however, U.S. treaty obligations may be one of the reasons why U.S. legislation on a specific issue (such as ozone depletion) is adopted and U.S. courts may be guided by aspects of that treaty regime when deciding a case arising under such legislation.

## I. EXAMPLES OF DOMESTIC LEGISLATION

Since potential harms relating to the atmosphere arise in a broad range of very different contexts, the U.S. has a variety of laws and regulations, at the federal, state, and local levels that address in different ways a multitude of issues relating to air pollution and other potential harm to the atmosphere. Such laws and regulations can take very different forms: e.g. emissions standards; cap-and-trade regimes; loan guarantees to promote new technologies; tax regimes; and other regulatory mechanisms.

At the federal level, the U.S. has sophisticated and detailed statutory and regulatory regimes in a variety of areas of atmospheric protection. As the following examples demonstrate, these regimes are designed to address their unique problems in unique ways, and are not subject to general rules that span or seek to harmonize them. The U.S. experience has been that a “one size fits all” approach to this topic is not effective, efficient, or practical.

### A. FEDERAL LEGISLATION

1. Clean Air Act (CAA), 42 U.S.C. § 7401-7626. The CAA limits the emission of pollutants into the atmosphere from stationary and mobile sources in order to protect human health and the environment from the effects of airborne pollution. The CAA includes, *inter alia*, provisions that address acid rain, emissions that deplete the ozone layer, and toxic pollutants such as the accumulation of heavy metals. The U.S. Environmental Protection Agency (EPA) has adopted extensive regulations implementing this Act. See 40 CFR Subchapter C.

2. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, or “Superfund”), 42 U.S.C. § 9601-9675, and § 311 of the Clean Water Act (CWA), 33 U.S.C. 1321. CERCLA and CWA section 311 authorize the Federal government to clean up environmental contamination wherever it is found, usually in or on earth or water. This legislation has an impact on curbing air pollution because much oil and chemical contamination will evaporate into the air if not cleaned up. The National Contingency Plan, 40 CFR Part 300, governs cleanups under CERCLA and CWA section 311. 3. Resource Conservation and Recovery Act (RCRA) 42 U.S.C. § 3004(n). This legislation directs EPA to promulgate standards for organic air emissions from hazardous waste management at RCRA treatment, storage, and disposal facilities. EPA regulates leaks from process vents, such as open-ended pipes or stacks, and equipment used to treat hazardous waste, including valves, pumps, compressors, flanges, and pressure relief devices. [40 C.F.R sections 264 and 265 subparts AA and BB.] EPA also regulates leaks from hazardous waste tanks, containers, and surface impoundments. (40 C.F.R sections 264 and 265 subpart CC.) The subpart CC regulations also apply to tanks and containers used to accumulate hazardous waste at facilities that are “large quantity generators” of hazardous waste. These RCRA regulations generally require use of equipment that actively controls air emissions, and include specific operation, design, inspection, repair, and reporting requirements.

4. The Act to Prevent Pollution from Ships (APPS), 33 U.S.C. § 1901 - 1915: This Act implements a number of treaty requirements, including Annex VI of the MARPOL Convention relating to air emissions from ships.

5. Uranium Mill Tailings Radiation Control Act (UMTRCA), 42 USC § 2022 et seq. UMTRCA amended the Atomic Energy Act by directing EPA to set generally applicable health and environmental standards to govern the stabilization, restoration, disposal, and control of effluents and emissions at both active and inactive mill tailings sites. Title I of the Act covers inactive uranium mill tailing sites, depository sites, and vicinity properties. It directs EPA, the

Department of Energy, and the Nuclear Regulatory Commission to undertake standards of protection and compliance.

6. Nuclear Waste Policy Act (NWSA), 42 USC § 10101 et seq. The NWSA supports the use of deep geologic repositories for the safe storage and/or disposal of radioactive waste in order to protect air, land, and water from contamination. The Act establishes procedures to evaluate and select sites for geologic repositories and for the interaction of state and federal governments. It also provides a timetable of key milestones the federal agencies must meet in carrying out the program.

