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CHAPTER 6

Human Rights

A. GENERAL

1. Country Reports on Human Rights Practices

On April 13, 2016, the Department of State released the 2015 Country Reports on Human Rights Practices. The Department submits the reports to Congress annually in compliance with §§ 116(d) and 502B(b) of the Foreign Assistance Act of 1961 ("FAA"), as amended, and § 504 of the Trade Act of 1974, as amended. These reports are often cited as a source for U.S. views on various aspects of human rights practices in other countries. The reports are available at State.gov/humanrightsreports and HumanRights.gov/reports. Secretary of State John Kerry's remarks on the release of the reports are available at http://2009-2017.state.gov/secretary/remarks/2016/04/255799.htm.
Tom Malinowski, Assistant Secretary of State for Democracy, Human Rights, and Labor provided a briefing on the country reports, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/04/255802.htm. A media note on the reports is available at http://2009-2017.state.gov/r/pa/prs/ps/2016/04/255793.htm.

2. UPR Working Groups

As discussed in *Digest 2015* at 175-78, the United States submitted its second Universal Periodic Review ("UPR") report and made its presentation in Geneva on that report in 2015. The United States received 343 recommendations from other UN Member States during its UPR cycle. The United States accepted, in whole or in part, 260 of those recommendations, or approximately 75 percent. To follow-up on the accepted UPR recommendations, the U.S. government organized six interagency UPR Working Groups, each of which conducted civil society consultations during 2016: 1) Civil Rights and Non-Discrimination; 2) Criminal Justice; 3) Economic, Social, and Cultural Rights, Indigenous

Issues, and the Environment; 4) National Security; 5) Immigration, Labor, Trafficking, Migrants, and Children; and 6) Domestic Implementation and International Treaties and Mechanisms. See *2016 Year-End Summary of the U.S. UPR Working Groups,* available at https://www.humanrights.gov/dyn/2017/01/2016-year-end-summary-of-the-u.s.-universal-periodic-review-working-groups.

3. Human Rights Council

a. Overview

The United States was not a voting member of the UN Human Rights Council in 2016 because of a mandatory one-year hiatus after completing two three-year terms on the Council. However, the United States attended and remained engaged at the Council's three regular sessions in 2016. The key outcomes of each session for the United States are summarized in fact sheets issued by the State Department. The key outcomes at the 31st session are described in a March 25, 2016 fact sheet, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/03/255182.htm. They include: resolutions on the human rights situations in South Sudan, Burma, Iran, North Korea and Syria; resolutions on human rights defenders and peaceful protests; a joint statement on freedom of expression; and resolutions on combatting religious intolerance and promoting freedom of religion or belief; and a joint statement on China's crackdown on lawyers, activists, journalists, and critics. Ambassador Keith Harper, U.S. Representative to the HRC, delivered an end of session statement and explanation for all HRC-31 resolutions on March 24, 2016. Ambassador Harper's statement, available at https://geneva.usmission.gov/2016/03/30/ambassador-harper-end-of-session-statement-and-explanation-for-all-hrc31-resolutions/, includes the following:

> The United States remains deeply troubled with this Council's stand-alone agenda item directed at Israel and the slate of one-sided resolutions. …
>
> We note that Council resolutions do not change the current state of conventional or customary international law nor create new legal obligations.

The key outcomes at the 32nd session are described in a July 6, 2016 fact sheet, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/07/259403.htm. They include: creating an independent expert on violence and discrimination based on sexual orientation and gender identity; a resolution to renew the mandate of the Special Rapporteur on freedoms of peaceful assembly and association; a resolution on women's equal nationality rights in law and in practice; resolutions relating to human rights situations in Belarus, Ukraine, Syria, and Eritrea; a resolution endorsing internet freedom; resolutions on eliminating discrimination and violence against women; the right of girls to education; trafficking in persons, with an emphasis on women and children; and on the elimination of female genital mutilation; and a resolution on protecting civil society space.

The key outcomes at the 33rd session are described in an October 4, 2016 fact sheet, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/10/262782.htm. They include: a resolution establishing a commission of inquiry on Burundi; resolutions renewing the mandates of independent experts on Sudan, Somalia, and the Central African Republic; resolutions on Syria and Yemen and joint statements on Cambodia and Venezuela; resolutions on political participation and safety of journalists; resolutions on the rights of indigenous peoples; and the appointment of the first UN independent expert on sexual orientation and gender identity. Ambassador Harper delivered the closing statement for the United States at HRC 33 on September 30, 2016. His remarks are excerpted below and available at https://geneva.usmission.gov/2016/09/30/ambassador-harper-closing-statement-at-the-33rd-session-of-the-human-rights-council/.

* * * *

The United States strongly supports the resolution establishing a Commission of Inquiry to investigate and report on deeply troubling human rights violations and abuses in Burundi. We are pleased that the Council adopted a consensus resolution on Yemen, reaffirming the critically important role of OHCHR in helping establish the facts and circumstances of human rights violations and abuses and in advising on appropriate accountability measures. We welcome the resolution strongly condemning continued serious violations and abuses in Syria and calling for the cessation of violence and a political solution to the conflict there. The renewed mandates on Sudan, Somalia, and the Central African Republic represent other valuable tools the council has maintained. We were also pleased to join two joint statements on the human rights situations in Cambodia and Venezuela.

The United States remains steadfast in our support for civil society. We are greatly disappointed by the efforts by several member states to weaken resolutions on critically important themes such as political participation. We welcome the Council's recognition of the critical role of journalists, as well as of the need for all countries to work toward creating a safe and enabling environment for journalists, free of harassment, intimidation, and violence.

The Council took an important step in promoting respect for the human rights of indigenous peoples and with its resolution empowering the Expert Mechanism on the Rights of Indigenous Peoples to help member states better achieve the goals of the UN Declaration on the Rights of Indigenous Peoples.

We note that Council resolutions neither change the current state of convention-based or customary international law nor create new legal obligations. The United States understands that any reaffirmation of prior documents in these resolutions applies only to those states that affirmed them initially. We reiterate our concerns regarding the "right to development," which are longstanding and well known. At the same time, we look forward to continuing to work with our many partners to ensure that our development efforts respect and promote human rights and that development and human rights are, in the words of the Vienna Declaration, mutually reinforcing.

The United States congratulates the Council for the groundbreaking appointment of the independent expert on violence and discrimination based on sexual orientation and gender identity.

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The United States was reelected to a new term on the Human Rights Council in October 2016. See Secretary Kerry's October 28, 2016 press statement, available at http://2009-2017.state.gov/secretary/remarks/2016/10/263798.htm. Secretary Kerry observed:

> U.S. engagement has helped transform the Council into a more balanced and credible organization and has helped focus the global spotlight on grave violations and abuses of human rights around the world. Since we joined the Council in 2009, it has created Commissions of Inquiry for Syria, North Korea, and Burundi; adopted country-specific resolutions on Sri Lanka, Iran, and Burma; passed groundbreaking resolutions promoting and protecting the rights of freedom of assembly and association; and created an independent expert on violence and discrimination based on sexual orientation and gender identity.

b. Actions regarding Eritrea

On June 10, 2016, the U.S. Department of State issued a statement, taking note of the report issued by the UN Commission of Inquiry on Eritrea. The June 10, 2016 press statement, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/06/258382.htm, includes the following:

> The United States takes note of the recently issued report by the UN Commission of Inquiry (COI) on Eritrea, in particular its conclusion that there are reasonable grounds to believe that crimes against humanity have been committed in Eritrea. We have repeatedly expressed grave concern about the human rights situation in Eritrea, and that concern has been reinforced by the COI's findings.
>
> We strongly encourage the Government of Eritrea to engage fully with the international community and UN bodies to address the human rights situation. The Government's willingness to work on several Universal Periodic Review recommendations is a step in the right direction. We also urge Eritrea to implement its constitution, hold national elections, honor its commitment to limit the duration of national service to 18 months, develop an independent and transparent judiciary, and release persons arbitrarily detained including political prisoners, journalists, and members of religious groups.
>
> We continue to support international efforts to improve the protection of human rights and fundamental freedoms in Eritrea and will work to promote these efforts within the context of the upcoming Human Rights Council session.

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c. Actions regarding Syria

On September 19, 2016, Ambassador Harper delivered a statement at the Interactive Dialogue with the Commission of Inquiry on Syria. The statement is excerpted below and available at https://geneva.usmission.gov/2016/09/19/ambassador-harper-statement-at-the-interactive-dialogue-with-the-commission-of-inquiry-on-syria/.

* * * *

…The United States welcomes the on-going critical work of the Commission of Inquiry. The Commission once again describes appalling atrocities against men, women and children, including: the regime's systematic and deliberate targeting of civilians, medical facilities, health care providers, first responders; restrictions of humanitarian assistance; torture; and the detention and disappearance of civilians. According to the COI, the majority of the attacks against medical facilities have been carried out by pro-Government forces. In Aleppo alone, 20 hospitals and clinics were destroyed since January with a devastating impact on civilians.

The COI has repeatedly documented the massive, synchronized nature of deaths in State-controlled detention facilities and concluded they amount to crimes against humanity and war crimes. The Syrian regime continues to imprison tens of thousands of Syrians, subjecting many—including children—to torture and sexual violence. We reiterate the many calls from UN bodies for the Syrian government to cease its egregious abuses against prisoners, and allow for immediate, unfettered access to and medical services for all detainees. We also echo the COI's concerns about the tens of thousands of missing persons, and welcome its views on how this issue can be addressed.

We applaud the courageous Syrian human rights defenders who, despite grave risks, continue to document atrocities. In addition to the COI's excellent reporting, the international community must hear directly from Syrians, which is why the cosponsors of the resolution on Syria are calling for a high-level panel to allow for Syrian civil society to address the Council directly.

United with the Syrian and international community, we reiterate our call for an immediate end to all violations and abuses, as well as accountability for perpetrators of them, especially the egregious, widespread, and continued violations committed by the Asad regime. It is the Asad regime's brutal suppression of democratic opposition forces and atrocities against civilians that allow terrorist groups like Da'esh to flourish. …

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d. Actions regarding South Sudan

On March 23, 2016, Ambassador Harper delivered the U.S. statement introducing a resolution on human rights in South Sudan at the 31st session of the Human Rights Council. His statement is excerpted below and available at https://geneva.usmission.gov/2016/03/24/u-s-statement-introducing-resolution-on-human-rights-in-south-sudan/.

* * * *

As demonstrated by the OHCHR report issued early this month, the human rights situation in South Sudan is one of the gravest situations we face at the Human Rights Council. Since fighting began in December 2013, many serious human rights violations and abuses have been committed.

As the resolution being introduced today makes clear, there is broad concern at the prevailing violence, widespread sexual and gender based violence, indiscriminate targeting of civilians, attacks on United Nations sites and humanitarian convoys, and heightened restrictions on the exercise of fundamental freedoms.

The Human Rights Council must act in the face of such serious concerns. To this end, this resolution establishes a Commission for Human Rights in South Sudan. As a special procedure dedicated to the situation of human rights in South Sudan, the Commission will monitor and report on human rights. The Commission will provide guidance on transitional justice, accountability and reconciliation issues, as appropriate. The Commission will also engage with other international and regional mechanisms, including the African Union and United Nations Missions in South Sudan, with a view to providing support to efforts to promote accountability for human rights violations and abuses. We appreciate South Sudan's express agreement to cooperate with this mechanism.

The text in front of you represents the oral revisions that have been circulated on the extranet. These revisions clarify that the mandate will be a Commission, created as a special procedure and appointed by the President of the Human Rights Council after consultation with the Consultative Group. We ask that the process be completed by the June session so that the mandate can be operationalized as soon as possible.

The U.S. would like to thank the African Group for its constructive approach throughout discussions of this resolution and in particular the leadership of the Ad Group chair, South Africa. We hope this resolution will be adopted by consensus. We encourage all states to support this resolution.

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e. Actions regarding Burundi

On September 27, 2016, at the 33rd Session of the HRC, Ambassador Harper delivered a statement at the presentation of the Independent Experts' Report on Burundi. Ambassador Harper's statement is excerpted below and available at https://geneva.usmission.gov/2016/09/27/burundi/.

* * * *

Since April 2015, Burundi has descended into a political and security crisis, triggered by the Burundian government's disregard for term limits and violation of the Arusha Agreement. The UN Independent Investigation on Burundi report issued on September 20, 2016, highlights this increasingly dire situation in Burundi. Burundi's current trend seems to be towards increased violence and humanitarian catastrophe.

Reported extrajudicial killings, arbitrary detentions, disappearances, sexual violence, torture, unacknowledged places of detention—including in residences of senior government officials—and retaliatory attacks against opposition party members, journalists, civil society members, victims, witnesses, and government officials have continued with impunity. The UN Experts' Report assessed that, "To the extent that there is a reduction in violence…it is a result of increased oppression." Burundi's gains following the end of its civil war in 2006 are receding. Doctors, teachers, and members of civil society and the media have fled the country. We call on all sides to put an end to human rights violations and abuses. We will continue to support efforts to promote accountability for perpetrators of unlawful violence and abuses.

We firmly believe that this crisis can and must be resolved, or Burundi risks descending into further conflict, including the possibility of mass atrocities. The dialogue currently led by the East African Community (EAC) and mediated by former Tanzanian President Mkapa represents the best avenue for reaching a peaceful resolution to the crisis and restoring stability in Burundi.

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B. DISCRIMINATION

1. Race

Human Rights Council

At the 33rd Session of the Human Rights Council, on September 26, 2016, Ambassador Harper delivered the statement for the United States at the interactive dialogue with the Working Group of Experts on People of African Descent. Ambassador Harper's statement is excerpted below and available at https://geneva.usmission.gov/2016/09/26/dialogue-with-working-group-of-experts-on-people-of-african-descent/.

* * * *

The United States was pleased to invite, and to facilitate the visit of, the Working Group of Experts on People of African Descent for a country visit from January 19-29, 2016. We welcome the chair of the Working Group, Ricardo Sunga III, here today.

The Working Group met with federal, state, and local government officials, judges and lawyers, members of Congress, police officers, academics, members of civil society, and hundreds of African Americans, in Washington, D.C.; Baltimore, Maryland; Jackson,

Mississippi; Chicago, Illinois; and New York City.

The Working Group's visit addressed a comprehensive range of issues impacting African-Americans, and members of other minorities, within the United States, including issues related to the criminal justice system, barriers to political participation, disparities in access to education, health, housing and employment, and multiple and intersecting forms of discrimination.

We were happy to arrange this visit and take note of the Working Group's conclusions and recommendations, which we will distribute to relevant stakeholders, including the state and local government officials who met with the Working Group, for appropriate consideration.

We would like to highlight some of the steps, among many, that the United States has been taking to address issues addressed by the Working Group in its report.

On Saturday, September 24, the United States was proud to open its newest addition to the Smithsonian Institution, The National Museum of African American History and Culture, in Washington, D.C. It is the only national museum devoted exclusively to the documentation of African American life, history, and culture. And further to the recommendation of the Working Group that "monuments, memorials and markers […] be erected to facilitate public dialogue" we note that new projects are emerging around the country, such as a planned memorial to the victims of lynching to be built by the Equal Justice Initiative in Montgomery, Alabama, in 2017.

We appreciate the Working Group's recognition of the "My Brother's Keeper" (MBK) Task Force, a coordinated Federal effort to address persistent opportunity gaps faced by boys and young men of color and ensure that all young people can reach their full potential. In response to the President's call to action, nearly 250 communities in all 50 states have accepted the President's My Brother's Keeper Community Challenge; more than $600 million in private sector and philanthropic grants and in-kind resources and $1 billion in low-interest financing have been committed in alignment with MBK; and new federal policy initiatives, grant programs, and guidance are being implemented to ensure that every child has a clear pathway to success from cradle to college and career.

Earlier this year, in response to recommendations from the MBK initiative, the Department of Education released a new resource guide, "Beyond the Box: Increasing Access to Higher Education for Justice-Involved Individuals," urging colleges and universities to remove barriers that can prevent citizens with criminal records from pursuing higher education. And just a few weeks ago, the Departments of Education and Justice put out new tools on the appropriate use of school resource officers and law enforcement to improve school climates, help ensure safety, and support student achievement in our nation's schools.

We would encourage the Working Group to devote more attention to issues surrounding racism that are more prominent in public discourse, particularly police brutality and racial profiling, and in this regard we would highlight the work of the President's Task Force on 21st Century Policing. In May 2015, the Task Force submitted to the President a final report of best practices and recommendations, based on expertise from stakeholders and input from the public. The task force recommendations provide meaningful solutions to help law enforcement agencies and communities strengthen trust and collaboration, while ushering the nation into the next phase of community-focused policing. The report was followed by an Implementation Guide, which outlines strategies to assist stakeholders with implementation. Thousands of agencies, associations, and related organizations across the country are now implementing various task force recommendations.

Furthermore, DOJ has opened numerous civil rights investigations into police departments that may have engaged in a pattern or practice of conduct that deprives persons of their rights. In addition, DOJ has obtained more than 250 criminal convictions against police officers in the past five years.

On issues of prison conditions, we would highlight that in January of this year, President Obama announced the adoption of recommendations by DOJ on the use of solitary confinement in the federal prison system, including the ending of solitary confinement for juveniles.

Finally, we reaffirm our commitment to promote racial and ethnic equality to mark the International Decade for People of African Descent. In doing so, we recognize the common challenges faced by persons of African descent in the United States and all over the world. The Decade is an opportunity for the United States to encourage positive domestic discourse on human rights at home, highlight over 50 years of progress under the U.S. Civil Rights Act, and work with international partners to promote nondiscrimination and equality.

The United States has made great progress toward countering racial discrimination, xenophobia, and related forms of intolerance, but we acknowledge much remains to be done. Although we may not agree with all of its factual or legal conclusions, we thank the Working Group for its findings from its constructive visit.

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2. Gender

a. General Assembly

On March 28, 2016, the United States provided an explanation of position on the Agreed Conclusions at the UN Commission on the Status of Women. The U.S. EOP follows. Ambassador Sarah Mendelson, U.S. Representative to the UN for Economic and Social Affairs, delivered remarks at the opening of the annual session of the UN Commission on the Status of Women on March 18, 2016. Ambassador Mendelson's March 18 remarks are not excerpted herein but can be found at http://2009-2017-usun.state.gov/remarks/7194.

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Thank you, Mr. Chairman. I first wish to commend you for your tireless and skillful leadership in facilitating our discussions on the Agreed Conclusions for the Commission on the Status of Women's session this year. I also would like to express my delegation's deep gratitude to the Executive Director and the entire team from UN Women for their careful preparation and effective work throughout this session.

Agreed Conclusions (general)

The United States is pleased the Commission on the Status of Women (CSW) has reached strong Agreed Conclusions. The CSW has focused intensively over the past two weeks on women's empowerment and its link to sustainable development, and we are grateful for the

hard work and commitment members of this body have shown to arrive at today's Agreed Conclusions. We have welcomed this body's work to promote gender equality and the empowerment of all women and girls through the 2030 Agenda for Sustainable Development and to recognize that women play a vital role as agents of development. We have all acknowledged that realizing gender equality and the empowerment of all women and girls is crucial to progress across all Sustainable Development Goals and targets. We agree that sustainable development is not possible if women and girls continue to be denied the full realization of their human rights and opportunities. The Agreed Conclusions we have adopted today represent our common commitment to these ends and will provide a roadmap for countries around the world to take additional steps to achieve the full human potential. We have addressed complex issues of education, economic empowerment, and health, and we have once again emphasized the importance of ending the global scourge of violence against women and girls. Today the Commission has fulfilled its role in that global effort.

There are still areas, however, where the Commission could have done better, and we are disappointed that certain issues were inadequately addressed.

SOGI

Overwhelming evidence demonstrates the clear link between violence against women and girls and discrimination based on sexual orientation and gender identity. We are deeply disappointed that the Conclusions failed to reflect this. The absence of any language to address this does nothing to change what is a meticulously documented truth.

Unilateral Economic Measures

Unilateral and multilateral sanctions are a legitimate means to achieve foreign policy, security, and other legitimate national and international objectives, and the United States is not alone in that view or practice. We reject the notion that sanctions have any substantial or demonstrated connection to women's empowerment and its important links to sustainable development. The language in the agreed conclusions referencing unilateral economic measures is an attempt to undermine the international community's ability to respond to acts that are contrary to international norms, violations of international law, and undermine the national security of other states.

Family

We regret that this resolution did not go far enough in recognizing the diversity of family or the various forms of the family all of which make an important contribution to sustainable development. We must realize the human rights of all family members and strengthen family policy development. Only in this way may we achieve our internationally agreed development goals, including on gender equality and empowerment of women and girls, and fulfill our commitment to the future.

CSE

The U.S. firmly supports sexual and reproductive health and rights and their link to sustainable development. However, we believe the Agreed Conclusions could have gone further toward recognizing the importance of comprehensive sexuality education, including evidence-based education on human sexuality, based on full and accurate information, to enable adolescents and youth to develop life skills in a manner consistent with their evolving capacities. The United States will continue to work to ensure that these issues are included in future agreements related to health and sustainable development.

Right to Development

While sustainable development is a goal we all aim to achieve, and we welcome the theme of this year's CSW linking sustainable development to women's empowerment, the concerns of the United States about the existence of a "right to development" are long-standing and well known, and the "right to development" does not have an agreed international understanding. Work is needed to make it consistent with human rights, which the international community recognizes as universal rights held and enjoyed by individuals—and which every individual may demand from his or her own government.

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b. U.S. Actions on Women, Peace, and Security

Ambassador Michele J. Sison, U.S. Deputy Representative to the United Nations, delivered remarks at a UN Security Council open debate on women, peace, and security on June 2, 2016. Her remarks are excerpted below and available at https://2009-2017-usun.state.gov/remarks/7313.

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This Council has long recognized that sexual and gender-based violence not only abuses and violates the human rights of its victims, but also undermines the security, livelihood, and health of nations by suppressing survivors' participation in civic, social, political, and economic life.

We have put in place many tools for countering conflict-related sexual violence inflicted by state and non-state armed groups, for improving accountability and bringing perpetrators to justice, and for documenting violations against marginalized groups of victims—including women and girls, men and boys, ethnic and religious minorities, and LGBTI individuals. But we must do a better job making use of these tools.

We commend Special Representative Bangura for her energetic efforts to translate the Council's resolutions into real, on-the-ground action. Her work with the national militaries of the Democratic Republic of Congo and with armed groups on both sides of the conflict in South Sudan to help develop structures to hold perpetrators accountable for their actions has been particularly noteworthy. We also applaud her efforts to support the investigation of the 2009 Stadium Massacre in Guinea.

In addition to the Special Representative's efforts, we value the work done by the Team of Experts on Rule of Law and Sexual Violence in Conflict, which has assisted countries in the areas of investigations and prosecution, in strengthening legal frameworks, and in ensuring protection of victims and witnesses.

However, significant challenges remain in countering sexual violence in conflict—especially when it comes to holding non-state armed groups and their partners and associates accountable for their crimes.

In resolution 2242, the Council recognized the nexus between sexual violence, terrorism, violent extremism—which can be conducive to terrorism. We have seen steady growth in the use of sexual violence against women and men, girls and boys, by terrorists not only in Iraq and

Syria, but also in Somalia, Nigeria, and Mali. Non-state armed groups like ISIL use sexual violence in a pre-meditated and systemic way to recruit fighters, raise money, and intimidate and demoralize communities in order to consolidate their hold over territory.

Resolutions 2199 and 2253 not only strongly condemn such acts by ISIL, al-Qaida, and their associates, but also work to strengthen accountability by encouraging all state and non-state actors with evidence to bring it to the attention of the Council.

The 1267 Committee represents a vital tool for us to punish perpetrators, since any individual who makes funds or other financial and economic resources available to ISIL and other terrorist groups in connection with sexual violence is eligible for designation in the 1267 sanctions regime.

We must make full use of these tools, as noted by Special Rapporteur Giammarinaro, we also need to do more to protect displaced women and girls whose heightened vulnerability puts them at increased risk of sexual violence and trafficking.

Over the past year, we've seen the continuation of mass migration from Syria, Iraq, and the Horn of Africa. Reports of smugglers demanding sex as "payment of passage" are rampant, and part of a global surge in human trafficking. And with reference to Ms. Davis' intervention, that's why last month at the World Humanitarian Summit in Istanbul, the United States announced an additional $10 million dollar contribution to the "Safe from Start" Initiative to prevent and respond to gender-based violence in emergency situations.

The United States urges all Member States to condemn these crimes and those who commit them; to properly document the horrors, so that one day those responsible can be held accountable; to commit to ending the conflicts that provide an ideal climate for human traffickers; and to commit to eradicating the groups that use human trafficking and conflict-related sexual violence as a weapon of war. Member States must also work to ensure that labor practices—such as charging workers recruitment fees that can lead to debt bondage—do not contribute to human trafficking. We must teach people how to actually see the victims of trafficking. We must also make our resources for victims more victim- and survivor-centered, incorporating victims and survivors into the policy-making process to yield better solutions.

A further challenge, of course, is the lack of global documentation of the phenomenon of sexual and gender-based violence against all vulnerable communities, including those which are too often forgotten in this discourse: LGBTI individuals, as well as men and boys. These individuals are not only at a heightened risk of facing harassment, abuse, sexual violence by armed groups due to discriminatory social norms and attitudes, but they also face a strong stigma against reporting abuses.

We commend the Secretary-General for highlighting the victimization of men and boys; the UN and Member States must more fully embrace a gender-inclusive approach in sexual violence and gender-based violence programming. There is scant documentation with little understanding of the patterns, prevalence, and severity of conflict-related sexual and gender-based violence against males as compared to sexual and gender-based violence against girls and women.

In addition, the absence of targeted services for male victims not only fails to address the needs of boys and men, but could also contribute to the problem of underreporting. Now bilateral efforts to counter conflict-related sexual violence and to improve accountability and documentation, of course, are also crucial.

In 2014, the United States launched the "Accountability Initiative" to support the development of specialized justice sector mechanisms to improve access to justice for survivors of sexual and gender-based violence. We remain committed to strengthening efforts to protect all people from harm, exploitation, discrimination, abuse, gender-based violence, and trafficking, and we must hold perpetrators accountable—especially in conflict-affected environments as all of the speakers have noted to us.

The United States has also committed nearly $40 million for support to victims of sexual violence in conflict, including in Nigeria, where the United States supports UN agencies, community groups, and local non-governmental organizations that provide health care services, including appropriate psychosocial counseling for women and children who have survived Boko Haram's horrific campaign.

However, we recognize that support programs are not enough. To combat sexual violence in conflict, women must have a seat at the table in resolving conflicts. Empowered women provide powerful antidotes to violent extremism and have critical contributions to make at every level of our struggle against sexual violence in conflict. We also need women in uniform to rebuild trust between law enforcement and communities; female corrections officers and female counselors to reach out to female inmates who are on the path to radicalization; and women legislators to support more inclusive public policies that address the unique grievances that drive individuals to terrorism.

As Secretary of State Kerry has said, fighting the scourge of sexual violence requires all of these tools, including UN Security Council resolutions, better reporting, and support to survivors. It especially requires holding criminals accountable, and ending impunity. Instead of shaming the survivors, we must punish the perpetrators, and we must be ready to support and empower the survivors as they work to rebuild their lives.

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On October 25, 2016, Ambassador Power delivered remarks at a UN Security Council open debate on women, peace, and security. Her remarks are excerpted below and available at https://2009-2017-usun.state.gov/remarks/7505.

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…[T]here has been, of course, genuine progress since Resolution 1325 was adopted 16 long years ago. And some of that progress shows up on paper. In 2015, 70 percent of peace agreements signed had gender-specific provisions, compared to just 22 percent of agreements in 2010. That's a big leap in a short period of time. Over the past year alone, 11 new countries completed national action plans explaining how they're going to empower women to resolve conflict and promote development; that brings the total number, as we've heard, to 64. Some of the progress has been on representation, if not on this UN Security Council. There was at least one woman present in the delegations for nine of 11 active negotiation processes in 2015, compared to four out of 14 in 2011, so that's not nothing. The United States continues to support this progress. President Obama released our second national action plan in June. And in addition to contributing $31 million to new initiatives launched over the past year, we're also looking at

… how to address new challenges, including how women can more effectively contribute to strategies on countering violent extremism.

Unfortunately, what the statistics miss is the persistent gap between how men and women actually contribute to peace processes. Even if women are present at the table, which is still too rare, men are the ones who almost always decide when and how to make peace. So today I want to talk briefly about why we need to do more to promote not mere participation, but meaningful, effective participation, with a stress on the word effective.

Let me start by describing the benefits of women's participation. As we've heard—and again, these are the same studies all of us cite—peace processes are more likely to succeed when women are involved. One study of 40 peace processes since 1989 found that the more that women influenced a negotiation, the higher the likelihood that an agreement would be reached. Another study that we all cite found that the likelihood of a peace agreement lasting more than two years goes up by 20 percent when women are involved. Now why is that? In part, it's because women often demand results. And when negotiations stall, as they inevitably do, women's groups can help push for talks to resume and press the parties to reach consensus. And women tend to demand more than what is politically expedient or in their narrow self-interest. Again, this is on the basis of limited data, because of the limited participation. But women's groups are known for lobbying for causes that do go beyond gender—including for human rights, transitional justice, and reconciliation—to be addressed in peace agreements. These are causes that are all too often deferred or ignored when women aren't there.

Here, I will turn to the example of the Philippines. In negotiations between the government and the Moro Islamic Liberation Front, a group seeking greater autonomy for the country's south, women were active at every level—from working groups to serving as lead negotiators. After negotiators reached an impasse in 2010, these women participants called for a national dialogue that generated new ideas to get the parties talking again. When violence broke out after the signing of the 2012 Framework Agreement, women helped organize protests calling for the parties to get back to the table. Or consider the Colombia peace process, where up to one-third of the participants at the table were women. These female representatives lobbied relentlessly so that those who committed sexual violence in the conflict would not be eligible for pardons, and they advocated for economic support to help women access new development opportunities in rural areas.

But these examples are still the exception. In Syria, South Sudan, and Yemen, men are the ones making decisions—even as we sit here—in negotiations. And maybe it's time to heed the famous aphorism that the definition of insanity is to do the same thing over and over again and expect a different result. Too often, what gets labeled as women's participation is just checking a box—a perfunctory meeting of male negotiators with female members of civil society. This matters not just for the content of a peace agreement itself; when children see peace accords signed by groups of men, the message received is that the men are the ones who matter in affairs of state and who are empowered to end conflicts. We don't want young girls internalizing that message.

We members of the Security Council need to demand that women have the ability to influence the course of negotiations. Not just because women deserve it, which, of course, they do. But because when women are effective participants, meaningful participants, we have a better chance at achieving the mission of this Security Council, which is preserving peace and security.

That brings me to my second and final point. In places where sexual violence is used as a weapon of war, this Council needs to address more fundamental needs: protection of women and accountability for those who commit abuses. Consider, as we've heard, South Sudan. In South Sudan's Unity State, government soldiers killed and raped civilians, pillaged homes, and destroyed livestock—forcing families to flee into swamps to hide. Anyone who left the swamps risked sexual assault. So when women had to start venturing out to find food, these communities reportedly nominated the oldest women to go first to protect the children and teenagers from being raped. And when the first ones grew too weak or had been raped too many times, these communities moved to the next oldest woman. Just imagine for a moment what the impact of these choices must be on the women of Unity State, South Sudan. Imagine that was your mother or grandmother, going out to shield your daughter.

Extremist groups are using medieval tactics elsewhere to subjugate women. We see this with Boko Haram, where the organization kidnaps schoolgirls to be forcibly married to fighters or brainwashed to be suicide bombers. And we see this with ISIL, when Yazidi women and girls are sold as sex slaves in markets.

So building peace in these conflicts must start by stopping the attacks against women, making sure that women will not be attacked with impunity. This means ending impunity generally, which we are not doing a good job of. These women, though, are not just victims of violence; their experiences need to be part of the long process of healing and rebuilding from a conflict. Recognizing their dignity means not just inviting them to negotiations, but making sure that they are not relegated to waiting in a side room for the men to break from the real negotiations and to deign to come in and receive their petition or hear their views.

That may sound simple, but frequently, Member States treat violence against women as a tragic byproduct of conflict, left to resolve itself once the men stop fighting. Protecting women from attacks and holding accountable those who commit these abuses need to be essential components of brokering peace—whether in our resolutions, in mediation processes, or in peace operations.

We've seen—and we live every day—how challenging this is. One place for members of this Security Council to start is to make certain that all components of the UN system do their utmost to keep women in conflicts safe. That is why the United States will continue to demand that peacekeeping missions carry out their mandates to protect civilians; and why the Secretary-General must ensure—as he recommitted to again today and as is stipulated in Security Council Resolution 2272—that when there is credible evidence of widespread or systematic sexual exploitation and abuse by a peacekeeping unit, that that unit is swiftly repatriated. Zero tolerance must come to mean zero tolerance.

Let me conclude with Liberia. Nobel laureate Leymah Gbowee organized women who were fed up with the violence of Liberia's civil war. When the negotiators went to Ghana, Leymah and her growing movement went, too—surrounding the negotiators in their hall to make sure that they did not come out until peace was reached. As she told a reporter at the time, the protest was "a signal to the world that we the Liberian women in Ghana at this conference are fed up with the war…and tired of fighting the killing of our people." And, Leymah added, "We can do it again if we want to." Imagine where we would be if every conflict had groups of women like this. Now imagine our world if people like Leymah were not just calling for peace from outside conference centers, but if she and others like her were sitting at the table on the inside. Before a conflict, during a conflict, and after a conflict, women must have an effective,

meaningful, impactful voice. And we on this Council must not rest until paper progress becomes tangible progress and "check the box" participation becomes meaningful participation.

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On December 5, 2016, Ambassador Michele J. Sison delivered remarks at a UN Security Council open Arria-formula meeting on women, peace and security. Ambassador Sison's remarks are excerpted below and available at https://2009-2017-usun.state.gov/remarks/7585.

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In 1979, the authors of the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW, recognized a truth that is at the core of the Women, Peace and Security agenda—that truth is that the full elimination of discrimination against women in political and social leadership is central to the strengthening of international peace and security.

However, nearly 40 years later, we are still making very little headway. Two months ago, the Council convened for our annual debate on Women, Peace and Security. As Ambassador Samantha Power remarked then, the enthusiasm in the room was "palpable," with more than 90 Member States, organizations, and civil society leaders speaking in support of the Women, Peace and Security agenda. And yet, despite the broad and fervent support for the inclusion of women in the peace processes or in post-conflict peacebuilding, Ambassador Power observed that "we are all drawing from the same handful of examples—and that's kind of sad, that we only have a limited roster of very inspiring examples to draw from."

Over the past year, the United States has surpassed the $31 million in initiatives we announced to the Council last year that protect women from violence, promote justice and accountability, and enhance women's participation in peace processes and decision-making. Just to name a few highlights: In Kenya, we are engaging women's organizations in preventing and responding to election-related violence and tackling barriers to women's political participation in local and national levels. We have funded six UN-led workshops in Rwanda, Burkina Faso, Cameroon, Benin, Niger, and Togo to increase the number of women police eligible to deploy to UN missions, almost doubling the number recommended to deploy from 36 percent to over 50 percent. We also sponsored UN delegations to attend the International Association of Women Police annual training conference and sponsored the International Female Police Peacekeeper of the Year award.

Yet, so much more remains to be done, and it's clear that we all have more we can do. The Obama Administration supports ratification by the United States of the Convention on the Elimination of All Forms of Discrimination Against Women, and hopes to see our Senate act. Our government believes that ratification would advance U.S. foreign policy and national security interests. That said, the policies and programs of the United States with respect to Women, Peace and Security—as expressed in our strong support for UN Security Council Resolutions 1325, 2122, 2242, and our own National Action Plan—do reflect many of the principles articulated in the CEDAW.

In addition, we firmly believe that the United Nations and its Member States must also work to dismantle institutional divisions within the UN system that impair the full implementation of the Women, Peace and Security agenda in all aspects of the UN's work.

For example, Special Representative for Sexual Violence in Conflict Zainab Bangura and her staff have bravely documented the unprecedented depravity of sexual violence and sexual slavery committed by ISIL in Iraq and Syria against ethnic and religious minorities. They have helped to shine a light on ISIL's use of enslaved women to recruit male fighters.

It is essential that we as a Council support the full integration of the work of the Special Representative for Sexual Violence in Conflict, as well as the Special Representative for Children and Armed Conflict into the broader UN system, to include appropriate reporting to sanctions committees and involvement in the planning of peacekeeping and special political missions.

Finally, we are tremendously encouraged that more than 60 states have adopted National Action Plans. The United States commends Spain's initiative to establish a Women, Peace and Security National Focal Point Network and is proud of being a founding member of the network. We look forward to the network's first meeting in Madrid in early 2017.

We reaffirm our conviction that women are agents of peace, reconciliation, development, growth, and stability, and states and societies are more peaceful …and more prosperous when women realize their full potential. We are pleased that the U.S. House of Representatives recognized this commitment as well and passed the Women, Peace and Security Act on November 11—which has now gone to the U.S. Senate for approval. We welcome the opportunity to work with our international partners to make the promise of this commitment real.

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c. Human Rights Council

On June 16, 2016, at HRC 32, the United States delivered a statement on violence against indigenous women and steps the U.S. government is taking to address the problem. The U.S. statement is excerpted below and available at https://geneva.usmission.gov/2016/06/16/human-rights-of-women-violence-against-indigenous-women/.