7. Energy Policy Act (EnPA), 42 USC 13201 et seq. (2005). The Act addresses energy production in the United States, including: (1) energy efficiency; (2) renewable energy; (3) oil and gas; (4) coal; (5) Tribal energy; (6) nuclear matters and security; (7) vehicles and motor fuels, including ethanol; (8) hydrogen; (9) electricity; (10) energy tax incentives; (11) hydropower and geothermal energy; and (12) climate change technology. For example, the Act provides loan guarantees for entities that develop or use innovative technologies that avoid the by-production of greenhouse gases. Another provision of the Act increases the amount of biofuel that must be mixed with gasoline sold in the United States.

8. Public Health Service Act (PHSA), 42 USC 201 et seq. This act, which consolidates laws related to the public health service, *inter alia* provides EPA the authority to monitor environmental radiation levels and provide technical assistance to states and other federal agencies in planning for and responding to radiological emergencies.

#### B. STATE LEGISLATION

Environmental law in the United States does not fall exclusively within the federal domain. Rather, various aspects of environmental law are regulated at the state level in recognition that different problems arising in different locations may require different types of legal measures that are tailored to the particular context in which they are applied. As such, all U.S. states have laws and regulations addressing air pollution. The cooperative federalism approach adopted by the federal Clean Air Act sets out distinct roles and obligations for the federal government and for state and local governments. State laws enacted to satisfy federal Clean Air Act obligations generally must be approved by EPA. See, e.g., 40 CFR Part 52 (approved state implementation plans designed to attain national ambient air quality standards). In certain circumstances, states are allowed to enact legal requirements that are more stringent than the federal requirements. 42 U.S.C. §7416.

The following are examples of state statutes that address air pollution and other relevant topic areas.

1. New Jersey: Air Pollution Control Act (1954), N.J. Stat. Ann. § 26:2C-1 (West): This act regulates motor vehicles exhaust emission standards and test methods.

2. Rhode Island: R.I. Admin. Code 25-4-10:10.2: This act establishes Emission Reduction Plans in case of air pollution alert, warning or emergency.

3. Colorado: "Colorado Air Pollution Prevention and Control Act," Colo. Rev. Stat. Ann. § 25-7-101-25-7-139 (West): This Act contains a list of substances that are declared to be hazardous air pollutants and are subject to regulation under this act.

4. California: Protect California Air Act of 2003, Cal. Health & Safety Code § 42500-42507 (West): This Act focuses on implementing the requirement that all new and modified sources, unless specifically exempted, must apply control technology and offset emissions increases as a condition of receiving a permit. It establishes non-vehicular emissions regulations.

5. Florida: Florida Radiation Protection Act, FL ST T. XXIX, Ch. 404: This Act relates to low-level radioactive waste management.

6. Illinois: Illinois Radon Awareness Act, 420 Ill. Comp. Stat. Ann. 46/1-46/99: This Act regulates radon testing and disclosure.

## II. DOMESTIC JUDICIAL DECISIONS

U.S. federal and state court decisions relating to the atmosphere generally address the specific provisions of the particular statute or regulation that have been challenged. There have been thousands of court cases that address air pollution and related atmospheric harm in some manner. In relation to air pollution, the two most significant types of cases are: (1) cases interpreting the Clean Air Act and determining whether an EPA rule is consistent with the Act; and (2) enforcement cases brought against polluters for violating the Act. The following are examples of some recent, notable federal court decisions relating to air pollution.

*CTS Corporation v. Waldburger*, 134S. Ct. 2175 (2014): This decision affects the ability of litigants to recover personal injury or property damages resulting from the release of a hazardous substance, pollutant or contaminant subject to the provisions of CERCLA. CERCLA Section 9658 preempts the application of state statutes of limitations to state tort claims in certain circumstances. The Court held that Section 9658 does not preempt state “statutes of repose,” which automatically terminate a cause of action after a specified number of years regardless of when the harm is first discovered, because the statutory language does not refer to “statutes of repose.” Noting that Congress could have preempted statutes of repose, but failed to do so, the Court observed that the states are independent sovereigns in the federal system and, accordingly, their powers are not preempted absent clear and manifest Congressional purpose.

*Sierra Club v. U.S. E.P.A.*, 762 F.3d 971 (9th Cir. 2014): Environmental organizations filed petition pursuant to the Clean Air Act (CAA) for review of an EPA order granting a permit for new natural gas-fired power plant to be built and operated under old air quality standards. The Court held, *inter alia*, that the CAA unambiguously required that the project comply with regulations in effect at the time the permit was issued.