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The United States is grateful for the opportunity to address the vitally important issue of violence against indigenous women and girls. Last month, the National Institute of Justice released a report that documents how indigenous women in the United States face disproportionate levels of sexual and physical violence. The study found that a staggering 84 percent of American Indian and Alaska Native women have experienced some form of violence, while 56 percent experienced sexual violence. Most survivors have been victimized by non-Indigenous perpetrators.

The U.S. Government is taking affirmative steps to address this persistent problem, partnering with indigenous communities as well as tribal, state and local governments to find solutions. Just two days ago, the White House hosted a "United State of Women Summit" which

included a focus area on empowering American Indian and Alaska Native women and girls. Participants discussed measures to address domestic and dating violence, sexual assault, and stalking.

This compliments the ongoing efforts to promote access to protection measures and services, and ensure accountability for perpetrators of violence and access to an effective remedy for survivors. One previous obstacle to effective accountability was the lack of criminal jurisdiction over non-Native perpetrators committing gender-based violent crimes in Indian Country. In 2013, President Obama signed the re-authorization of the Violence Against Women Act which closed jurisdictional gaps by recognizing tribes' inherent jurisdictional authority to prosecute non-Indian offenders in tribal courts.

Agencies across the U.S. government are presently working with tribes to implement this new basis for accountability.

We recognize the importance of taking real and tangible steps to address the high levels of violence against indigenous women and girls. We look forward to continuing our work with other countries so that together we can work to eradicate the worldwide scourge of violence against indigenous women and girls.

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3. Sexual Orientation and Gender Identity

Human Rights Council

On June 30, 2016, the UN Human Rights Council adopted a resolution on the human rights of lesbian, gay, bisexual, and transgender ("LGBT") persons, creating an independent expert on violence and discrimination based on sexual orientation and gender identity. U.N. Doc. A/HRC/RES/32/2 (2016). Secretary Kerry and Ambassador Power each issued statements welcoming the resolution. Secretary Kerry's June 30, 2016 statement is available at http://2009-2017.state.gov/secretary/remarks/2016/06/259257.htm, and includes the following:

> This Expert will serve as a global focal point on combatting challenges faced by LGBT persons—a step that reflects the growing global momentum against human rights violations and abuses that LGBT persons continue to face around the world.
>
> The United States was pleased to work with countries from many regions of the world in support of this resolution…

Ambassador Power's statement on the adoption of the resolution establishing an independent expert on violence and discrimination based on sexual orientation and identity is available at http://2009-2017-usun.state.gov/remarks/7363, and includes the following:

This expert will track LGBTI issues around the globe and provide technical assistance and capacity building to help countries better address these issues. It will also institutionalize LGBTI issues into the work of the HRC, as the mandate holder will have a three-year term to submit reports to the HRC and partake in country visits.

…The United States looks forward to working closely with the Independent Expert in rooting out discrimination and violence against all LGBTI persons, so they can live in dignity and enjoy truly universal human rights regardless of where they were born or whom they love.

* * * *

C. CHILDREN

1. Rights of the Child

a. Periodic Report on the Optional Protocols to the Convention on the Rights of the Child

On January 22, 2016, the United States submitted to the Committee on the Rights of the Child its Combined Third and Fourth Periodic Reports on the Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the Sale of Children, Child Prostitution, and Child Pornography. The report is available at https://2009-2017.state.gov/j/drl/rls/252299.htm. Excerpts follow from the U.S. report. The Committee later published the U.S. report as two separate reports, U.N. Docs. CRC/C/OPAC/USA/3–4 and CRC/C/OPSC/USA/3–4, and responded to the U.S. report with Lists of Issues on each Protocol dated November 8, 2016, U.N. Docs. CRC/C/OPAC/USA/Q/3–4 and CRC/C/OPSC/USA/Q/3–4.[*]

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A. INTRODUCTION

A-1. The United States of America welcomes this opportunity to submit its Combined Third and Fourth Periodic Report to the Committee on the Rights of the Child (Committee) on measures giving effect to its obligations under the Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC), and on the Sale of Children, Child Prostitution and Child Pornography (OPSC), and on other information of interest to the Committee.[1] The Report consolidates information on both Protocols, in accordance with the Committee's guidelines, and places particular emphasis on developments since the prior U.S. reports of 2010. The selection and order of the content generally follows that of the Committee's June 26 and July 2, 2013, Concluding Observations (Observations), UN Docs.

[*] Editor's note: The United States provided responses to the Lists of Issues and made a presentation before the Committee in Geneva in 2017.

CRC/C/OPAC/USA/CO/2 and CRC/C/OPSC/USA/CO/2. A table of contents appears in the Contents Annex.

A-2. This Report draws on the expertise of the U.S. Departments of State (DOS), Defense (DoD), Justice (DOJ), Homeland Security (DHS), Health and Human Services (HHS), Labor (DOL), and Education (ED), as well as the U.S. Agency for International Development (USAID) and the Equal Employment Opportunity Commission (EEOC). The United States held a civil society consultation concerning this Report with nongovernmental organizations (NGOs) on November 12, 2015, and intends to hold further consultations prior to its Committee presentation.

B. OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

1. General Measures of Implementation

B-1. The United States is committed to effective domestic implementation of its OPAC obligations. The legal and policy framework through which the United States gives effect to its undertakings has not changed since the submission of its Second Periodic Report, UN Doc. CRC/C/OPAC/USA/2. The United States refers the Committee to its declaration submitted upon becoming a Party, in OPAC Annex 1.

B-2. Since its Second Periodic Report, the United States has actively promoted the goals of the OPAC. In the multilateral arena, the United States has worked with foreign governments; UN entities, including the UN Working Group on Children and Armed Conflict (CAAC) and the Special Representative for CAAC; NGOs; and others to monitor, report on, and prevent the unlawful recruitment and use of child soldiers and to protect, assist, and rehabilitate children associated with fighting forces through Disarmament, Demobilization, Rehabilitation, and Reintegration (DDRR) programs. These include counseling, formal and informal education, vocational training, and physical rehabilitation (e.g., prosthetics) for former child soldiers.

B-3. Various DOS components, including its Office to Monitor and Combat Trafficking in Persons (TIP Office), the Bureau of Democracy, Human Rights, and Labor, and embassies and missions worldwide, including the U.S. Mission to the United Nations, are involved in addressing unlawful child soldier recruitment and use, including reporting on the unlawful use of child soldiers in the annual Human Rights and Trafficking in Persons Reports. DOL's annual Findings on the Worst Forms of Child Labor report includes information on the prevalence of child soldiering in countries that experience it, and the actions corresponding governments are taking to address it and other worst forms of child labor through legislation, law enforcement, policies, inter-ministerial coordination, and social programs. USAID supports the rehabilitation and reintegration of former child soldiers in certain countries. The United States has insisted on stronger human rights reporting by UN peacekeeping missions, including accurate and timely information on violations of applicable law and other abuses committed against children in the host State. We have also called on the United Nations to ensure that child protection issues are addressed during peace agreement negotiations, and have acted to ensure that DDRR programming is robust and diverse so that it can address the needs of disarmed and demobilized child soldiers, including girls and children with disabilities.

B-4. The United States has actively implemented the Child Soldiers Prevention Act of 2008 (CSPA), which requires publication in the annual Trafficking in Persons (TIP) Report of a list of countries that have governmental armed forces or government-supported armed groups that unlawfully recruit or use child soldiers, as defined in the CSPA. The governments of CSPA-listed countries, absent a waiver, are subject to restrictions on certain forms of U.S. military

assistance and licenses for direct commercial sales of military equipment in the fiscal year (FY) following their placement on the CSPA list. The United States engages diplomatically with such governments and encourages national armies to improve age vetting of recruits; monitor troops to identify, demobilize, and rehabilitate child soldiers; investigate perpetrators of child soldier recruitment and use and hold them accountable; and otherwise implement UN child soldier action plans. The United States has also actively sought to hold perpetrators accountable through immigration bars and other tools made available by the CSPA.

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d. Reservations and Related Conventions

B-9. Regarding **Observation ¶ 4**, the United States supports the goals of the Convention on the Rights of the Child (CRC). The United States signed the treaty but has not transmitted it to the U.S. Senate for its advice and consent, which is required for ratification of a treaty under our constitutional system. Consideration of that potential transmission remains ongoing.

B-10. The United States maintains its position regarding the understandings in its instrument of ratification, attached to the U.S. Initial Report, UN Doc. CRC/C/OPAC/USA/1, as Annex I (**Observation ¶ 12**), and points to its strong record of implementing its OPAC obligations regarding protecting children in situations of armed conflict. For further discussion of the U.S. understandings, see the Second Periodic Report at ¶¶ 47-48 and 63, and ¶ 8 concerning the U.S. declaration.

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C. OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION, AND CHILD PORNOGRAPHY

1. General Observations

C-1. The United States is committed to effective domestic implementation of its OPSC obligations, and has been active in promoting the OPSC's goals since its Second Periodic Report, UN Doc. CRC/C/OPSC/USA/2. Among many other actions, the United States has developed and moved forward to implement its National Strategy for Child Exploitation Prevention and Interdiction (National Strategy) and a new Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States, 2013-2017 (Federal Strategic Action Plan). These and many other developments are discussed below.

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b. Human Rights Council

On March 7, 2016, at the annual meeting on the rights of the child at the 31st session of the HRC, Attorney Adviser Amanda Wall delivered the U.S. statement. Ms. Wall's statement is excerpted below and available at https://geneva.usmission.gov/2016/03/07/hrc-31-annual-full-day-meeting-on-the-rights-of-the-child/.

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The United States supports efforts to protect children from online sexual exploitation, which poses a grave challenge to nations around the world, including our own.

Many federal programs address the online sexual exploitation of children. For example, the U.S. Department of Justice prosecutes federal offenses involving child sexual exploitation, and supports initiatives like Project Safe Childhood. This project brings together federal, state, local, and tribal law enforcement to respond to the abuse and exploitation of minors.

The U.S. Federal Bureau of Investigation investigates child sexual exploitation through its Violent Crimes Against Children Program. This bureau works with federal, state, and local law enforcement agencies on 71 Child Exploitation Task Forces to investigate cases of child sexual exploitation.

The U.S. Department of Homeland Security has dedicated resources to investigate large-scale producers and distributors of child pornography, as well as U.S. citizens who travel abroad to engage in sex with minors. This team uses the latest technology to collect evidence and track the activities of individuals and organized groups.

The United States considers child sexual exploitation a serious offense, and we will continue to take steps to identify offenders, bring them to justice, and protect victims.

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c. UN General Assembly

On October 13, 2016, Kelly Razzouk, Senior Policy Advisor for the U.S. Mission to the UN, delivered remarks at the 71st Session of the General Assembly Third Committee on the topic of rights of children. Ms. Razzouk's remarks are excerpted below and available at http://2009-2017-usun.state.gov/remarks/7485.

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In 2016, more than 140 million children will be born around the globe. That gives us 140 million reasons to do more this year to ensure that children around the world grow up in an environment free from violence.

All over the world, children's rights continue to be violated. In Syria, preliminary reporting from Save the Children indicates that children make up half of the casualties that humanitarian workers in Eastern Aleppo are pulling from the rubble or treating in hospitals from recent bombings. In June, the Syrian Network for Human Rights reported that no fewer than 21,000 children had been killed in Syria since the start of the conflict, assigning blame for the majority of deaths to Syrian regime forces. On July 29, Save the Children reported that a deadly airstrike targeted a maternity hospital in the city of Idlib, resulting in two deaths and several injuries to infants.

One can only imagine what those mothers felt as they made their way to that hospital with the hope that within those walls they could give their newborn babies a fighting chance at

survival. But the bombs fell on even the incubators holding newborn babies—causing them to crash to the floor.

The ongoing violence has led UNICEF to name Syria as the most dangerous place in the world to be a child.

And across the globe, refugee children are particularly at risk as they flee countries including Syria, Somalia, and Afghanistan.

A few weeks ago, at the Leaders' Summit on Refugees here at the United Nations, President Barack Obama spoke of five-year-old Omran Daqneesh in Aleppo, Syria, sitting in an ambulance, stunned, silent and in shock after a bombing with blood dripping down his face. No child should ever have to endure what Omran experienced.

Our collective response is a test of our common humanity. We must all do our part. Major commitments to refugees by countries including Turkey, Thailand, Chad, and Jordan will help more than one million children who are refugees get an education, and will help one million refugees to get training they need to find a job. As part of the Leaders' Summit, the United States provided nearly $37 million dollars to the UN High Commissioner for Refugees and $15 million dollars to UNICEF to help reach our goal of sending one million more refugees to school. The United States also strongly supports Education Cannot Wait, the world's first fund for education in emergencies and protracted crises.

Domestically, the United States has invested more than $1 billion in early childhood education in recent years, such as through the Preschool Development Grants program that is expanding access to high-quality preschool for children in high-need communities, including from immigrant and migrant families.

We have implemented strategies that close opportunity gaps and awarded billions of dollars through grant programs such as Race to the Top, Investing in Innovation, and Promise Neighborhoods. As a result, U.S. high school graduation rates are at all-time highs, and more students are going to college than before.

To address the range of challenges facing adolescent girls, in March, Secretary Kerry launched the United States Global Strategy to Empower Adolescent Girls. The United States is also proud to highlight the work of Let Girls Learn—a presidential initiative focused on making sure adolescent girls get a quality education— and we are grateful to the countries that have partnered with us in this effort.

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On November 22, 2016, Stefanie Amadeo, U.S. Deputy Representative to ECOSOC, provided the U.S. explanation of position at the 71st meeting of the UN General Assembly Third Committee on the rights of the child. The explanation of position is excerpted below and available at https://2009-2017-usun.state.gov/remarks/7572.[**]

[**] Editor's note: References to operative paragraph numbers and other discrepancies have been corrected from the version posted on the website of the U.S. Mission to the UN to conform to the remarks as they were delivered.

* * * *

The United States is pleased to join consensus on this resolution. Doing so underscores the priority we place on our domestic and international efforts to protect and promote the well-being of children. For example, the U.S. Agency for International Development's maternal and child survival efforts in 25 priority countries since 2008 have saved the lives of 4.6 million children. The Every Student Succeeds Act, which contains provisions that ensure educational rights and protections for homeless children and youth, is an example of our domestic efforts.

In joining consensus today, we wish to clarify our views on several provisions. We will not comment explicitly on all of our concerns about the text but instead focus on its most problematic elements.

First, we understand that the provisions of this resolution, and the others adopted by this Committee, do not imply that states must become parties to instruments to which they are not a party or implement obligations under such instruments. Any reaffirmation of prior documents in this resolution and any others adopted by this Committee applies only to those states that affirmed them initially.

We also underscore that this resolution and the other ones adopted by this Committee do not change or necessarily reflect the United States' or other states' obligations under treaty or customary international law. With respect to operative paragraph 3, we note that reservations are an accepted part of treaty practice and are permissible except when prohibited by a treaty or incompatible with the treaty's object and purpose. As for operative paragraph 75, the right to consular notification under the Vienna Convention on Consular Relations is held by the state of a detained person's nationality—not that individual. Finally, with respect to operative paragraph 71 in particular, we underscore that human rights violations result from conduct by state officials and agents, not by private parties.

This resolution rightly emphasizes the importance of protecting vulnerable children. We read this resolution's references to persons in vulnerable or marginalized families or communities or situations to include LGBTI persons and persons with disabilities.

With respect to the section on migrant children, the United States emphasizes that we will fulfill our international obligations to promote and protect the human rights of migrants by providing substantial protections under the U.S. Constitution and other domestic laws to individuals within the territory of the United States, regardless of their immigration status. We also reiterate the well-settled principle under international law that all states have the sovereign right to control admission to their territory and to regulate the admission and expulsion of foreign nationals.

The U.S. government draws from a wide range of available resources to safely process migrant children, including those who are unaccompanied, in accordance with applicable laws. In the circumstances in which migrant children are in the care and custody of the U.S. government, the United States is committed to ensuring that they are treated with dignity, respect, and special concern for their particular vulnerabilities, as reflected in several U.S. laws, regulations, and policies concerning migrant children. We endeavor to promote the best interests of the child principle, but reiterate that the United States does not have an obligation under international or domestic law to apply that principle as a primary consideration at all times or in all actions concerning children, including immigration enforcement and immigration proceedings or criminal proceedings.

In addition, with respect to operative paragraph 68 that is drawn from operative paragraph 33 of the New York Declaration for Refugees and Migrants, General Assembly Resolution 71/1, we reiterate the concerns in our Explanation of Position on that Declaration, which are set forth in UN Document A/71/415.

In closing, the United States expresses our concern about the lack of transparency in the negotiation process for this resolution, as well as the main sponsors' general unwillingness to incorporate states' constructive suggestions. In this regard, we regret that the final text does not reflect many of our proposed edits, which other countries supported.

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2. Children and Armed Conflict

a. Child Soldiers—South Sudan

On August 31, 2016, State Department Spokesperson John Kirby issued a press statement on child soldiers in South Sudan, which is available at http://2009-2017.state.gov/r/pa/prs/ps/2016/08/261411.htm. The statement expresses U.S. alarm in response to a UNICEF report implicating the government of South Sudan in the recruitment of child soldiers:

> [W]e insist on an immediate halt to the unlawful recruitment and use of child soldiers by government and opposition forces. Individuals responsible for the unlawful recruitment or use of child soldiers for armed groups or forces may be subject to sanction under U.S. law and may be targeted for UN sanctions.

b. Child Soldiers Prevention Act

Consistent with the Child Soldiers Prevention Act of 2008 ("CSPA"), Title IV of Public Law 110-457, the State Department's 2016 Trafficking in Persons report lists the foreign governments that have violated the standards under the CSPA, *i.e.* governments of countries that have been "clearly identified" during the previous year as "having governmental armed forces or government-supported armed groups, including paramilitaries, militias, or civil defense forces, that recruit and use child soldiers," as defined in the CSPA. Those so identified in the 2016 report are the governments of Burma, Democratic Republic of the Congo, Nigeria, Somalia, South Sudan, Sudan, Syria, and Yemen. Regarding the recruitment and use of children by the Afghan National Police ("ANP") and the Afghan Local Police ("ALP"), the Department concluded that there was not a basis on which to list Afghanistan under the standard specified in the CSPA. Although the ANP and ALP are government security forces, they are not part of the armed forces of Afghanistan; therefore, they are not a "governmental armed force" under the CSPA. "Governmental armed force" refers to a military force, such as the army, navy, or air force, as opposed to other national security actors, such as the national police or local police. Because the ANP and ALP are government security forces, they are also not a "government-supported armed group," a term in the CSPA which

refers only to non-state actors.

The full text of the TIP report is available at http://2009-2017.state.gov/j/tip/rls/tiprpt/2015/index.htm. For additional discussion of the TIP report and related issues, see Chapter 3.B.3.