*Alaska v. Kerry*, 972 F. Supp. 2d 1111(D. Alaska 2013): The U.S. District Court for the District of Alaska dismissed the case brought by the state of Alaska and joined by the Resource Development Council (“RDC”) challenging the procedure by which an emissions control area (“ECA”) off the coast of Alaska was established pursuant to the International Convention for the Prevention of Pollution from Ships (“MARPOL”), including Annex VI, and domestic implementing legislation (the Act to Prevent Pollution from Ships, “APPS,” 33 U.S.C. §§ 1901 to 1915). The court considered the applicability of the political question doctrine to the first cause of action in the complaint, which alleged violations of the APPS and the Administrative Procedure Act (“APA”) in the establishment of the ECA. The court agreed with the United States that the first cause of action raises a nonjusticiable political question and was therefore not subject to judicial review. The court also rejected claims under the Treaty Clause of the U.S. Constitution and the separation of powers doctrine, specifically, claims that the executive branch did not have the domestic authority to implement the amendment to MARPOL.

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## E. OTHER ORGANIZATIONS

### 1. Inter-American Commission on Human Rights

The United States made several submissions to the Inter-American Commission on Human Rights (“IACHR” or “Commission”) in 2015. See Chapter 1 for discussion of and excerpts from the June 30, 2015 submission by the United States on the IACHR draft report on the situation of refugee and migrant families and unaccompanied children in the United States. See Chapter 18 for discussion of and excerpts from the March 30, 2015 U.S. submission to the Commission on the treatment of detainees at Guantanamo. The United States also participated in hearings and other proceedings at the IACHR. The Charter of the Organization of American States (“OAS”) authorizes the IACHR to “promote the observance and protection of human rights” in the Hemisphere. The Commission hears individual petitions and provides recommendations on the basis of two international human rights instruments, the American Declaration of the Rights and Duties of Man (“American Declaration”) and the American Convention on Human Rights (“American Convention”). The American Declaration is a nonbinding statement of principles adopted by the American States in a 1948 resolution. The American Convention is an international treaty that sets forth binding obligations for States parties. The United States has signed but not ratified the American Convention.

#### a. *Petitions regarding the death penalty*

On August 7, 2015, the United States submitted observations and a response to various communications it received from the Commission regarding the case of petitioner Bernardo Tercero, No. 12.994. Petitioner Tercero was sentenced to death in state court in Texas in 2000. Petitioner was afforded opportunities for direct appellate review in state courts as well as *habeas* review in federal district and appeals courts. The U.S. response argues that Tercero’s petition to the Commission is inadmissible and that the Commission may reconsider its decision on admissibility though it had already been rendered. The response also restates the longstanding U.S. position that the imposition of the death penalty for the most serious crimes and in accordance with the law does not violate any international legal obligations of the United States. The response addresses claims regarding failure to receive consular notification by explaining that consular notification is not a human right under the American Declaration, but a right upheld among States in the Vienna Convention on Consular Notification. The IACHR issued its merits report, Report No. 51/15, on August 25, 2015, requesting that the United States, *inter alia*, grant Tercero a review of his trial and sentence.

On the same day, Tercero was granted an additional opportunity for *habeas* review in Texas court and his execution was stayed. The United States informed the Commission in a letter on August 25, 2015 that Tercero’s petition should be deemed

inadmissible under Article 31 of the Commission's Rules of Procedure because the petitioner is still exhausting his domestic remedies. The U.S. letter also requests that the Commission rescind its Report No. 51/15 on the merits of Tercero's petition. The August 25, 2015 correspondence with the Commission is available at <http://www.state.gov/s/l/c8183.htm>.

On September 10, 2015, the U.S. Department of State forwarded information regarding the status of the Tercero petition to the governor of Texas. The letter, available at <http://www.state.gov/s/l/c8183.htm>, includes the following explanation of U.S. support for the IACHR:

Under the OAS Charter, the Commission has a mandate to examine respect for human rights commitments under the Declaration throughout the Americas, including by state and provincial authorities in federal systems such as the United States, Canada, Mexico, and Brazil. Although the IACHR only issues recommendations, and cannot compel action by federal or state governments in countries such as the United States that have not ratified the American Convention on Human Rights, the United States greatly respects its work and considers the IACHR to play a vital role in safeguarding and promoting human rights in the Western Hemisphere, most significantly because it shines a light on abuses in countries that might otherwise escape outside scrutiny. Keeping in mind the critically important work the IACHR performs across the countries of the Americas, the United States participates actively in IACHR cases and hearings concerning alleged human rights violations within the United States. The United States will continue to do so and, where relevant, make appropriate requests of U.S. state authorities for information or other assistance related to matters before the IACHR. ...

On August 6, 2015, the United States made similar admissibility arguments in a letter to the Commission regarding the petition of Linda Carty, No. P-2309-12. Carty appealed her conviction in Texas state court through both direct appeal in Texas state courts and through *habeas* petitions in state and federal court. After filing her petition with the Commission, petitioner's application for further *habeas* review was granted by a Texas appellate court. The United States informed the Commission that this further review renders the petition inadmissible because petitioner has not yet exhausted domestic remedies. The August 6, 2015 correspondence with the Commission regarding Carty is available at <http://www.state.gov/s/l/c8183.htm>.

**b. *Group petitions and Commission authority with respect to precautionary measures***

On September 1, 2015, the United States provided its observations on the petition of Jurijus Kadamovas *et al.*, No. P-1285-11. The U.S. response explains that the petition is inadmissible under Articles 28, 31, and 34 of the Commission's Rules of Procedure. The petition was brought by two prisoners purporting to represent themselves and several

fellow prisoners regarding their treatment in prison. As the U.S. response explains, the claims regarding this group of petitioners are too vague and non-specific to meet the threshold requirements of Articles 28 and 34. For petitioners Kadamovas and Bolden, the petition is deficient on the additional ground of failure to exhaust.

Excerpts follow (with footnotes omitted) from the final section of the U.S. response, addressing the Commission's purported authority to require precautionary measures. The U.S. response in its entirety is available at <http://www.state.gov/s/l/c8183.htm>.

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As noted, the Commission requested precautionary measures in this case on December 27, 2011. The United States once again respectfully submits that the Commission does not have authority to request or require that the United States adopt precautionary measures. The practice of requesting precautionary measures is based on Article 25(1) of the Rules, which states:

[T]he Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures. Such measures, whether related to a petition or not, shall concern serious and urgent situations presenting a risk of irreparable harm to persons or to the subject matter of a pending petition or case before the organs of the inter-American system.

Importantly, this rule was approved by the Commission and not by the Member States of the Organization of American States (OAS) themselves. Through this rule, the Commission apparently considers itself to possess not only the power to *request* that a State adopt precautionary measures—which implies that the State may choose to decline the request—but also to *require* the measures, in a manner akin to the Inter-American Court of Human Rights (“Court”). This is evident from terms used in other subparagraphs of Article 25, which speak of the Commission granting, extending, modifying, and lifting the precautionary measures—as opposed to making, modifying, or withdrawing a *request* for such measures. Communications sent by the Commission over the years also refer to precautionary measures with language evincing the belief that when the Commission requests precautionary measures, it is in effect imposing them and that their implementation is not optional.

While the Commission's arrogation of such a power is perhaps understandable, it is not within the mandate given to the Commission by the OAS Member States. Article 25(1)'s reference to purported sources of a precautionary measures power—Article 106 of the OAS Charter, Article 41(b) of the American Convention on Human Rights (“American Convention”), Article 18(b) of the Commission's Statute, and Article XIII of the American Convention on Forced Disappearance of Persons—do not change this reality. Article 106 of the Charter established the Commission to promote the observance and protection of human rights, but makes no further mention of its specific powers. Article 41(b) of the American Convention and Article 18(b) of the Statute empower the Commission to make recommendations to OAS Member States “for the adoption of progressive measures in favor of human rights” and “appropriate measures to further the observance of those rights,” but are silent on precautionary measures, and *a fortiori* on any power to require them. Whatever precautionary measures power

may have been sanctioned by States Parties to the American Convention on Forced Disappearance of Persons in that treaty's Article XIII is not applicable to the United States as a nonparty to that Convention.