Absent further action by the President, the foreign governments designated in accordance with the CSPA are subject to restrictions applicable to certain security assistance and licenses for direct commercial sales of military equipment. In a memorandum for the Secretary of State dated September 28, 2016, the President determined:

> that it is in the national interest of the United States to waive the application of the prohibition in section 404(a) of the CSPA with respect to Burma, Iraq, and Nigeria; and to waive in part the application of the prohibition in section 404(a) of the CSPA with respect to the Democratic Republic of the Congo (DRC) to allow for provision of International Military Education and Training (IMET) and Peacekeeping Operations (PKO) assistance to build the DRC military's capacity to respond to critical atrocity prevention priorities in the region such as countering the Lord's Resistance Army and other armed groups, to the extent such assistance or support would be restricted by the CSPA; to waive in part the application of the prohibition in section 404(a) of the CSPA with respect to Rwanda to allow for the provision of IMET, PKO assistance, and non-lethal Excess Defense Articles for humanitarian and peacekeeping purposes, to the extent such assistance or support would be restricted by the CSPA; to waive in part the application of the prohibition in section 404(a) with respect to Somalia to allow for the provision of IMET, PKO assistance, and support provided pursuant to 10 U.S.C. 2282, to the extent such assistance or support would be restricted by the CSPA; and to waive in part the application of the prohibition in section 404(a) with respect to South Sudan to allow for the provision of IMET, PKO assistance, and support provided pursuant to section 1208 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113– 66), to the extent such assistance or support would be restricted by the CSPA.
>
> 81 Fed. Reg. 72,683 (Oct. 21, 2016).

D. SELF-DETERMINATION

On February 23, 2016, the Department of Interior held a panel discussion on "Self-Determination in the U.S. Virgin Islands, American Samoa, and Guam." The video of the panel discussion can be viewed at https://www.doi.gov/oia/self-determination. The presentation of Meredith Johnston, Attorney-Adviser at the Department of State, Office of the Legal Adviser, on self-determination under international law is excerpted below.[***]

[***] Editor's note: Some corrections have been made to the as-delivered remarks for this written record.

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Thank you very much. I really appreciate the opportunity to be here and to be part of this discussion. I will be addressing self-determination from an international law perspective. This is actually one of the most challenging aspects of international law, so I will be going over areas where there is consensus in the international community about some aspects of self-determination, and also some areas where there is disagreement. I will then go into the United States position in areas where there is consensus, and some specific issues.

Historical Background

I will first start with a history of the principle of self-determination as it has evolved in the United Nations system. Nearly a century ago, President Wilson advocated for the principle of self-determination as a key principle of international relations in his Fourteen Points. That principle was affirmed after WWII as part of the UN Charter. But when the UN Charter was adopted in 1945, there was still no general consensus as to the exact scope or meaning of self-determination.

Through the 1950s and 1960s, the concept evolved in the UN of self-determination not just as a principle, but as a right. I will address specifically three key UN General Assembly resolutions and two international human rights Covenants. But before I go into that, I just want to set the stage at this time. As these discussions are going on, many states are motivated by a desire to see an end to colonialism, and so these documents will refer to "colonies" or "colonial people," and some of the discussions will refer to those terms. But the U.S. government as a general matter does not use those terms. We use the term that is in the UN Charter itself, which is "non-self-governing territories."

So the first of the resolutions I want to address was in 1960. It is Resolution 1514, titled the "Declaration on the Granting of Independence to Colonial People"—again, you see this title reflecting an outdated terminology. It states that "[a]ll peoples have the right to self-determination; by virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development."

Right after this—the next day, in fact—the General Assembly adopted Resolution 1541, which elaborated on states' obligations under the UN Charter to provide information to the Secretary General about non-self-governing territories. This resolution describes some of the characteristics that states should consider in determining whether they have this reporting obligation. Two key features of a "non-self-governing territory" identified in this resolution are: (1) that it was "geographically separate"; and (2) that it is "distinct ethnically and/or culturally" from the administering state. If these two features existed, then states may then go on to consider other factors, such as administrative, political, juridical, economic or historical factors. The resolution declared that peoples in non-self-governing territories have the right to freely determine basically three options: (1) independence; (2) independence with free association; or (3) integration with the administering state.

At the same time that these resolutions were being adopted and these issues were being discussed in the General Assembly, states were also negotiating the UN Human Rights Covenants. These were originally intended to be a single covenant, but it split into two: the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Soviet Union advocated for the inclusion of a right to self-determination that would apply only to colonial peoples. Eastern European

States and some developing states said, "Yes, there should be some right to self-determination in these covenants, but it should apply both to colonial peoples and to people living under oppressive governments." Most Western countries were reluctant to support a right to self-determination in the Covenants themselves, in part because of this dispute about who constituted a "people"—they thought the term was vague. But if it were to be included, the Western states thought it should apply to both colonial peoples and those living under oppressive governments. Over the objections of many Western states, the UN General Assembly directed the inclusion of the right to self-determination as an article in both Covenants. And so the language of Article 1 is identical in both Covenants. It is referred to as "Common Article 1." But even at this point, there was strong disagreement about what this right meant, and neither covenant has a definition of "peoples" or "self-determination."

Then in 1970, the UN General Assembly adopted a resolution that's known as the Friendly Relations Declaration. By this point, there was general consensus that the right of self-determination applied to colonial peoples, and the resolution affirms this. It also states that "subjection of peoples to alien subjugation, domination and exploitation" is a violation of the principle of equal rights and self-determination of peoples. The Friendly Relations Declaration also contains what is called a "safeguard clause," which provides that the territorial integrity of states must be preserved for those states that are "conducting themselves in compliance with the principle of . . . self-determination . . . and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour." The right of self-determination and the safeguard clause also appeared in subsequent documents, including the Final Act of the Conference on Security and Cooperation in Europe, and the Vienna Declaration and Program of Action from 1993.

Contemporary Views on Self-Determination

So that's the historical development. The question is: Where are we now? There is general consensus in the international community that "people," for the purposes of Article 1 of the Covenants, means the entire population of a state, or the entire population of a non-self-governing territory that forms a separate geographical entity. In addition, there is general consensus that the people of a geographically separate non-self-governing territory can choose freely to integrate with an administering state, to become an independent state, or to become an independent state with free association with the former administering state.

However, there is not consensus about whether groups other than the entire population of a state or non-self-governing territory can qualify as "peoples" for purposes of Article 1, and there is some disagreement when it comes to addressing this issue in particular contexts. For example, in 2009 the International Court of Justice (ICJ) held proceedings regarding an advisory opinion on the question of Kosovo's declaration of independence, and many states provided their views. The ICJ in its opinion essentially simply noted that there were "radically different views" among states and did not address it as a substantive matter in its opinion.

For the U.S. position, the United States has stated that it agrees that a "people" means the entire population of a state, or the entire population of a non-self-governing territory. So, for example, if there were a referendum on the question of self-determination, that should be open to all voting-eligible residents of the territory and not be limited to a subset of the population or a particular ethnic group. The U.S. also agrees with the international community that there are these three options—independence, integration, or independence with free association. In fact, that position is reflected in the U.S. relationship with its own insular areas and former trust territories. For example, the people of Puerto Rico completed an act of self-determination in

1952, when they approved the Puerto Rico Constitution, choosing integration into the United States as a commonwealth. The people of the Northern Mariana Islands completed an act of self-determination through a referendum in 1975—which was observed by the UN—and also chose integration as a commonwealth. The peoples of Palau, Micronesia, and the Marshall Islands completed respective acts of self-determination and chose independence with free association. For Guam, the U.S. Virgin Islands, and American Samoa, the peoples of these current U.S. territories have not yet exercised their respective rights of self-determination under international law, but the U.S. certainly supports self-determination for these peoples.

Now, going to some more specific questions, the U.S. has historically taken the position that the right of self-determination with respect to the administering state—and by this I mean that decision between independence, integration, or independence with free association—can only be exercised once. And once that right has been exercised, then from an international law perspective the question is over.

So, for example, the United States has maintained at the United Nations that the residents of Alaska and Hawaii have completed acts of self-determination by choosing statehood in 1959, and there is not an ongoing international legal right to re-determine that relationship. The same is true for the residents of Puerto Rico. Now, the fact that Alaska and Hawaii elected statehood and Puerto Rico elected commonwealth—from an international law perspective—are both equally valid choices, provided that they really reflected the will of the people, meaning the entire population, at the time the respective decisions were made.

United Nations Declaration on the Rights of Indigenous Peoples

I did want to address one separate issue, which is the distinction between the right to self-determination under international law and the right of indigenous peoples to self-determination under the United Nations Declaration on the Rights of Indigenous Peoples. This is a non-binding UN declaration that the United States supports. In our 2010 announcement of our support for the Declaration, the United States explained that the Declaration promotes a new and distinct right of self-determination for indigenous peoples that is separate from the international right; that the non-binding Declaration was never intended to alter or define international law; and that for the United States' purposes, the right of indigenous peoples to self-determination is reflected in our existing recognition of and relationship with federally recognized tribes who have large measures of self-government in a wide variety of areas.[****]

Conclusion

With that, I think I have covered the full international law perspective, but if there are specific questions about that or the UN system, I would be happy to answer them.

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E. ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

1. Food

The United States joined consensus on all but operative paragraphs 27 and 10 of the UN General Assembly resolution on "Right to Food," which was adopted at the 71st session

[****] Editor's note: See *Digest 2010* at 262-84 for the full text of the announcement of U.S. support for the Declaration.

of the General Assembly on December 19, 2016. U.N. Doc. No. A/RES/71/191. The U.S. explanation of position on the resolution follows.

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The United States agrees that hunger and malnutrition have devastating consequences, and maintaining a focus on global food security is critical to realizing our vision of a world free from hunger. For more than a decade the United States has been the world's largest food aid donor. The United States reiterates our commitment to reducing hunger and addressing poverty sustainably through a variety of approaches. We are pleased that this resolution emphasizes the important link between the empowerment of women and the progressive realization of the right to adequate food in the context of national food security and expresses concern about child mortality and morbidity and stunting. Our Feed the Future Initiative and programs to support women entrepreneurs and women farmers exemplify the United States' commitment to incorporating a gender equality perspective in our efforts to address hunger and poverty.

Although we will not block consensus, we are disappointed that this resolution contains problematic, inappropriate language that does not belong in a resolution focused on human rights. As a result, we are dissociating from consensus on paragraphs 27 and 10 in particular. The reference to Doha in paragraph 27 in no way overrides or supersedes the World Trade Organization (WTO) Nairobi Ministerial Declaration, which was agreed by all Members of the WTO and which reflects accurately the current status of the issues in those negotiations. At the WTO Ministerial Conference in Nairobi last year, WTO Members could not agree to reaffirm the Doha Development Agenda (DDA). As a result, WTO Members are no longer negotiating under the DDA framework. Further, the United States firmly considers that paragraph 27, and any other effort in non-WTO fora to undermine decisions reached by consensus in the WTO, has no standing. It only demonstrates how disconnected the UN is on trade issues that are outside of its mandate.

With respect to paragraph 10, the United States does not support the reference to technology transfer. The United States only supports the transfer of technology if it is on a voluntary basis and on mutually agreed terms. The United States does not accept any other reference to the conditions of technology transfer in paragraph 10, and further, from the United States' perspective, paragraph 10 does not serve as a precedent for future negotiated documents. We request that our dissociation from paragraphs 27 and 10 be reflected in the record for the agenda item under which this resolution has been adopted.

We have strong concerns about other aspects of this resolution. The resolution continues to use outdated, inapplicable, or otherwise inappropriate language. In particular, trade and trade negotiations are the purview of the WTO and its membership, and should not have been included in this resolution. We do not accept any reading of this resolution that might suggest that protection of intellectual property rights has a negative impact on food security. The United States notes that intellectual property and the international rules-based intellectual property system promote agricultural innovations that bring wide-ranging benefits to farmers, consumers, and innovators. The United States firmly considers strong protection and enforcement of intellectual property rights as providing critical incentives needed to produce innovation that will enable us to address the development challenges of today and tomorrow. We are also concerned that the resolution's language concerning donor nations and investors is imbalanced. The text

also should have reflected the need for transparency, accountability, good governance, and other elements critical to providing an environment conducive to investment in agriculture.

We also underscore our disagreement with other inaccurate language in this text. For example, this resolution refers to a "global food crisis," when we are not currently in a global food crisis. Using this term detracts attention from important and relevant challenges that contribute significantly to the recurring state of regional food security, including the lack of strong governing institutions and systems that deter investment. Unfortunately, the resolution mentions none of these significant factors. We also reiterate that the United States is concerned by and does not necessarily agree with this resolution's unattributed statements of a technical or scientific nature. Similarly, while addressing climate change is a top priority for the United States, while we are taking ambitious steps domestically and internationally to tackle this challenge, and while we are fully committed to implementing the Paris Agreement, we underscore that the resolution draws inaccurate linkages between climate change and human rights related to food.

The United States supports the right of everyone to an adequate standard of living, including food, as recognized in the Universal Declaration of Human Rights. The United States does not recognize any change in the current state of conventional or customary international law regarding rights related to food. To the extent that this resolution purports to define or elucidate any such right, the United States does not accept that definition or elucidation. The United States is not a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Accordingly, we interpret this resolution's references to the right to food, with respect to States Parties to the ICESCR, in light of its Article 2(1). We also interpret this resolution's references to Member States' obligations regarding the right to food as applicable to the extent they have assumed such obligations. The United States is working to achieve a world in which everyone has adequate access to food but does not treat the right to food as an enforceable obligation. We also do not concur with any reading of this resolution or related documents that would suggest that States have particular extraterritorial obligations arising from a right to food.

Finally, we interpret this resolution's reaffirmation of previous documents, resolutions, and related human rights mechanisms as applicable to the extent countries affirmed them in the first place. As for other references to previous documents, resolutions, and related human rights mechanisms, we reiterate any views we expressed upon their adoption.

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2. Housing

The UN held its third conference on housing (held every 20 years) in 2016, Habitat III, which concluded with the "New Urban Agenda" as its outcome document. The U.S. explanation of position on the New Urban Agenda follows.

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The United States is pleased that member states were able to reach consensus on this New Urban Agenda. We are pleased that the New Urban Agenda is an action-oriented document which will

set global standards of achievement in sustainable urban development, rethinking the way we build, manage, and live in cities through drawing together cooperation with committed partners, relevant stakeholders, and urban actors at all levels of government as well as the private sector. We encourage all stakeholders from all sectors to work to make this New Urban Agenda a reality in the coming years.

In supporting this document we reaffirm our long-standing commitment to both sustainable urban development and the promotion of human rights. The United States takes its human rights obligations and commitments seriously in cities, just as it does everywhere within its territory. We do not recognize any "right to the city", nor do we have any obligations or commitments with respect to it. We also reiterate the concerns of the United States regarding the topic of a "right to development," which are long-standing and well known; it does not have an agreed international meaning, and any related discussion needs to focus on aspects of development related to human rights, which are universal rights held and enjoyed by all individuals and which every individual may demand from his or her own government.

Further, the United States supports the right to an adequate standard of living, including adequate housing, and we support States Parties to the International Covenant on Economic, Social and Cultural ("ICESCR") as they undertake steps to achieve progressively the full realization of this right. However, the United States joins consensus with the express understanding that the New Urban Agenda does not imply that States must implement obligations under human rights instruments to which they are not a party and the United States is not a party to the ICESCR.

We note that the term "equitable" is used in multiple contexts in the Agenda. While the United States fully endorses the importance of universal access to safe drinking water and sanitation, for example, we must collectively avoid any unintended interpretation of the term "equitable" that implies a subjective assessment of fairness that, among other things, may lead to discriminatory practices.

As we have said many times, the U.S. remains as committed as ever to assisting the most vulnerable on a path to achievement of this agenda. We note that throughout the document, the phrase persons in vulnerable situations is included. We understand that this term is inclusive of all groups that find themselves vulnerable due to various characteristics such as gender, race, religion, sexual orientation, and gender identity.

At the same time, we collectively recognize that this is a universal Agenda, that calls for action by all. We underscore here that, by its terms, paragraph 18 reaffirms the principle of common but differentiated responsibilities only as it was originally set out in principle 7 of the Rio Declaration on Environment and Development, where it was explicitly limited to certain types of global environmental degradation. The reaffirmation of principle 7 in this limited context does not imply, and the United States does not accept, that this principle has relevance or application to the broad range of issues addressed in this Agenda, or to sustainable development as a whole.

Economic sanctions, whether unilateral or multilateral, can be a successful means of achieving foreign policy objectives. In cases where the United States has applied sanctions, they have been used with specific objectives in mind, including as a means to promote a return to the rule of law or democratic systems, to respect human rights and fundamental freedoms, or to prevent threats to international security. We believe that economic sanctions can be an appropriate, effective, and legitimate alternative to the use of force and that U.S. sanctions are fully compliant with international law and the Charter of the United Nations.

Regarding the reference to foreign occupation in Paragraph 19, we reaffirm our abiding commitment to a comprehensive and lasting peace based on a two-state solution to the Israeli-Palestinian conflict. We remain committed to supporting the Palestinian people in practical and effective ways, including through sustainable development. We will continue to work with the Palestinian Authority, Israel, and international partners to improve the lives of ordinary people toward a more sustainable future.

Finally, the New Urban Agenda is not legally binding and does not affect existing obligations under applicable international and domestic law, including where commitments in other instruments are characterized as having been "agreed". Nor does it change the current state of conventional or customary international law. The United States will pursue the commitments, including those aspiring to changed circumstances, in the Agenda consistent with U.S. law and policy and our limited authority at the federal level. We will pursue the Agenda's commitments within and subject to our appropriations process.

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3. Water, Peace, and Security

On November 22, 2016, Ambassador Isobel Coleman, U.S. Representative to the UN for UN Management and Reform, delivered remarks at a UN Security Council open debate on water, peace, and security. Ambassador Coleman's remarks are excerpted below and available at https://2009-2017-usun.state.gov/remarks/7570.

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As we've heard, conflict over water is increasingly a serious global issue. In discussing water, peace, and security today, I would like to focus my remarks on two points: first, the example of the Lake Chad Basin as an area struggling with water insecurity; and second, the role that the international community can play in helping prevent water disputes from becoming armed conflicts.

The Lake Chad Basin—spanning the border region of Chad, Niger, Nigeria, and Cameroon—is an example of what happens when water scarcities contribute to conflict. Overuse, poor management practices, and expanding desertification have caused the lake to recede by approximately 90 percent. The disappearance of this critical resource, which is the basis of survival for millions of people, has led to territorial disputes and helped nurture the rise of Boko Haram.

Boko Haram uses the dying lake as a recruiting base, easily exploiting the tens of thousands of displaced people who are searching for a means of livelihood. Boko Haram deploys brutal tactics of abduction, sexual slavery, killing, and looting to terrorize the population, and the resulting armed conflict has left over nine million people in need of humanitarian assistance.

However, there is a glimmer of hope in this otherwise dark reality. The Lake Chad Basin Commission was established by regional governments and civil society to try to peacefully resolve disputes over the lake. The commission also formed a Multinational Joint Task Force to

fight Boko Haram, a powerful testament to the role regional cooperation can play in combatting issues stemming from water scarcity.

It is urgent that the international community bolster its support to the MNJTF to assist in its efforts to counter Boko Haram. In particular, the MNJTF's main challenge is a severe lack of funding, so we all must recommit to contributing to the force. Greater international support would be a strong sign of solidarity with the people of the four countries that are bearing the brunt of a terrorist threat that mocks the value of human life. Support to local governments to help build capacity for rehabilitation and reconstruction would also go a long way in helping to ensure lasting peace and stability.

Conflict over water is not exclusive to the Lake Chad Basin, of course. In Syria, poor drought management resulted in the loss of livelihood for thousands of farmers, leading to mass migration to urban areas and fanning the flames of what was already a deep-rooted discontent with respect to government policies. In Iraq, ISIL has manipulated strategic dams on the Tigris and Euphrates rivers as a key component of its strategy.

I doubt there is a single country in this room that is immune to water challenges. I know that the United States is not. With 50 states that share 21 large rivers and more than 20,000 watersheds, we have had to learn to cooperate.

For more than 100 years, the United States has had close relationships with both our neighbors on water management, and all three countries have benefitted. For example, our 2012 bilateral agreement with Mexico permits Mexico to store water in the United States for drought protection, but also allows U.S. entities to invest in water conservation projects in Mexico, and then share in the water saved. This model has proven to be successful in strengthening the water security of both countries and encourage investments in water conservation and sound resource management.

Drawing from this partnership and others, I'd like to share some thoughts on best practices we have learned in helping keep water disputes from erupting into conflict.

First, the international community should support regional resolution of water disputes by building the capacity of states and stakeholders. Countries require the ability to negotiate, resolve disputes, and implement agreements relating to their water resources. This includes the technical skills needed to understand emerging challenges and opportunities, as well as the means to address them. One model of capacity building is the USAID-funded program in the Kadamjai region of Kyrgyzstan, which provided technical assistance and resources to better manage water inefficiencies. The program enabled the construction of a permanent diversion dam, which benefited nearly 2,000 farmers and residents.

Second, institutions and processes can help "lock in" progress. The establishment of regional organizations, bilateral agreements, and information-sharing platforms can all play a role in institutionalizing and maintaining cooperation. The United States has been working with several other donors to develop the Shared Waters Partnership that supports cooperative efforts on transboundary waters in regions where water is, or may become, a source of conflict. The program is a resource to any country looking for support to resolve water issues.

Finally, sound data and impartial analysis is essential to developing a common view of the challenges and opportunities that face us and help provide a foundation for decision-making. A project in the Okavango River Basin—between Angola, Namibia, and Botswana—effectively used data to give early warning of locations at risk of resource conflict, allowing the involved parties to proactively resolve potential issues before they could develop.

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4. Education

On July 3, 2016, at the 29th session of the HRC, Eric Richardson delivered the U.S. explanation of position regarding the Council's resolution on the right to education, on which the United States joined consensus. That explanation is excerpted below and available at https://geneva.usmission.gov/2015/07/06/u-s-eop-on-hrc-right-to-education-resolution/.

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The United States is firmly committed to providing equal access to education. We note that our judicial framework provides robust opportunities for redress, but it is appropriately limited to parties who have suffered harm. We interpret this resolution's references to obligations as applicable only to the extent that States have assumed such obligations, and with respect to States Parties to the International Covenant on Economic, Social, and Cultural Rights, in light of its Article 2(1). The United States is neither a party to that Covenant nor to its Optional Protocol, and the rights contained therein are not justiciable as such in U.S. courts. We read this resolution to urge States to comply with their applicable international obligations.

As educational matters in the United States are primarily determined at the state and local levels, we understand the resolution's call on States to strengthen access to quality education in terms consistent with our respective federal, state, and local authorities.

With respect to this resolution's references to private providers, we underscore the importance of education as a public good, but note also that private providers can offer students a viable educational option. We support encouraging all providers to deliver education consistent with its importance as a public good, and take very seriously the responsibility of States to intervene in litigation as appropriate.

The United States does not regard the language in this resolution as assigning primacy to any one issue in the priorities or structure of the Post-2015 Development Agenda or in any other way pre-judging the outcome of these ongoing negotiations.

Despite these and other concerns with the resolution, we join consensus on this resolution because we support its focus on the right to education.

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F. RESPONSIBLE BUSINESS CONDUCT

On April 25, 2016, the U.S. Department of State issued a media note on the annual plenary meeting of the Voluntary Principles on Security and Human Rights Initiative

("VPs Initiative"), co-hosted by the governments of the United States and Colombia in Bogota, Colombia. The media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/04/256561.htm, summarizes key achievements during the U.S. Government's one-year chairmanship of the VPs initiative:

> revision and clarification of the entry criteria for new members; updates to the reporting guidelines for VPs participants to encourage more robust corporate reporting on security and human rights; and implementation of a framework to allow regular verification of members' implementation of their respective roles and responsibilities.

Deputy Assistant Secretary Scott Busby's keynote remarks delivered at the plenary on April 20, 2016 are available at http://2009-2017.state.gov/j/drl/rls/rm/2016/256445.htm.

On March 25, 2016, the United States released its annual online report on the VPs Initiative, which is available at http://www.state.gov/j/drl/rls/vprpt/2015/255172.htm. For background on the VPs Initiative, see *Digest 2000* at 364-68. See also *Digest 2013* at 354-55 and *Digest 2012* at 409-10.

On December 16, 2016, the White House released the National Action Plan on Responsible Business Conduct, available at https://www.state.gov/documents/organization/265918.pdf. The NAP focuses on five categories, detailing how the USG intends to:

> (1) continue to refine the ways in which the USG purchases and finances responsibly; (2) work with companies, civil society, and foreign governments to share best practices and support high standards; (3) highlight the success stories of leading companies; and (4) seek to provide effective mechanisms to address negative impacts when they occur.

A Fact Sheet on the NAP is available at https://obamawhitehouse.archives.gov/the-press-office/2016/12/16/fact-sheet-national-action-plan-responsible-business-conduct.

G. INDIGENOUS ISSUES

1. EMRIP Reform

In the World Conference on Indigenous Peoples Outcome Document of September 2014, A/RES/69/2 (2014), the UN General Assembly set forth several commitments related to indigenous peoples. See *Digest 2014* at 239-42 for contemporaneous U.S. statements on the Outcome Document. Among these was a commitment to reform the Expert Mechanism on the Rights of Indigenous Peoples ("EMRIP") so that it better

assists states to achieve the ends of the UN Declaration on the Rights of Indigenous Peoples ("UNDRIP"). As discussed in *Digest 2015* at 225-26, the HRC adopted a resolution, A/HRC/RES/30/11 (2015), co-sponsored by the United States, establishing the modalities and a specific timeline for a substantive dialogue among states and indigenous peoples on EMRIP reform. EMRIP created a website on the reform process at http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/Reviewofthemandate.aspx.

In advance of the April 4-5, 2016 expert workshop on the review of EMRIP, the United States government responded to a questionnaire from the Office of the High Commissioner for Human Rights ("OHCHR") in March 2016. The U.S. questionnaire response is excerpted below and available at http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/MandateReview/States/US.pdf. The U.S. proposal within this questionnaire response to combine the Special Rapporteur on the Rights of Indigenous Peoples with EMRIP was subsequently abandoned for lack of support from other UN members or indigenous peoples.

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In advance of formulating this response, the United States held two separate consultations with indigenous peoples in the United States to learn their views on the reform of EMRIP's mandate. We are grateful to those who participated for the immensely helpful contributions shared with us during those consultations, and to OHCHR for granting an extension of time so that we could fully consider those contributions. Many of the ideas below reflect input shared with us during these consultations.

As explained in detail under Question 2 below, the most significant change we suggest for EMRIP is to merge it with the Special Rapporteur on the Rights of Indigenous Peoples (Special Rapporteur) to create a single entity charged with promoting respect for the UN Declaration on the Rights of Indigenous Peoples (Declaration). The Special Rapporteur would become the head of the new entity, which would combine and streamline aspects of the current mandates of EMRIP and the Special Rapporteur and take on new functions, in order to better assist states. The new entity would be designed to have greater flexibility and to make more efficient use of resources. In short, such a body would be designed to be greater than its individual parts.

1. What are the most valuable aspects of the current mandate of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)?

EMRIP is currently charged with preparing studies and conducting research on themes selected by the Human Rights Council (HRC or Council) related to the rights of indigenous peoples. Since EMRIP was established in 2007, it has examined topics of importance to states, the HRC, and indigenous peoples worldwide. It has completed studies on indigenous peoples' education, participation in decision-making, languages and culture, and access to justice. Work on the right to health, cultural heritage, and disaster risk reduction is ongoing. This function is valuable and could be retained in a modified form, as discussed in our answer to Question 2 below.

2. How can the Expert Mechanism's role in assisting States to monitor, evaluate, and improve the achievement of the ends of the Declaration be strengthened?

EMRIP, the Permanent Forum on Indigenous Issues (PFII), and the Special Rapporteur are the three main UN mechanisms devoted to the rights of indigenous peoples…

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In considering what EMRIP's future mandate should be, it is essential to reflect holistically on activities of EMRIP, the PFII, and the Special Rapporteur and consider how these three can function synergistically and without duplication of efforts. In this regard, we note the large degree of overlap in the current mandates of EMRIP and the Special Rapporteur, both of which fall under the purview of the HRC and may be modified through an HRC resolution.

Neither EMRIP, the PFII, nor the Special Rapporteur is currently mandated specifically with examining member states' progress in achieving the goals of the UN Declaration on the Rights of Indigenous Peoples (Declaration). The United States supports the consensus of the 2014 World Conference on Indigenous Peoples (WCIP) that an important step forward would be to explicitly include this responsibility in the mandate of a UN body. While we are open to other ideas and look forward to engaging in a robust dialogue at the Expert Workshop, the United States believes that a modified mechanism that combines EMRIP and the Special Rapporteur into a single entity could appropriately assume this role.

We would therefore suggest, first, that EMRIP's mandate designate its *raison d'etre* as "promot[ing] respect for the Declaration, including by better assisting member states to monitor, evaluate, and improve the achievement of the ends of the Declaration," reflecting the wording from paragraph 28 of the WCIP outcome document.

EMRIP's mandate could then specify that it would carry out this broad grant of authority through two principal functions: 1) examining member state achievement of the Declaration's ends within a particular member state and giving pointed advice and recommendations as appropriate; and 2) examining regional, cross-regional, and worldwide indigenous issues with a view to advancing the ends of the Declaration, and preparing studies and focused recommendations.

If framed in this manner, this new mandate would accordingly reflect the most critical functions currently performed by EMRIP the Special Rapporteur, while shifting the body's focus explicitly toward member states' achievement of the ends of the Declaration. …

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5. How could a new mandate for the Expert Mechanism contribute to greater engagement between States and indigenous peoples to overcome obstacles to the implementation of indigenous peoples' rights?

A revised mandate for EMRIP along the lines of what is suggested above would facilitate voluntary discussions between EMRIP and member states on issues of importance to indigenous peoples in the state, with a view toward better achieving specific ends of the Declaration within and across states. This process would involve and encourage dialogue not only between EMRIP and the state, but among EMRIP, the state, and the affected indigenous peoples, NGOs, and other stakeholders in the state about the issues in question. Moreover, recommendations resulting from discussions between EMRIP and a member state could serve as a model for other states with similar circumstances or situations.

6. Do you have any comments or suggestions concerning the composition and working methods of the Expert Mechanism?

Appointment of EMRIP members and membership size. EMRIP now consists of five independent experts. All are of indigenous origin, in accordance with the strong recommendation in HRC Resolution 6/36 establishing EMRIP's mandate. The United States recommends that the revised EMRIP continue to be made up of experts serving in their individual capacity, independent of any government.

To help member states better achieve the ends of the Declaration, EMRIP will likely require more than its current five members. The United States is open to suggestions about the appropriate number, noting that EMRIP's revised functions should help point the way to the correct membership size. At the same time, too many members could prove unworkable, inefficient, and make consensus more difficult. While EMRIP should continue to endeavor to make decisions by consensus, an odd number of members is advisable, should situations arise in which the members cannot take a decision by consensus.

Member states, individually or in regional groupings, and indigenous peoples could propose candidates for consideration. Asking the candidates to submit applications could be considered, if helpful. A consultative group would then review the qualifications of any candidates put forward, and the HRC President, as happens currently, could select the members, keeping in mind equitable geographic and gender representation and the value of having persons of indigenous origin among the membership.

The United States is also open to suggestions about term lengths. One possibility would be for the members to serve three-year terms, as they currently do. To allow expertise to be transferred and to avoid an influx of many new members at once, new members would be phased in over the first three years their terms would be staggered.

PFII and EMRIP annual sessions. Given the importance of certain topics under consideration by both the PFII and EMRIP, some overlap in their annual agendas is to be expected. We would encourage reducing duplication of topics or specific areas of focus within common topics to the greatest extent possible. Similar meeting agendas discourage interest, both on the part of member states and indigenous peoples, in participating in two annual meetings which are held only several weeks apart in different countries. More importantly, having EMRIP endeavor not to take up topics that have already been discussed at the PFII, or to focus only on aspects of a topic the PFII did not address, would enable EMRIP to focus on assisting states to achieve the ends of the Declaration.

Expanding EMRIP's mandate would likely make meeting more than once a year advisable. One possibility would be for EMRIP to meet once a year in person in Geneva, and hold additional electronic/virtual meetings as needed.

Additional U.S. government comments

- Budgetary considerations. The United States would like to see a revitalized EMRIP that is adequately funded, allowing it to achieve its mandate in a cost-effective manner and without duplicating other efforts. Merging the Special Rapporteur and EMRIP to create the single entity described above would entail significant cost savings by streamlining efforts to promote the rights of indigenous peoples, using existing resources in a more efficient way.
- Avoiding creation of another treaty body. We do not recommend turning EMRIP into an entity resembling a treaty body. The treaty bodies continue to be challenged by significant backlogs and delays. In redefining EMRIP's functions, we want to avoid imposing additional reporting requirements on UN member states, with the concomitant resource burden

that would impose on EMRIP. This pitfall can be avoided by carefully defining EMRIP's revised mandate. For example, as noted above, EMRIP should not have a mandate to issue general comments interpreting provisions of the Declaration or to "adjudicate" individual complaints, and its written advice and recommendations should be concise and focused.

- Envisioning a more efficient and effective institution. Although the review process would be voluntary, we predict that member states would have a significant incentive to take advantage of it. Many member states and indigenous peoples recognize that it is essential to work toward the Declaration's ends to better the situation of indigenous peoples worldwide. Revitalizing EMRIP, along with the Special Rapporteur, offers a way to move forward on this objective, and is also an example of using existing UN structures more effectively to accomplish an important task.

* * * *

Pursuant to the modalities resolution, OHCHR hosted a two-day workshop April 4–5, 2016, moderated by former special rapporteur James Anaya and attended by delegations from numerous States and indigenous peoples. Ambassador Harper delivered an intervention as part of the first panel at the workshop in which he identified three key areas where EMRIP's mandate could be improved:

> *First,* while EMRIP has discussed application of the Declaration consistently in its reporting, neither it nor any other UN body has a mandate to assist states to achieve the Declaration's ends. We believe EMRIP is well placed to become the pre-eminent body charged with promoting respect for the Declaration.
>
> *Second,* while HRC should be able to continue to request EMRIP's expert advice on identified themes, EMRIP's mandate should allow it to identify and address, on its own initiative, issues affecting the rights of indigenous peoples.
>
> *Third,* EMRIP should be able to work directly with states, or groups of states, to assist them in achieving the Declaration's ends.

Ambassador Harper also provided an intervention for the United States at the second panel, reiterating the U.S. suggestions in its questionnaire response relating to streamlining the work of the various mechanisms for addressing indigenous issues. State Department Attorney-Adviser James Bischoff also delivered interventions on behalf of the United States at panels held during the workshop. The intervention at Panel 3 is excerpted below.

> We suggest that the reformed EMRIP's mandate should define, as its core function, the role states recommended in the World Conference outcome document: assisting member states to monitor, evaluate, and improve the achievement of the ends of the Declaration.
>
> To carry out this broad mandate, the revitalized EMRIP would have two main functions:
>
> *First*, EMRIP would be authorized to examine achievement of the Declaration's ends within a particular member state and give pointed advice and

> recommendations. In carrying out this work, EMRIP could identify, on its own initiative, a particular situation or concern, and garner information on the basis of input from state officials, indigenous peoples, NGOs, and others, including through country visits. Member states could also, if they so choose, ask EMRIP for advice on a given issue. The state's participation would be voluntary. EMRIP would then develop concise, tailored, action-oriented proposals and recommendations to address those concerns, similar to those offered by other special procedures of the HRC. EMRIP would not have the authority to issue binding recommendations, nor to adjudicate complaints by individuals or groups against a state, just as other special procedures do not have such an ability.
>
> *Second*, EMRIP would examine thematic or cross-cutting issues that appear across states, within and among regions, and globally. This is an expanded version of EMRIP's current reporting authority, with the key difference being that it would be able to identify and explore issues on its own initiative and, hopefully, have an enhanced ability to examine situations, including through site visits. EMRIP could engage with more than one state at a time, as well as indigenous peoples and other stakeholders across states. We envision focused studies and recommendations resulting from this effort, as opposed to long reports, which could either apply to specific countries or have broader relevance. We do not, however, recommend having EMRIP function like a treaty body.

Mr. Bischoff's intervention at the fourth panel relating to modalities and methods of work for the reformed EMRIP commended the Indigenous World Association's proposal that membership in EMRIP be based on the seven socio-cultural regional groupings relied upon by the Permanent Forum for the selection of representatives by indigenous peoples: Africa; Asia; Central and South American and the Caribbean; the Arctic; Eastern Europe, Russian Federation, Central Asia and Transcaucasia; North America; and the Pacific. Mr. Bischoff also provided the U.S. recommendation that qualifications for membership should align with EMRIP's functions such that international human rights lawyers and indigenous rights lawyers should be included if EMRIP is to guide States on achieving the ends of the Declaration.

Mr. Bischoff also delivered the U.S. intervention at the concluding panel, recapping the ideas expressed at the workshop. In particular, the United States prioritized two suggestions for further pursuit in reforming EMRIP, the first of which acknowledged the lack of support for the United States' prior proposal to merge the Special Rapporteur and EMRIP instead of maintaining two separate mandates:

> *First*, EMRIP should be able to directly engage states, indigenous peoples, and other stakeholders at the country level, in order to promote dialogue and examine specific situations, with a view to providing pointed recommendations guided by the principles in the Declaration. These would not be general comments like those issued by a treaty body, but interpretations in the context of recommendations on actual situation of concern.