The Commission's Statute does, in fact, refer to *provisional* measures, but only in the context of States Parties to the American Convention. Even there, it does not give the Commission the power to request or require such measures directly of a Member State. Instead, the Statute merely gives the Commission the power to request the Inter-American Court of Human Rights ["Court"] to take provisional measures in serious and urgent cases involving States Parties to the American Convention that have accepted the jurisdiction of the [Court], where the case has not yet been submitted to the [Court]. Article 63(2) of the American Convention, in turn, empowers the [Court] to act on such a request. There is no provision in the Statute or the American Convention that provides authority for the Commission to request the [Court] to issue provisional measures with respect to a nonparty to the American Convention, for the [Court] to do so, or for the Commission to itself require any OAS Member State—American Convention party or not—to take precautionary measures. For a nonparty to the American Convention the Commission is empowered, at most, to make a nonbinding recommendation that it take precautionary measures.

As such, the United States has construed the Commission's request for precautionary measures as a nonbinding recommendation that the United States take precautionary measures. The United States respectfully declines that recommendation, and requests that the Commission withdraw the recommendation. For Petitioners Ortiz, Mikhel, and Umana, the Commission has no information whatsoever on which to ground a determination that they face irreparable harm—no specific facts, no information about remaining domestic remedies, or otherwise—beyond the bare fact that they were sentenced to death; and Petitioner Sinnistera, as noted above, has already died of natural causes. The Commission has only slightly more information about Petitioner Kadamovas. Moreover, Petitioners are not, in fact, in imminent danger of irreparable harm. None is currently scheduled to be executed, and some are still pursuing domestic remedies. The U.S. Department of Justice is continuing to review the federal execution protocol used by the Federal Bureau of Prisons as well as policy issues related to the death penalty, and no executions will occur during the pendency of that review.

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On September 14, 2015, the United States responded to a petition filed by Oswaldo Lucero *et al.*, P-1506-08, broadly alleging "violations of the human rights of Latinos" by the United States on behalf of named petitioners and several unnamed individuals. The U.S. response enumerates the grounds for finding the petition inadmissible and also addresses its lack of merit. First, concerning the unnamed petitioners, the United States points out that the Commission only has competence to consider allegations of "concrete violations of the rights of specific individuals." Second, concerning those petitioners who are identified, many of the perpetrators of the violence against them have been prosecuted, the local police in one area of the incidents have received hate crimes training, and, more broadly, the United States has increased its prosecution of hate crimes. The U.S. response addresses allegations regarding its immigration enforcement, explaining how the claims are false or fail to

account for recent reforms. The response further explains that the claims are inadmissible under Article 34 for failing to allege any violation of the American Declaration because Declaration commitments extend only to state action, not the conduct of private individuals. This petition, like others addressed by the United States, also fails the exhaustion requirement in Article 31 of the Commission's Rules of Procedure. Excerpts on the exhaustion requirement follow (with footnotes omitted) from the U.S. response in *Lucero*, which is available at <http://www.state.gov/s/l/c8183.htm>.

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The Commission should also declare the Petition inadmissible because the Petitioners have not satisfied their duty to demonstrate that they have “invoked and exhausted” domestic remedies under Article 20(c) of the Commission's Statute and Article 31 of the Rules. While the Statute and Rules require the Commission to examine the full array of domestic remedies that may address the Petitioners' claims, the Petition contains no details on any Petitioner's attempts to invoke or exhaust domestic remedies. Petitioners merely aver that any such attempt would be futile because they cannot sue the federal government under one statute—42 U.S.C. § 1983—and so they should be excused from not attempting to pursue any domestic remedies, even against state and local officials. Yet as the Commission has noted, the burden is on the petitioner to “resort to and exhaust domestic remedies to resolve the alleged violations,” and “[m]ere doubt as to the prospects of success in going to court is not sufficient to exempt a petitioner from exhausting domestic remedies.”

Petitioners paint far too narrow a picture of the remedies available in the U.S. legal system for the types of wrongs they allege. The U.S. domestic legal system provides several avenues for redress that serve to prevent human rights abuses, hold human rights abusers accountable, and provide relief to victims. Available remedies can include, *inter alia*: (1) criminal punishment of the individuals responsible for violations against the victim; (2) relief aimed at improving an institution or system; and (3) money damages to the victims.

With respect to *criminal punishment*, the Commission has broadly construed “remedy” to include both civil remedies and remedies of a criminal nature, and has acknowledged that the primary method for redress in some cases is a “criminal domestic remedy.” Subsequent to the filing of the Petition, the named Petitioners received an effective criminal domestic remedy: authorities conducted an investigation, located and arrested the perpetrators, put them on trial, and secured convictions and substantial prison sentences. Implicit in the requirement of exhaustion is the incontrovertible principle that if a petitioner has received an effective remedy in the domestic system, then his or her claim is not admissible before the international forum. Because justice was manifestly done in the named Petitioners' cases, the Commission should find their claims inadmissible for failure to satisfy the exhaustion requirement. For the unnamed Petitioners, the Commission should, consistent with its own precedent, also find their claims inadmissible for failure to exhaust because the Petitioners provide no evidence whatsoever that the incident in question “was reported to the proper authorities to adequately put them on notice to conduct a criminal investigation.”

With respect to *relief aimed at improving an institution or system*, as described above, DOJ conducted an investigation which led to an agreement with the Suffolk County Police

Department under which the latter committed, among other things, to ensure training for officers on hate crimes and to strengthen outreach efforts in Latino communities. DOJ has opened more than 20 pattern and practice investigations of law enforcement agencies in the last six years, and is currently enforcing approximately 16 landmark agreements with state or local law enforcement agencies. It also seeks to identify and address potential policing issues before they become systemic problems. In March, the Presidential Task Force on 21st Century Policing released its report with 59 recommendations, following a three-month-long public consultation process to identify and promote effective, community-based crime reduction practices.

With respect to *civil suits*, the Commission has found claims inadmissible under Article 31 of the Rules because the petitioner was pursuing a private lawsuit against his or her alleged perpetrator. Here, Petitioners provide no explanation of whether they attempted to pursue the ample opportunities they have under state law to bring a civil tort suit against those private actors they claim are responsible for their injuries. In the U.S. system, tort suits are the principal way for private individuals to secure monetary damages or other redress for wrongs committed by other private individuals.

Finally, as concerns civil suits against government authorities, bases for civil actions in cases of credible, verifiable, and substantiated human rights violations include: bringing a civil action in federal or state court under the federal civil rights statute, 42 U.S.C. § 1983, directly against state or local officials for money damages or injunctive relief; seeking damages for negligence of federal officials and for negligence and intentional torts of federal law enforcement officers under the Federal Tort Claims Act, 22 U.S.C. § 2671 *et seq.*; suing federal officials directly for constitutional tort damages under provisions of the U.S. Constitution, *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), and *Davis v. Passman*, 442 U.S. 228 (1979); challenging official action through judicial procedures in state courts and under state law, based on statutory or constitutional provisions; and seeking civil damages from participants in conspiracies to deny civil rights under 42 U.S.C. § 1985. Despite their duty to do so, Petitioners make no showing in the Petition that they pursued any civil suit under § 1983 against any state or local governments or officials—those whose acts and omissions constitute the bulk of the alleged misconduct described in the Petition—and do not explain how such an attempt would be futile; nor do they cite any attempt at all to pursue civil suits under other statutes against federal, state, or local governmental authorities.

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**c. U.S. suggestions for more effective screening of petitions**

On October 27, 2015, the IACHR held a meeting of certain OAS Member States, including the United States, Canada, and countries of the English-speaking Caribbean, on reorganization of the IACHR Secretariat and case management. The United States delivered the following oral remarks.

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As the Commission is aware, the United States strongly supports the Commission's work. Like the other OAS member states, we have committed ourselves not only to the Commission's role in protecting and promoting human rights through examination of thematic issues, but also through the individual petition process. It is the management of this process, however, that gives us the most concern. Specifically, the Commission's substantial backlog of cases threatens to undermine its effectiveness and its legitimacy, particularly in the eyes of those petitioners who have waited many years for resolution of their petitions.