In this regard, we should continue to think about ways to have the Special Rapporteur and EMRIP mutually reinforce each other's work and avoid duplication. We should think about whether the Special Rapporteur should have some status in EMRIP—whether as a member of EMRIP while retaining her own separate mandate; or, at a minimum, the respective mandates should formalize the close coordination and cooperation between the two mechanisms.

We also see considerable merit in Finland's idea of having the Special Rapporteur refer situations to EMRIP for in-depth examination. This function could allow EMRIP to use its expertise to undertake in-depth follow-up on the Special Rapporteur's country visits and implementation of recommendations; and it could allow EMRIP to consider situations of serious violations of the rights of indigenous peoples in a particular country or region, or across regions.

Second, EMRIP should be tasked with providing technical advisory assistance to states, on a voluntary basis, to promote best practices. This could be a part of the follow-up on the Special Rapporteur's work.

OHCHR's report on the workshop, U.N. Doc. No. A/HRC/32/26, is available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/26.

The United States raised the question of EMRIP reform at the annual meeting of the Permanent Forum on Indigenous Issues ("PFII") in May 2015. Mr. Bischoff's statement on "Agenda Item 9(a): Coordination Among the Three UN Mechanisms Pertaining to Indigenous Peoples," delivered on May 16, 2016, is excerpted below and available at http://2009-2017-usun.state.gov/remarks/7278.

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The United States welcomes this opportunity to discuss ways in which the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, and the Special Rapporteur on the Rights of Indigenous Peoples can better work together in order to protect indigenous peoples' rights and improve their livelihoods, and better meet the ends of the UN Declaration on the Rights of Indigenous Peoples. As we stressed in advance of and during the expert workshop in Geneva last month, the activities of EMRIP, the Permanent Forum, and the Special Rapporteur must be considered together, so that the work of all three bodies may better complement one another and to avoid unnecessary duplication of efforts.

* * * *

The workshop revealed substantial interest in three reform concepts:

First, the expert workshop reaffirmed the determination of the World Conference that EMRIP should be charged with assisting states to achieve the ends of the Declaration. In this regard, the workshop revealed substantial support for the idea that EMRIP's work could include the provision of much-needed technical support to states aimed at achieving the ends of the

Declaration; follow-up on communications sent to the overburdened Special Rapporteur; and follow-up on recommendations made by the Special Rapporteur to states.

Second, the workshop prompted a great deal of discussion on ways to have the Special Rapporteur and EMRIP mutually reinforce each other's work and avoid duplication. We should continue to explore how the respective mandates could formalize and enhance the close coordination and cooperation between the two mechanisms. We could, for example, consider whether the Special Rapporteur should have some status in EMRIP—including whether the Special Rapporteur should serve as a member of EMRIP while retaining her own separate mandate.

Third, there was general support for the idea that EMRIP should be able to decide for itself the topics of its thematic studies. EMRIP could continue to have the ability to conduct thematic studies, on topics of its own choosing as well as topics suggested by the Human Rights Council, but whether it actually conducts a thematic study would be at its discretion.

We are pleased with the diligent and thoughtful work of the current and former Special Rapporteurs. Nevertheless, they are the first to note that one person with limited staff resources cannot fully address the extent of the mandate with which he or she is tasked. Our hope is that by strengthening EMRIP and formalizing its relationship with the Special Rapporteur, the Special Rapporteur can be more effective.

In closing, there is a great deal of work to do in Geneva and New York to build upon the progress already achieved, but we should take full advantage of this rare opportunity. We look forward to strengthening the mandates of EMRIP and the Special Rapporteur, and to continuing to support the work of the Permanent Forum, thereby strengthening the UN indigenous system as a whole.

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At the 32nd session of the HRC, Ambassador Harper delivered a statement on June 23, 2016 on behalf of the United States on progress in the review of EMRIP. His statement is excerpted below and available at https://geneva.usmission.gov/2016/06/23/item-5-expert-mechanism-on-the-rights-of-indigenous-peoples-emrip-review/.

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The outcome document from the World Conference on Indigenous Peoples calls for improving UN indigenous mechanisms to achieve the ends of the UN Declaration on the Rights of Indigenous Peoples. The United States strongly supports this goal.

We thank Mexico and Guatemala for their leadership on the reform processes related to the Expert Mechanism on the Rights of Indigenous Peoples, and the Office of the High Commissioner for engaging with stakeholders and hosting the highly productive expert workshop in April. We welcome OHCHR's report, which outlines reforms proposed by States, experts, indigenous peoples, and other civil society actors.

The report identifies several areas of convergence from which we can draw in the coming months.

The United States supports many of the proposals in the report, and would like to comment on three of them.

First, to enhance a coherent, system-wide approach to indigenous rights, as called for in the World Conference outcome document, we believe it is crucial to strengthen the relationship between EMRIP and the Special Rapporteur so that they mutually reinforce each other's work. This could include having the Special Rapporteur serve as a full or *ex officio* member of EMRIP while maintaining his or her own mandate. It could also include establishing a referral system by which EMRIP conducts follow-up on communications sent to the Special Rapporteur.

Second, we support the proposal that EMRIP be able to engage in country-specific situations. EMRIP could perform follow-up on engagement by the Special Rapporteur, and could play a role in facilitating dialogue between states and indigenous peoples.

Third, we see merit in equipping EMRIP to provide technical assistance to states. This could include advice on implementation of recommendations from the Special Rapporteur, the Permanent Forum on Indigenous Issues, or another UN body or mechanism, or at the request of the country concerned.

The United States looks forward to continuing a detailed, substantive dialogue on EMRIP reform at the July EMRIP session.

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At the annual meeting of the EMRIP on July 11, 2016, Anna Naimark of the U.S. Mission to the UN in Geneva delivered a statement on EMRIP reform. Her statement is excerpted below and available at https://geneva.usmission.gov/2016/07/11/item-3-expert-mechanism-on-the-rights-of-indigenous-peoples-emrip-review/.

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The OHCHR report outlines reforms proposed by states, experts, indigenous peoples, and other civil society actors, and helpfully identifies several areas of emerging convergence.

The United States supports the vast majority of the proposals summarized in the report's Annex, and would like to highlight three that we regard as particularly important.

First, to encourage a coherent, system-wide approach to the protection and advancement of the rights of indigenous peoples, the relationship between EMRIP and the Special Rapporteur should be institutionalized so that they mutually reinforce each other's work and avoid duplication. We should continue to explore how the respective mandates can be modified to formalize and enhance close coordination and cooperation between the two mechanisms, including whether the Special Rapporteur should serve as a full or *ex officio* member of EMRIP while maintaining his or her own mandate. Reform of the relationship could include establishing a referral system between the Special Rapporteur and EMRIP.

For example EMRIP could conduct follow-up on communications sent to the overburdened Special Rapporteur and on recommendations made by the Special Rapporteur to states.

Second, EMRIP should be able to engage on country-specific situations in furtherance of the outcome document's commitment to help states better achieve the Declaration's end, a role for which indigenous representatives have repeatedly expressed support. To this end, EMRIP

should be equipped to provide much-needed technical support to states, on a voluntary basis. This could include advising a particular state, at its request, on how it can implement recommendations from the Special Rapporteur, the Permanent Forum on Indigenous Issues, or another UN body or mechanism.

EMRIP could also play a role in facilitating dialogue between states and indigenous peoples.

Third, EMRIP should have the ability to decide on its own working methods and to select the topics of its thematic studies. While the Human Rights Council could still suggest topics, EMRIP should have the discretion to determine what studies it conducts.

EMRIP's mandate should be designed so that EMRIP's work product consists mainly of concise and focused advice. The United States does not recommend that a revitalized EMRIP prepare lengthy, general reports on achieving the Declaration's goals. Similar to what has occurred in other global and regional human rights bodies, issuing long reports would impose burdens that EMRIP could not manage with its limited resources.

EMRIP's membership qualifications should be guided by what its functions are, but should feature members who are experts in international human rights law and the rights of indigenous peoples, and also members with expertise in providing technical advice at the country level. EMRIP's membership should reflect gender and geographical balance by drawing members from the seven socio-cultural groupings used by the Permanent Forum. We also support an increase in EMRIP's support staff.

We do not recommend turning EMRIP into an entity resembling a treaty body. The treaty bodies continue to face significant backlogs and delays. In redefining EMRIP's functions, we want to avoid creating additional reporting requirements on member states, with the accompanying resource burden that would impose on EMRIP.

EMRIP's mandate should neither state nor imply that EMRIP has the power to issue binding recommendations. While EMRIP will inevitably make reference to provisions in the Declaration in the course of providing specific guidance on real-life situations, EMRIP should not issue general comments interpreting provisions of the Declaration. Nor should it adjudicate individual complaints by persons or groups against a state.

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From July to September 2016, the U.S. Mission to the UN in Geneva negotiated the text of a draft EMRIP reform resolution with other delegations in Geneva. Mexico and Guatemala sponsored the final resolution on EMRIP reform at HRC 33. Ambassador Harper delivered the general comment for the United States at the EMRIP consultations at HRC 33 on September 15, 2016. His statement is excerpted below and available at https://geneva.usmission.gov/2016/09/15/ambassador-harper-emrip-mandate-resolution-a-high-priority-at-hrc33/.

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The EMRIP mandate resolution is one of our highest priorities this session. We thank Mexico and Guatemala for their leadership on this issue and for putting forward a strong text. We intend to co-sponsor this resolution.

I will outline four core elements we hope to see in the new mandate:

1. There needs to be a coherent, system-wide approach to the protection and advancement of the rights of indigenous peoples. As such, the relationship between EMRIP and the Special Rapporteur should be institutionalized so that they mutually reinforce each other's work and avoid duplication.
2. EMRIP should be empowered to seek and receive information from all relevant sources on situations affecting the rights of indigenous peoples, making recommendations thereon, and engaging with states and indigenous peoples at the country level to find solutions on those situations affecting the rights of indigenous peoples.
3. EMRIP should be empowered to provide much-needed technical cooperation to states in furtherance of the Outcome Document's commitment to help states better achieve the ends of the Declaration. EMRIP should also be more responsive to the realities on the ground.
4. EMRIP's members should represent the seven socio-cultural groupings used by the Permanent Forum rather the five regional groups that reflect member states' political alignments. We encourage gender balance.

We recognize there will be a PBI, which will provide the necessary resources for EMRIP to execute its enhanced mandate. We support these near-term increases because we believe that over the long-term there will be cost savings as the current redundancies among EMRIP, the Permanent Forum and the Special Rapporteur will be eliminated. We hope other states will share this view.

It is not everyday that the Council is granted an opportunity to revise and enhance the mandate of a UN body. We should take full advantage of the General Assembly's invitation and strive for meaningful reforms to EMRIP to empower the Mechanism to assist states to monitor, evaluate, and ultimately, to achieve the ends of the Declaration on the Rights of Indigenous Peoples.

We look forward to engaging with states, indigenous peoples, and other stakeholders with the aim to significantly strengthen the Expert Mechanism's existing mandate. My team will convey the specific edits we have to further strengthen the text.

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At the "international issues" breakout session of the annual White House Tribal Nations Conference on September 26, 2016, the United States discussed with U.S. tribal representatives several topics of interest, including the U.S. priorities achieved in the EMRIP reform resolution, which by that date had already been tabled in an almost final form. The resolution on EMRIP reform was ultimately adopted by the HRC on September 30, 2016. U.N. Doc A/HRC/RES/33/25. As discussed by Elizabeth Wilcox of the International Organizations Bureau of the Department of State during the September 26 breakout session, most of the top priorities for the United States were reflected in the operative paragraphs ("OP") of the resolution, including:

- The resolution explicitly cites EMRIP's overarching task as helping member states achieve the Declaration's ends through promoting, protecting, and fulfilling indigenous peoples' rights.
- EMRIP will report annually to the HRC on challenges as well as best practices in implementing the Declaration. EMRIP can also facilitate dialogue between states and indigenous peoples "where specific challenges exist."
- EMRIP will provide technical advice to states and indigenous peoples upon request, including on legislation and policies and on follow-up to other UN bodies.
- EMRIP will be able to seek and receive information from all relevant sources in order to fulfill its mandate.
- The resolution urges enhanced cooperation between EMRIP and the Special Rapporteur.
- There will be EMRIP members from the seven UN indigenous regions, an increase from the five current members. They should be much more representative of the world's indigenous peoples than the standard five UN geopolitical regions. The current annual five-day meeting is augmented by five additional days of meetings at another time of the year. Terms will be staggered to prevent a mass exodus of expertise. And EMRIP will be able to determine its own methods of work. These elements will give EMRIP increased autonomy, resources, and capacity.

Ms. Wilcox noted, however, the United States' disappointment that the resolution lacked a clearer role for EMRIP in calling the world's attention to abuses and other emerging situations as they happen. As Ms. Wilcox explained, despite the significant efforts of our negotiators, consensus on explicit language to this effect was elusive. She noted further that on the whole, the revamped EMRIP would be a much more robust body than it had been, with far greater powers to respond effectively to indigenous peoples' concerns. This outcome would have been unlikely without strong U.S. engagement, armed with ideas shared by indigenous representatives from the United States and elsewhere.

2. Enhanced Participation

In the 2014 World Conference on Indigenous Peoples Outcome Document, States also committed to look into "ways to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them … " during the UN General Assembly's 70th Session. During the 70th Session of UN General Assembly, in the annual resolution on rights of indigenous peoples, which was co-sponsored by the United States, the President of the General Assembly ("PGA") was directed to conduct consultations with member states and indigenous peoples on measures needed to enable the participation of indigenous

peoples' institutions in relevant UN bodies, and to prepare a compilation of views that would eventually form the basis for a draft text to be finalized and adopted during the 71st Session of the UN General Assembly. U.N. Doc. A/RES/70/232. See *Digest 2015* at 226.

In accordance with Resolution 70/232, the PGA set up a process for a dialogue on enhanced participation, described at https://www.un.org/development/desa/indigenouspeoples/participation-of-indigenous-peoples-at-the-united-nations.html. On February 26, 2016, the PGA appointed four advisers: the permanent representatives to the UN from Finland and Ghana and two indigenous academics, Dr. Claire Charters and Professor James Anaya. The U.S. State Department held a telephonic conversation with U.S. tribal representatives about enhanced participation and other topics on February 25, 2016. From March 8 to April 8, 2016, the advisers conducted an "electronic consultation" with states and indigenous peoples about elements for enhanced participation. The United States submitted detailed proposals, including a markup of the PFII participation procedures that could be used as a basis for general enhanced participation procedures. The U.S. submission to the Indigenous Peoples Advisers is excerpted below.

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(a) Procedures and modalities that will make the participation of indigenous peoples' representatives meaningful and effective

The United States recommends initially considering new participation procedures for selected UN bodies rather than the entire UN. These could include the Permanent Forum on Indigenous Issues (PFII), Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), ECOSOC and its subsidiary bodies, and the Human Rights Council (HRC). These entities work on topics of particular importance to indigenous peoples, or topics that tend to have a greater impact on the rights of indigenous peoples. These topics include, for example, economic and social development, education, health, human rights, culture, women, youth, the environment, and conservation.

The revised procedures could build upon those that ECOSOC established for participation in the PFII. It is important to recall that representatives of indigenous peoples, including tribal governments, are not non-governmental organizations (NGOs) as that term is traditionally used in the UN. ECOSOC recognized that fact in establishing procedures for the PFII that permit the participation of indigenous institutions, communities, and other non-NGO entities. According to ECOSOC Resolution 2000/22 that established the PFII, the participation of "non-NGO" organizations of indigenous peoples was based on procedures that were used for the Working Group on Indigenous Populations (WGIP) of the Sub-Commission on the Promotion and Protection of Human Rights. Member states approved them through ECOSOC Resolution 2000/22, and they have enjoyed widespread support among indigenous peoples. The United States herein proposes certain updates to the procedures, with the aim of making them consistent with the suggestions laid out in the other sections of this U.S. response (Tab 1).

The new procedures would be aimed at enabling indigenous representatives to attend selected UN sessions; submit written input; and make oral statements in accordance with rules of procedure.

In refining the new participation procedures, we should avoid changes that would make UN sessions cumbersome, inefficient, or cost-prohibitive, including by adding unwieldy numbers of participants or cumbersome procedures to UN meetings. If the new participation procedures are found to meaningfully improve indigenous peoples' participation in selected meetings, consideration could be given to expanding them to other UN bodies and meetings.

(b) Criteria for determining the eligibility of indigenous peoples' representatives for accreditation as such

As to which indigenous entities would operate under these new procedures, the U.S. government supports enhanced participation for representatives of its federally recognized Indian tribes, which have a nation-to-nation relationship with the United States. We also favor inclusion under the new arrangements of other U.S. entities that can demonstrate that they should be allowed to participate in the UN system as indigenous peoples' representatives, as appropriate. We support applying this principle to the representatives of indigenous entities from other countries as well. We recognize that some member states have different systems in place or may have no formal domestic process for recognition of indigenous peoples; as such, the selection procedure would need to be able to evaluate applications from entities beyond those recognized under a country's established domestic process.

(c) Nature and membership of a body to determine the eligibility of indigenous peoples' representatives for accreditation

To determine eligibility, a hybrid committee could be created consisting of member state representatives and indigenous representatives, the respective numbers of which would need to be determined. The PFII Secretariat may be helpful in supporting the selection process. Its involvement with the PFII accreditation process, working with the UN Division of Social Policy and Development's Civil Society and Outreach Unit, gives it expertise that should prove useful in vetting applications. It would need to be determined whether the PFII Secretariat would require additional resources to assist with this function.

(d) Details of the process, including the information required to be submitted to obtain accreditation as an indigenous peoples' representative.

The application process could consist of a questionnaire requesting pertinent information from an indigenous entity. We envision more selective criteria for the new participation procedures than those currently used to determine PFII participation. The criteria would not be so broad as to accommodate those who self-identify as indigenous persons without satisfying additional factors, such as a shared history, language, or culture with a group. Questions could include:

-- What is the relationship between the indigenous representative and the indigenous people? Is the indigenous representative an elected or traditional leader of an indigenous people? Is the indigenous representative authorized by the indigenous people to speak at the UN on its behalf? Has the indigenous people established a government-to-government relationship with the central government or a sub-national government in the state? Such information would indicate whether the person has a constituency that accepts him or her as a leader.

-- What are the membership size, governance structure, and programs and activities of the indigenous people?

-- Does the indigenous people have a shared history, language, or culture?

TAB 1 – Draft Revised Participation Procedures

PARTICIPATION OF ORGANIZATIONS AND INSTITUTIONS OF INDIGENOUS PEOPLES IN THE OPEN-ENDED INTER-SESSIONAL WORKING GROUP [NAME OF BODY/BODIES]

Notes: (1) By virtue of ECOSOC resolution 2000/22 which established the Permanent Forum on Indigenous Issues, the PFII is to use the participation procedures "which have been applied in the Working Group on Indigenous Populations of the Subcommission on the Promotion and Protection of Human Rights." (The WGIP has since been discontinued.) This is a mark-up of those procedures, updated and revised as appropriate to reflect both current practice (in both the PFII and EMRIP) and the enhanced participation objective reflected in paragraph 2 below. (2) The phrase "organizations and institutions" of indigenous peoples is used throughout the 2012 Secretary-General report referenced in para. 2 below and in GA resolution 66/296 on the organization of the World Conference, and the term "institutions" is used in the World Conference outcome document.

1. The procedures contained in the present annex are adopted solely to authorize the participation of organizations and institutions of indigenous peoples not in consultative status with the Economic and Social Council.

2. These procedures are consistent with the procedures set forth in resolution 1296 (XLIV) of 23 May 1968 1996/31 of 25 July 1996 of the Economic and Social Council and do not constitute a precedent in any other situation. They are also consistent with the conclusion in the Secretary-General's report of 2 July 2012 (A/HRC/21/24) with respect to the further enhancement of procedures to enable indigenous peoples' participation in all relevant work of the United Nations, as supported by resolution 69/2 of 22 September 2014 of the General Assembly setting forth the outcome of the World Conference on Indigenous Peoples. They These procedures shall apply only to the Working Group created by Council resolution ... and they shall remain in effect for the duration of the Working Group [name of body/bodies].

Note: The referenced SG report is entitled "Ways and means of promoting participation at the United Nations of indigenous peoples' representatives on issues affecting them."

3. Organizations and institutions of indigenous peoples not in consultative status wishing to participate in the Working Group [name of body/bodies] may apply to the Coordinator of the International Decade of the World's Indigenous People Secretariat of the [name of decision-making entity]. For the purposes of these procedures, institutions may include indigenous communities, nations and other indigenous bodies.

Note: The objective of this provision is to broaden the range of indigenous entities that, expressly, may participate in UN bodies – partly by memorializing current practice. The terms "communities and nations" come from para. 9 of the UN Declaration on the Rights of Indigenous Peoples (DRIP). The phrase "indigenous bodies" may be deemed to embrace "representative bodies" as used in the SG Report (para. 62) and "indigenous peoples' governance bodies…including traditional indigenous parliaments, assemblies and councils" as used in the participation proposal submitted to the Human Rights Council by the Expert Mechanism on the Rights of Indigenous Peoples (A/HRC/18/43), as cited in the SG Report (paras. 3, 4). The phrase "indigenous bodies" would also cover other terms used by indigenous participants in the PFII to describe themselves, such as "tribes" and "pueblos".

4. Such applications Applications for participation in the [name of body/bodies] must include the following information concerning the subject organization concerned or institution:

(a) The name of the organization or institution, headquarters or seat its location, address and contact person information for the organization its representative(s);

(b) A description of the organization or institution, including who it represents and its The aims and purposes of the organization (these should be in conformity with the spirit, purposes, and principles of the Charter of the United Nations);

(c) Information on the programmes and activities of the organization or institution and the country or countries in which they are carried out or to which they apply and its governance structure;

(d) A description of the membership of the organization or institution, indicating the total number of members and whether they have a shared history, language, or culture;

(e) Information on whether the organization or institution has a relationship with the central government or a subnational government of a State;

(f) Information on the selection procedure used by the organization or institution to choose its representative(s) to the [name of body/bodies], including whether a representative is an elected or traditional leader and has been authorized to speak on its behalf.

5. Upon receipt of applications, the Coordinator of the International Decade Secretariat of the [name of decision-making entity] should may consult with any State concerned pursuant to Article 71 of the Charter of the United Nations and paragraph 9 of resolution 1296 (XLIV) 1996/31 of the Economic and Social Council. The Coordinator Secretariat should promptly forward all applications and information received to the Council Committee on Non-Governmental Organizations [name of decision-making entity] for its decision.

6. Authorization to participate in the [name of body/bodies] shall remain valid for the duration of the Working Group subject to the registration process and the relevant provisions of part VIII of resolution 1296 (XLIV) 1996/31 of the Economic and Social Council.

7. The activities of organizations and institutions of indigenous peoples authorized to participate in the Working Group [name of body/bodies] pursuant to these procedures shall be governed by rules 75 and 76 of the rules of procedure of the functional commissions of the Economic and Social Council.

8. Organizations and institutions of indigenous people authorized to participate in the Working Group [name of body/bodies] will have the opportunity to address the Working Group [name of body/bodies], consistent with the relevant provisions of paragraphs 31 38 and 33 40 of Council resolution 1296 (XLIV) 1996/31, and are encouraged to organize themselves into constituencies for this purpose.

9. Organizations and institutions of indigenous people may make written presentations which, however, will not be issued as official documents.

10. States having indigenous populations should take effective measures to bring the invitation to participate and these procedures to the attention of organizations and institutions of indigenous peoples potentially interested in contributing to and participating in the Working Group [name of bodies/bodies].

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On April 27, 2016, the advisers circulated a first draft of a compilation of views, to be discussed during two consultations held during the 15th annual session of PFII in New York in May 2016. On May 11, 2016, the advisers held the first of these two

consultations during PFII. The United States made interventions on the major topics identified in the April 2016 compilation and met bilaterally with the advisers. Excerpts follow from the U.S. comments on the advisers' compilation of views, delivered by Linda Lum of the International Organizations Bureau of the Department of State, and James Bischoff of the State Department's Office of the Legal Adviser.

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- As the compilation indicates, there is already a great deal of convergence of views on the topic of enhanced participation. We will work collaboratively and flexibly to help refine these discussions, with the goal of adopting a resolution by the end of this year.
- The United States supports most of the statements in Section 3(A) on converging views.
- There is a suggestion that self-identification is an important factor in determining who enhanced participation should pertain to. Finding the right balance between self-identification and state recognition is one of the main challenges to be sorted out in these discussions. We think that the selection criteria should not be so broad as to accommodate all who self-identify as indigenous peoples. Applicants should be required to meet other standards, which could include a shared history, language, or culture.
- The point is also made that existing procedures which enable indigenous peoples' participation, including in the Permanent Forum on Indigenous Issues, should not be undermined by efforts to enhance indigenous participation in the broader UN system.
- We agree with that in principle. In fact we proposed that the participation procedures approved for the Permanent Forum by member states—and which have enjoyed widespread support among indigenous peoples—could form the basis for a new set of procedures that would simply build upon and refine what is already there. This would be in order to address current realities and issues, so as to better serve the goal of broadened and more meaningful participation of indigenous peoples in the work of the UN.
- We also agree that a new category for participation is needed, since indigenous peoples are not synonymous with non-governmental organizations.

Section 3(B): Suggested Forms of Participation

- The United States agrees to some extent with some of the suggestions in this section, and our suggestions are reflected in three bullet points on page 5. We would like the new participation procedures to allow indigenous representatives to attend, speak, and submit written input at UN meetings, in accordance with rules of procedure. We should avoid changes that would lead to cumbersome and inefficient UN meetings, including excessively large number of participants. We think that if the new procedures are shown to work well in selected UN bodies—such as the Permanent Forum, EMRIP, ECOSOC and its subsidiary bodies, and the HRC—we can consider expanding them to other bodies.
- We would caution that indigenous groups' ability to make oral statements should not pre-empt Member States' speaking role, and reasonable parameters will need to be found to avoid adding unwieldy numbers of speakers to already lengthy speaking lists. We do not support the suggestion that limitations on the length of oral statements should be relaxed

for indigenous peoples, or that they should have priority in all instances over representatives of non-governmental organizations in speaking order or seating.

- We also do not envision inclusion of indigenous peoples during consultations on draft resolutions as appropriate. Consultation with groups of representatives of indigenous peoples, however, could be an appropriate mechanism.
- We note in this section and elsewhere in the compilation reference to a "separate observer status" or "permanent observer status" for indigenous peoples. Aside from the fact that those terms—particularly the latter—can have different meanings in the UN system, we believe it is more accurate to view the goal here as a separate observer "category" which will be governed by a separate set of participation procedures.

Section 3(C): Relevant UN Venues for Enhanced Participation

- The proposal to consider new participation procedures for selected UN bodies rather than the entire UN system—at least initially—is from the United States. We suggest starting with ECOSOC, the ECOSOC subsidiary bodies (including the Commission on the Status of Women, Commission for Social Development, and Commission for Population and Development), and the Human Rights Council, in addition to the Permanent Forum and EMRIP.
- The operative words here in this compilation are "initially consider." There are advantages to beginning with a selected number of entities and being able to demonstrate progress and what is workable.
- First, it will likely be difficult to obtain consensus at this stage on introducing new procedures throughout the UN. Because this is uncharted territory, there would likely be concerns or outright opposition to making changes to the entire UN system without testing them first. By contrast, considering new participation procedures for selected bodies would allow for studying their implementation and assessing whether any adjustments to the procedures are needed.
- Second, the UN entities we name also have governing structures / rules of procedure that can be revised relatively easily to accommodate enhanced participation by indigenous peoples. In our written submission to the online consultation, as noted earlier, we suggest updating the PFII rules of procedure for this purpose, and we included possible line-by-line edits.
- Third, if the procedures are found to significantly improve indigenous peoples' engagement without negative consequences, we could then reflect on whether they could be applied to other UN bodies and meetings, including the General Assembly and its main Committees.
- We agree there could be greater efforts to inform indigenous peoples about existing possibilities to participate in the UN.

Section 3(D): Procedure to Select Indigenous Peoples

- We agree that a General Assembly resolution can be a proper vehicle for putting an enhanced participation regime in place. Such a resolution would presumably address all of the issues—participation procedures, an oversight body, and so on—that are the subject of this consultation process.

Section 3(E): Body to Oversee Accreditation

- The suggestion about the hybrid committee of member state representatives and indigenous representatives (toward the end of page 5) comes from the United States. This is consistent with the proposal (toward the top of page 5) to establish an independent

body, for example a Working Group. However, further discussion is required on whether the most feasible parent of such a hybrid committee or Working Group would be the General Assembly or ECOSOC.

- We think it would be useful to have the two key stakeholders involved in decisions on the applications. In addition, if only indigenous representatives made decisions on applications from indigenous peoples, there could be concerns that the selection process would not be impartial.
- We can give further thought as to the exact number of member state and indigenous representatives needed. One consideration is that there would need to be enough people to review the number of applications coming in.
- Further thought should be given to the notion of geographic representation mentioned in the compilation, in light of the disparities in numbers of indigenous peoples, both recognized and unrecognized, in various parts of the world. It may be more representative for additional weight to be given to those areas which are home to the greatest numbers of indigenous peoples, while not ignoring other regions.
- The proposal to select representatives for one year from among the delegates to the PFII seems overly restrictive.

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On May 16, 2016, the advisers released an updated compilation. On May 18, 2016, the advisers held the second of two consultations at PFII. The United States again made interventions on the major topics. Excerpts follow from Ms. Lum's remarks on behalf of the United States, commenting on the updated compilation.

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- … one item that we did not mention in our previous interventions, but which may be useful, is that the principles enumerated in Article 46 of the UN Declaration on the Rights of Indigenous Peoples should be borne in mind in the process of assessing applications, in particular Article 46, paragraph 1.
- We also believe it would be useful to base any provisions related to geographic representation on the seven indigenous socio-cultural regions rather than on the usual five UN regions. Again, there is ample precedent for this model in the work of the Permanent Forum.
- Shifting gears a bit, we would caution against reliance upon another existing UN mechanism mentioned that we think has less potential than the current Permanent Forum participation procedures. That is General Assembly decision 49/426 of 1994 that concerns so-called "permanent" observer status in the General Assembly for "States and [for] those intergovernmental organizations whose activities cover matters of interest to the Assembly."
- One commenter last Wednesday noted that the granting of observer status in the General Assembly is not addressed in the UN Charter, and that participation in the General

Assembly as an observer has developed through practice. Both these statements are accurate.

- The argument was made that GA decision 49/426 could be interpreted broadly to not be limited to States and intergovernmental organizations as such, thus permitting selected organizations and institutions of indigenous peoples to become permanent observers through that route. The granting of observer status to the Parliamentary Assembly of the Mediterranean in 2009 was cited as an example of such flexibility.
- That is actually not the best example, as that organization is comprised of Member States and is officially listed by the United Nations as an intergovernmental organization. A better example of flexibility is another application that was also approved in 2009, from the International Olympic Committee (IOC).
- The fact is that the IOC is just one of five entities that are considered to be entities not strictly covered by GA decision 49/426. The International Committee of the Red Cross is another.
- It is also a fact that UN practice on this issue has become less flexible. The granting of observer status for the International Olympic Committee has been the last one of that nature, and is now regarded by many as an anomaly done for political reasons.
- In this regard, the Advisers' second compilation notes that another GA document—GA resolution 54/195 of 1999—provides that applications for observer status are to be considered by the GA's Sixth (Legal) Committee before they go to the GA plenary for approval.
- We note that the Sixth Committee operates by consensus, and there are certain States in particular that insist that the GA criteria be interpreted very strictly. They ask that an entity's status as a true intergovernmental organization—for example, one with a treaty basis and international juridical personality—be clearly demonstrated. As a result, several applications for observer status have been blocked in recent years.
- The bottom line is that attempting to have indigenous organizations and institutions seek observer status through this avenue is not a promising option. The United States thinks it is much more productive to work toward a new category of observers that is tailored to indigenous peoples.

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On May 27, 2016, the advisers released a further updated compilation. As of this compilation, the conversation began to coalesce around four main topics: (1) venues of participation; (2) modalities of participation; (3) mechanism for accreditation of indigenous representative institutions; and (4) criteria for accreditation. The advisers thereafter released a "discussion paper" to supplement the compilation. Attorneys with the U.S. delegation to the UN in New York provided comments and some proposals for draft resolution language.

On June 16, 2016, the Department held a second telephonic consultation with U.S. tribal representatives. On June 30, 2016, the advisers convened another consultation at the UN. The United States made oral interventions. At that consultation, India proposed that the resolution on enhanced participation incorporate a definition of

"indigenous peoples" drawn from Article 1(b) of ILO Convention 169 to the exclusion of Article 1(a) of that Convention. The United States expressed concerns about this proposal.

On July 8, 2016, the advisers released an updated compilation incorporating the views shared at the various consultations held from March to June 2016. This compilation contained an annex of "Potential Elements for Discussion During the 71st Session of the General Assembly." Responding to the request in Resolution 70/232, the PGA formally released this compilation as UN Document A/70/990 dated July 25, 2016.

On September 26, 2016, at the "international issues" breakout session of the annual White House Tribal Nations Conference, the United States shared with U.S. tribal representatives views on enhanced participation along the lines of what the United States had discussed during the May 2016 discussions held during the Permanent Forum annual meeting.

Also in September, the PGA reappointed the four advisers to conduct consultations during the 71st Session of UN General Assembly, running until August 2017. On October 3, 2016, the advisers held an "informal launch briefing" at the UN. On October 13, 2016, the advisers circulated an agenda for consultations during the 71st Session, with a view to finalizing and adopting a resolution in the summer of 2017.

On December 14–15, 2016, the advisers held further consultations in New York with States and indigenous peoples, and met bilaterally with the United States. The United States delivered interventions on the four main topics (venues of participation; modalities of participation; mechanism for accreditation of indigenous representative institutions; and criteria for accreditation). Among other things, the United States discussed in its intervention on "selection criteria" some of the challenges presented by attempting to prescriptively define "indigenous." Excerpts follow from the U.S. interventions on the selection mechanism and selection criteria, delivered by Mr. Bischoff.

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Professor Anaya's questions are an excellent way to frame this issue so I'll organize our intervention following that structure. On Prof. Anaya's first question, whether this would be a new body, the United States favors establishing a new body composed of member state and indigenous representatives. A new body is needed that is separate from the NGO Committee. We do not recommend using an existing body to perform this function, such as the Permanent Forum or EMRIP, because they have multiple and varied other responsibilities—especially EMRIP, which now has many new duties. Further consideration is needed on whether this body is best placed in the General Assembly or ECOSOC.

On Prof. Anaya's second question, the composition of the new body, we see advantages in having the two key stakeholders—states and indigenous peoples—making decisions on the applications. If only indigenous representatives made decisions on applications from indigenous peoples, some might take the view that the selection process would not be impartial. The indigenous representatives should come from all seven sociocultural regions. As for the state representatives, the seven-region model may also work well; we should give that possibility

further consideration as these discussions continue to evolve. There should, of course, be gender balance and among the membership should be persons who are experts in indigenous issues and the rights of indigenous peoples.

On how selection of the members of the body would be chosen, for the indigenous representatives, we see merit in Prof. Anaya's analogy to how Permanent Forum members are chosen. On how State members would be chosen, we'll give that more thought and hopefully can provide developed views at the January consultation.

On how many member state and indigenous representatives are needed, it's difficult at this stage to give an exact number, but we need enough to review the number of applications that are submitted. The size may therefore need to be adjusted over time depending on the ebb and flow of applications.

On Prof. Anaya's fourth question—what the application process looks like—we think a written application, with supporting documentation with the possibility of filling out a pre-established checklist or questionnaire, would work. In principle, we are skeptical about the prospect of UNGA or another body being able to second-guess determinations of the selection body, but we'll also give that more thought. Deliberations should probably be private to allow for candor. Thought should be given to the body providing its reasoning in writing after it takes a decision, so the manner in which it applies the criteria can be seen by the public and aid future application of the criteria.

We do not support having states use a non-objection procedure in the General Assembly to decide on accreditation. A non-objection procedure would have the potential of excluding indigenous institutions that states do not recognize, or whose views do not coincide with those of specific states. It would politicize the process and undermine its transparency.

Finally, while the body should have equal numbers of mechanism members from each region, the number of indigenous institutions ultimately accredited may vary from region to region. This is a function of population, numbers of indigenous peoples and their distribution, and how many actually apply for enhanced participation.

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[On selection criteria] [i]t's again useful to use Prof. Anaya's two questions as a way to organize our intervention.

As to the first question, in past consultations, the United States and many others recognized that enhanced participation should focus on indigenous peoples' institutions. Our interpretation of UN terminology is that the term "indigenous institutions" includes—but is not necessarily limited to—indigenous governments.

Like Prof. Anaya, we are curious to learn more about how indigenous peoples are organized in other parts of the world. Our experience is, naturally, principally with U.S. Native American tribes, which as has been explained several times by our tribal colleagues, have a government-to-government relationship with the federal government under the U.S. Constitution.

The criteria to be met should be flexible, in order to accommodate the diverse indigenous peoples' organizational structures existing throughout the world today.