While we do not have statistics on other member states, a few statistics on U.S. cases may help enlighten this discussion. According to our records, the Commission has 73 individual cases against the United States open on its docket that have passed the threshold requirements for consideration. Of the 73, 49 are at the admissibility stage, and 24 are at the merits stage. Of the 73, the United States has yet to file a response in 10. We are the first to admit that 10 is too high a number, and we are working diligently to complete responses in those cases. The other 63 open cases are pending a Commission decision or other action. Some have been pending for many years—many since the mid-2000s, and the oldest since 1994.

We acknowledge the Commission's recent efforts to reduce this severe backlog. We have made a number of suggestions in recent years for more efficient case management, including that the Commission should archive or close cases where the petitioner has died or is no longer interested in prosecuting the case, or where the respondent state has done all that it can to implement recommendations in a final report. No stakeholder benefits from leaving finished or dormant cases open indefinitely. The Commission should focus not only on processing new or high-profile petitions, but also—perhaps more importantly—by disposing of old cases. As the adage goes, justice delayed is justice denied. For the future, the Commission should consider new criteria for filtering petitions so that it may focus on those that present the most pressing human rights claims which could have a broader regional impact. The Commission should impose strictly enforced page and font requirements on petitions. We would welcome a further meeting to discuss our case-management ideas in more detail.

Finally, we believe that financial limitations are the single most important crisis facing the system and contribute substantially to the backlog problem. There must be an increase in the IACHR's budget to achieve many of the goals outlined here today. As such, we encourage member states to provide more voluntary funding.

Thank you again for the presentation and for your attention to our concerns.

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#### **d. *Hearings***

In March 2015, the IACHR held five hearings related to the United States. Four were thematic hearings—on racial discrimination in criminal justice, trafficking in persons, human rights in Puerto Rico, and the situation in Guantanamo. In October 2015, the IACHR held three hearings related to the United States, all thematic—on extractive industries' impact on sacred places of indigenous peoples; on alleged excessive force by police against African Americans; and on the alleged rendition, detention, and interrogation program. U.S. remarks at the hearing on the alleged rendition, detention, and interrogation program are discussed in Chapter 6.

The only adversarial hearing in which the United States was involved in 2015 was on the petition brought on behalf of Leopoldo Zumaya and Francisco Berumen Lizalde, No. P-119006 (Case No. 12.834). The petition alleged that U.S. treatment of undocumented workers violates the American Declaration. The United States had previously filed a written submission on the petition and presented oral remarks at the hearing on March 16, 2015. Before addressing the inadmissibility and merits of the claims, the United States delivered general comments about the Commission's authority. The Commission issued a preliminary merits report, Report No. 83/15, in favor of the petitioners on December 31, 2015, and the United States thereafter filed a letter disagreeing that the alleged conduct violated any international legal obligations owed by the United States. Excerpts follow from the U.S. March 16 oral statement.

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We welcome this opportunity to discuss the petition brought on behalf of Leopoldo Zumaya and Francisco Berumen Lizalde. As explained more fully in our written brief, the United States respectfully disagrees that Petitioners' experiences demonstrate a failure by the United States to uphold its commitments under the American Declaration. We do not believe the Commission should further consider Petitioners' claims because each has failed to exhaust the domestic remedies available to him. If the Commission chooses to further consider this matter, it should deny the claims because they lack merit. While we believe the claims should be dismissed, however, we look forward to continuing our engagement with civil society in our shared goal of advancing the rights and protections of all workers, including undocumented workers.

Before proceeding, we would offer three preliminary observations. First, the Petitioners' written briefs go into significant detail on cases of alleged employment discrimination and retaliation wholly unrelated to Petitioners' claims. Yet in 2011, the Commission narrowed this matter to the claims of Mr. Zumaya and Mr. Berumen Lizalde. Our remarks therefore focus on these claims.

Second, we note our longstanding position that the American Declaration is a non-binding instrument that does not itself, or through the OAS Charter, create legal rights or impose legal obligations on states. Nonetheless, the United States faithfully respects its political commitments to uphold the Declaration.

Third, we would also note that the Commission is not competent to entertain claims or issue recommendations with respect to the International Covenant on Civil and Political Rights or the International Convention on the Elimination of All Forms of Racial Discrimination. It should therefore disregard Petitioners' request to do so here.

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***e. Lack of authority to consider international humanitarian law claims***

On October 6, 2015, the United States submitted its response to the petitions filed on behalf of Moath Al Alwi, Petition No. P-98-15 and Mustafa Al Hawsawi, Petition No. P-

1385-14. The U.S. brief demonstrates the inadmissibility of these petitions under the Commission's Rules of Procedure. In addition, the brief explains why the Commission is not competent to consider claims under international humanitarian law. Excerpts follow from the U.S. submission (with some footnotes omitted), which is also available in full at <http://www.state.gov/s/l/c8183.htm>. For discussion of U.S. treatment of detainees at Guantanamo, including the March 30, 2015 U.S. submission to the Commission on the subject, see Chapter 18.

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Petitioners allege that the United States has “violated” certain specific rights recognized in the American Declaration of the Rights and Duties of Man (“American Declaration”) through their detention at the Guantanamo Bay Detention Facility (“Guantanamo”). The United States has undertaken a political commitment to uphold the American Declaration, a non-binding instrument that does not itself create legal rights or impose legal obligations on member States of the Organization of American States (OAS).<sup>13</sup> Article 20 of the Statute of the Commission sets forth the Commission's powers that relate specifically to OAS member States that, like the United States, are not parties to the legally binding American Convention on Human Rights (“American Convention”), including to pay particular attention to observance of certain enumerated human rights set forth in the American Declaration, to examine communications and make recommendations to the State, and to verify whether in such cases domestic legal remedies have been pursued and exhausted. The Commission also lacks competence to issue a binding decision vis-à-vis the United States on matters arising under other international human rights treaties, whether or not the United States is a party, or under customary international law.

Even if the Commission considered the American Declaration to be binding on the United States, it could not apply it to determine the legality of the petitioners' detention because, during situations of armed conflict, the law of war is the *lex specialis*. As such, it is the controlling body of law with regard to the conduct of hostilities and the protection of war victims. Moreover, the Commission has no competence under its Statute or Rules to consider matters arising under the law of war and may not incorporate the law of war into the principles of the American Declaration.<sup>3</sup>

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## 2. International Renewable Energy Agency

On September 3, 2015, President Obama issued Executive Order 13705, “Designating the International Renewable Energy Agency as a Public International Organization

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<sup>13</sup> As the American Declaration is non-binding, the United States understands any allegation of a “violation” of it to be an allegation that a country has not lived up to its political commitment to uphold the American Declaration.

<sup>3</sup> The law of war and international human rights law contain many provisions that complement one another and are in many respects mutually reinforcing. Despite the general presumption that specific law of war rules govern the entire process of planning and executing military operations in armed conflict, certain provisions of human rights treaties may apply in armed conflicts. However, treaties and customary international law may not be applied by the Commission through the non-binding American Declaration.

Entitled To Enjoy Certain Privileges, Exemptions, and Immunities.” 80 Fed. Reg. 54,403 (Sep. 9, 2015). Excerpts follow from the executive order.

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Section 1. Designation. By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and having found that the International Renewable Energy Agency is a public international organization in which the United States participates within the meaning of the International Organizations Immunities Act, I hereby designate the International Renewable Energy Agency as a public international organization entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act. This designation is not intended to abridge in any respect privileges, exemptions, or immunities that such organization otherwise may have acquired or may acquire by law.

Sec. 2. General Provisions.

(a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department, agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) This order is not intended to, and does not, impair any right or benefit, substantive or procedural, enforceable at law or in equity that arises as a consequence of the designation in section 1 of this order.

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**Cross References**

*U.S. actions to comply with ICJ Avena decision*, **Chapter 2.A.1.**

*International Criminal Court*, **Chapter 3.C.1.**

*Palestinian Authority efforts to accede to treaties*, **Chapter 4.A.1.**

*ILC's work on law of treaties*, **Chapter 4.A.7.**

*OAS adoption of Inter-American Convention on Human Rights of Older Persons*, **Chapter 6.B.4.b.**

*Immunity of the UN*, **Chapter 10.E.**

*Middle East peace process*, **Chapter 17.A.**

*UN peacekeeping*, **Chapter 17.B.1.**

*Sexual Exploitation and Abuse ("SEA") by peacekeepers*, **Chapter 17.B.4.b.**