As to Prof. Anaya's second question, we agree that self-identification is an indispensable criterion, but isn't enough, on its own, to qualify the applicant for enhanced participation status.

State recognition should also be an important criterion, but cannot be an absolute requirement. In some cases, state recognition may be unworkable, for example, with respect to

indigenous peoples in countries that have no formal domestic recognition process in place for a tribe or analogous entity. Also, we think there are circumstances where an indigenous people not recognized by a state can nevertheless demonstrate that it can usefully contribute to UN deliberations. So for indigenous peoples who live in states where state recognition does exist, recognition or the absence thereof should be given appropriate weight in determining enhanced participation privileges.

As noted, applicants should be required to present additional evidence beyond self-identification and state recognition in making the case for enhanced participation benefits. Relevant factors related to whether an applicant qualifies include those already discussed and listed in the compilation text, such as ancestral connections with lands, territories, or resources; a shared history, indigenous language, or indigenous culture; and self-governance.

We also think that indigenous institutions should have the authority to designate their own representatives through their own procedures.

It is, of course, correct that there is no single or universal definition of "indigenous" under international law.

We should recall that the parties negotiating the Declaration on the Rights of Indigenous Peoples could not come to consensus on a definition of "indigenous" despite over 15 years of discussions.

Yet despite the lack of a universal definition, we think elements of the criteria could usefully be drawn from ILO Convention No. 169's criteria. Those are longstanding—indeed, dating from ILO Convention No. 107 in the 1950s—and have inspired many non-binding sets of guidelines.

But two important caveats are in order.

First, it simply cannot be that at the end of this process, only some of the world's indigenous peoples have the opportunity for enhanced status. We think it is imperative that the criteria from the second prong of Convention No. 169's definition not be used as inspiration for the criteria applied by the accrediting body to the exclusion of the critical first prong of Convention No. 169's definition. Both prongs have been part of the formulation for decades, and attempts to eliminate the first prong in the negotiation of Convention No. 169 were rightly rejected at that time.

Is "indigenousness" a phenomenon that exists solely in certain parts of the world? Does it apply only to the Americas, to the Arctic, to Oceania? Surely not, and the experience of the UN, as related in reports of the Special Rapporteur on the Rights of Indigenous Peoples, the Permanent Forum, and the Expert Mechanism, is that indigenous peoples exist across the world.

The second caveat: at the same time, it should be clear that the body does not have the authority to pass judgment on who is indigenous or who is a people for purposes other than enhanced participation status. Language in the resolution incorporating this limitation may help eliminate some of the concerns some states have expressed today.

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3. American Declaration on the Rights of Indigenous Peoples

On June 15, 2016, the General Assembly of the Organization of American States ("OAS") adopted the American Declaration on the Rights of Indigenous Peoples at its 46th regular

session. AG/doc.5557/16. The United States stopped actively participating in the process of negotiating the text in 2007 due to a number of factors, including a deadlock in the negotiations on several key issues. U.S. views on the American Declaration appear in footnote 1 to the text, below.

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The United States remains committed to addressing the urgent issues of concern to indigenous peoples across the Americas, including combating societal discrimination against indigenous peoples and individuals, increasing indigenous participation in national political processes, addressing lack of infrastructure and poor living conditions in indigenous areas, combating violence against indigenous women and girls, promoting the repatriation of ancestral remains and ceremonial objects, and collaborating on issues of land rights and self-governance, among many other issues. The multitude of ongoing initiatives with respect to these topics provide avenues for addressing some of the consequences of past actions. The United States has, however, persistently objected to the text of this American Declaration, which is not itself legally binding and therefore does not create new law, and is not a statement of Organization of American States (OAS) Member States' obligations under treaty or customary international law.

The United States reiterates its longstanding belief that implementation of the United Nations Declaration on the Rights of Indigenous Peoples ("UN Declaration") should remain the focus of the OAS and its Member States. OAS Member States joined other UN Member States in renewing their political commitments with respect to the UN Declaration at the World Conference on Indigenous Peoples in September 2014. The important and challenging initiatives underway at the global level to realize the respective commitments in the UN Declaration and the outcome document of the World Conference are appropriately the focus of the attention and resources of States, indigenous peoples, civil society, and international organizations, including in the Americas. In this regard, the United States intends to continue its diligent and proactive efforts, which it has undertaken in close collaboration with indigenous peoples in the United States and many of its fellow OAS Member States, to promote achievement of the ends of the UN Declaration, and to promote fulfillment of the commitments in the World Conference outcome document. Of final note, the United States reiterates its solidarity with the concerns expressed by indigenous peoples concerning their lack of full and effective participation in these negotiations.

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4. Annual Thematic Resolutions at the HRC and UN General Assembly

The United States cosponsored the resolution adopted by the Human Rights Council on September 29, 2016 at its 33rd session entitled, "Human rights and indigenous peoples." U.N. Doc. A/HRC/RES/33/13. The United States also cosponsored the resolution adopted at HRC 33 entitled, "Human rights and indigenous peoples: mandate of the Special Rapporteur on the rights of indigenous peoples," which renewed the mandate of that special rapporteur. U.N. Doc. A/HRC/RES/33/12. The United States also cosponsored the

resolution adopted by the General Assembly on December 19, 2016 on the rights of indigenous peoples. U.N. Doc. A/RES/71/178.

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

On June 13, 2016, the Department of State released (with excisions) a February 9, 2007 memorandum from Legal Adviser John B. Bellinger, III to Steven G. Bradbury, Acting Assistant Attorney General, Office of Legal Council, U.S. Department of Justice, expressing concern with the Office of Legal Council's draft opinion concluding that enhanced interrogation techniques ("EITs") involving nudity and sleep deprivation do not violate Common Article 3 of the Geneva Conventions. The memorandum is discussed and excerpted in Chapter 18. Also discussed in Chapter 18 is the Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations ("Transparency Report") issued by the White House on December 6, 2016.

I. FREEDOM OF ASSEMBLY AND ASSOCIATION

At the 32nd session of the HRC, Ambassador Harper delivered a statement presenting the resolution on freedom of assembly and association. His statement, excerpted below, is available at http://geneva.usmission.gov/tag/HRC32/.

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The principal objective of this resolution is to renew the mandate of the special rapporteur who addresses these important freedoms.

Unfortunately, these freedoms are under increasing threat across the globe. It is more important than ever that we have a mechanism that continues to monitor challenges to the freedoms of peaceful assembly and association, and makes recommendations on how better to protect them. We hope that renewing this mandate will continue to help everyone understand best practices in promoting and protecting these fundamental freedoms.

This resolution also highlights one of the many manifestations of freedom of association—professional associations. We recognize that professional associations may take different forms in different places. But in all of our societies, creating, joining, and participating in such associations enables professionals—for example, doctors, lawyers, and engineers—to cooperate, to share experiences, and to address challenges jointly. The activities of these associations may bring significant benefits not only to their members, but to societies at large. These are specific examples of the benefits of the rights underscored in this resolution.

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J. FREEDOM OF EXPRESSION

On March 31, 2016, at the 31st session of the HRC, 66 countries joined the United States-led statement on Freedom of Expression and Peaceful Transitions Within Democracies. The joint statement, below, is available at https://geneva.usmission.gov/2016/03/11/joint-statement-on-freedom-of-expression-and-peaceful-transitions-within-democracies/.

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A key feature of democracies, new and old, is that at regular intervals they undergo peaceful transitions from one elected government to a newly elected government.

Respect for universal human rights is critical, including during peaceful transitions within democracies; today we would like to highlight one such right: freedom of expression. As former Philippine President Corazon Aquino put it, "Freedom of expression—in particular, freedom of the press—guarantees popular participation in the decisions and actions of government, and popular participation is the essence of [our] democracy."

We reaffirm our obligation regarding freedom of expression as set forth in Article 19 of the International Covenant on Civil and Political Rights, which includes the right of everyone to hold opinions without interference, as well as the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art or through any other media of their choice. It is a key component of democratic governance, as the achievement of participatory decision-making processes is unattainable without adequate access to information.

In turn this right is intrinsically linked to the rights to freedom of thought, conscience and religion, peaceful assembly and association and the right to participate in public affairs, all of which underpin the vibrant democratic life of a country. Societies are more stable and prosperous when the right to freedom of expression, as well as other human rights, are respected.

Freedom of expression is a fundamental pillar for building a democratic society, and is essential in supporting the peaceful transition of political power. Citizens use this fundamental freedom to tell incumbent governments what they would like to see accomplished. Journalists and media workers use freedom of expression to write, broadcast, and televise stories that help citizens make educated political choices and hold those they have elected accountable.

The right to freedom of opinion and expression is a universal right: Freedom of opinion and expression applies to all persons equally. It needs to be protected regardless of frontiers and for everyone, regardless of who they are and where they live. It must be respected and protected equally online as well as offline.

We welcome actions taken by states undergoing transitions in democratically elected leaders to protect freedom of expression and ensure access to the Internet and telecommunications networks. States have the primary obligation to protect and ensure the right

to freedom of opinion and expression, in accordance with their human rights obligations and commitments.

We also welcome the efforts of UN entities, such as OHCHR, the special procedures, and the UN Democracy Fund, to promote human rights and democracy.

We encourage all states to ensure the freedom and independence of media, which are fundamental for democracy. We encourage all states to protect and promote pluralism, tolerance, and freedom of thought and expression and to enhance dialogue and debate.

We look forward to further discussion in this Council of the important relationship between freedom of expression and democratic transitions.

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K. FREEDOM OF RELIGION

1. Designations under the International Religious Freedom Act

On February 29, 2016, Secretary Kerry designated Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, Tajikistan, Turkmenistan, and Uzbekistan as "Countries of Particular Concern" under § 402(b) of the International Religious Freedom Act of 1998 (Pub. L. No. 105–292), as amended. The ten states were so designated "for having engaged in or tolerated particularly severe violations of religious freedom." 81 Fed. Reg. 23,344 (Apr. 20, 2016). The presidential actions designated for each of those countries by the Secretary are listed in the Federal Register notice.

On October 31, 2016, Secretary Kerry re-designated the same ten as "Countries of Particular Concern." 81 Fed. Reg. 87,997 (Dec. 6, 2016).

2. U.S. Annual Report

On August 10, 2016, the U.S. Department of State submitted the 2015 International Religious Freedom Report to the United States Congress. See August 10, 2016 State Department media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/08/260950.htm.
The report is available at *state.gov/religiousfreedomreport/*. The State Department media note summarizing key developments discussed in the 2015 report is excerpted below.

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Now in its 18th year, this congressionally-mandated Report comprises almost 200 distinct reports on countries and territories worldwide and continues to reflect the United States' commitment to, and advancement of, the right of every person to freedom of religion or belief.

The 2015 Report notes a continuing trend of some governments enforcing strict laws against blasphemy, apostasy, and conversion from the majority religion, or restricting religious

liberty under the guise of combatting violent extremism. Many non-state actors, including terrorists, continued their assault on religious and ethnic minorities.

The Report also notes the positive actions of civil society and other governments around the world to provide greater protections for religious minorities and to safeguard the fundamental freedom of individuals to believe, or not believe—according to their own conscience, and to manifest their religion or belief in worship, practice, observance, and teaching.

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3. U.S. Congressional Hearing

On May 26, 2016, Acting U.S. Special Envoy to the Organization of Islamic Cooperation Arsalan Suleman testified before the Senate Human Rights Caucus on the impact of blasphemy laws around the world. His testimony is excerpted below and available at http://2009-2017.state.gov/s/rga/rls/remarks/257830.htm.

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First, blasphemy laws enforced in various parts of the world violate the fundamental freedoms of expression and religion or belief, weaken broader protections for human rights, and undermine social stability and prosperity.

By prohibiting expression or acts deemed to be blasphemous or offensive or insulting to religion or religious sensibilites, blasphemy laws on their face are inconsistent with the fundamental freedoms of expression and religion or belief that are enshrined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Blasphemy laws empower the state to be the arbiter of religious truth or orthodoxy, which almost always reflects the views of the majority. When enforced, the end result is that individuals with different beliefs are prevented from fully expressing or carrying out their peaceful religious practice.

The enforcement of blasphemy laws also undermines other human rights, such as non-discrimination and fair trial protections. State enforcement of blasphemy laws is often arbitrary and sometimes used as a tool by governments and non-government actors to target members of marginalized groups including religious minorities and political dissidents. Laws shape societal norms and expectations, and the enforcement, and sometimes mere existence, of blasphemy laws has had a pernicious effect on the rule of law in some countries. Mere accusations of blasphemy have sparked vigilante mob violence and targeted killings in various situations. When government fails to deter such actions, and does not vigorously hold those who engage in them accountable, it breeds an atmosphere of impunity that destabilizes communities and leaves minorities ever more vulnerable.

In this way, enforcement of blasphemy laws, or sometimes their mere existence, can exacerbate divisions within society, undermining social stability and prosperity. According to a 2012 Pew Research Center Study on Religion and Public Life, countries with the most

restrictions on the exercise of religious freedom, including blasphemy laws, also have the highest level of religious hostilities. Other recent studies have highlighted the correlation between blasphemy laws and higher rates of violent extremism within societies. The recent killings of secularist bloggers in Bangladesh illustrate the challenges many countries face in addressing extremist violence motivated by accusations of blasphemy.

Blasphemy laws are a global concern. Many of us are familiar with deeply troubling cases of application of blasphemy laws, or instances of murder or mob violence motivated by accusations of blasphemy, in countries such as Pakistan, Saudi Arabia, Egypt, Bangladesh, and Sudan. But blasphemy laws are not limited just to those countries or their regions of the world. According to the Pew study mentioned above, nearly half of the world's countries have laws and policies that punish blasphemy, apostasy, or defamation. Countries like Russia, Ireland, Italy, Germany, Indonesia, Singapore, and Greece, to name a few, also have blasphemy laws. Indeed, while in the United States, Supreme Court precedent holds blasphemy laws unconstitutional, there remain six states—Massachusettes, Michigan, Oklahoma, Pennsylvania, South Carolina, and Wyoming—that still have blasphemy laws on the books.

Second, the U.S. Department of State has a multifaceted approach to addressing blasphemy laws globally, which includes our human rights reports, bilateral and multilateral diplomacy, and civil society engagement.

The United States is absolutely clear in its opposition to blasphemy laws globally, and we convey that view through various channels of engagement.

Human rights reports

As members of the Caucus know, the U.S. State Department submits an annual Human Rights Report which includes reporting on violations of the right to freedom of expression, including through blasphemy laws. The Department also submits an annual International Religious Freedom Report which describes the status of religious freedom in every country. The report covers, among other things, government policies limiting the exercise of religious freedom, including blasphemy laws, and U.S. policies to promote religious freedom around the world. My dedicated colleagues in the State Department's Office of International Religious Freedom, led by Ambassador-at-large David Saperstein, do a tremendous job day in and day out on promoting religious freedom globally.

Bilateral diplomacy

The U.S. State Department regularly engages countries with blasphemy laws, advising them on the negative effects of such laws, and encouraging our counterparts to repeal them. Furthermore, we encourage governments to hold accountable those who commit acts of violence motivated by accusations of blasphemy. For example, the United States regularly expresses its concern directly to Pakistani authorities about blasphemy laws and the state of religious freedom in Pakistan, more broadly. In my own engagements abroad with the OIC and countries that have blasphemy laws, I have made a concerted effort to raise our concerns with government officials, religious leaders, academics, and civil society leaders from all backgrounds.

Multilateral diplomacy

U.S. opposition to blasphemy laws is a regular feature of our multilateral diplomacy as well. At the United Nations (UN), and at other international organizations, the United States regularly raises concerns regarding blasphemy laws and advocates for the highest protections for freedoms of expression and of religion or belief. In addition, last year the United States helped to form the International Contact Group for Freedom of Religion or Belief (ICG). The ICG is a

consortium of over 20 countries who support UDHR Art. 18, regarding the right to freedom of religion or belief, and are working to advance that right for all. Ambassador Saperstein and Knox Thames, Special Advisor for Religious Minorities in the Near East and South/Central Asia, hosted a meeting of the ICG last Friday.

We have experienced challenges and progress in our multilateral engagement on this topic. For over a decade, we worked successfully to build opposition to a UN resolution sponsored by the Organization of Islamic Cooperation (OIC) aimed at prohibiting "defamation of religions," or speech deemed insulting or offensive to religion. Some states were using this resolution to justify their own blasphemy laws and other restrictions on speech, and we adamantly opposed that resolution for the same reasons (listed above) that we oppose blasphemy laws.

In 2011, working with the OIC and several other delegations, we achieved a breakthrough in eliminating the "defamation of religions" resolution from the UN. By focusing on our shared concerns about violence, intolerance, and discrimination on the basis of religion or belief, we were able to craft a consensus resolution—UN Human Rights Council Resolution 16/18—that addresses the underlying causes of religious intolerance in a manner that protects the freedoms of religion or belief and expression. That resolution provides a list of positive actions—like enforcing anti-discrimination laws, having officials speak out against intolerance, engaging in interfaith dialogue, and training government officials to engage effectively with religious communities—that states should take to address this issue.

Further to that, given our deep concerns over violence against religious minorities in various parts of the world, we organized an effort with the EU, the OIC, and other delegations to launch an implementation process for Resolution 16/18 so that those positive actions would be translated into real action on the ground to help protect individuals from discrimination or violence on the basis of their religion or belief. That effort began in 2011 with a high-level meeting in Istanbul and an experts meeting in Washington, DC. A separate experts meeting has been held each year since then—with 5 total thus far—in different cities around the world to focus on best practices for promoting implementation of the actions called for in the resolution. Hosts have been secured for the meetings this year and next.

In parallel to that Istanbul Process series of meetings, the United States also launched a series of bilateral workshops to discuss and share best practices for implementation of the resolution. These sessions have been extremely helpful in depoliticizing the issue and sharing with experts on the ground tools to combat religious intolerance without resorting to blasphemy bans or other restrictions on human rights. The workshops feature experts from the U.S. Departments of Justice and Homeland Security engaging with their counterparts from interested countries on ways to best protect religious freedom domestically. So far we have had successful workshops in Bosnia, Greece, Indonesia, and Spain, and several more are being planned.

Civil society engagement

We also actively engage civil society globally to help protect and promote universal human rights and fundamental freedoms, including specifically on blasphemy law issues. This includes working with human rights defenders, affected communities, and religious leaders.

Our engagement with religious leaders on this issue has been a source for optimism. Many religious leaders, both domestically and globally, have been working to protect the religious freedom of members of religious minority groups, including as it relates to blasphemy laws. For example, in January 2016, a group of over 300 Islamic scholars, religious and interfaith

leaders, and international observers gathered in Marrakesh, Morocco on the topic of protecting religious minorities in Muslim-majority countries. That group of Islamic scholars issued a declaration, called the Marrakesh Declaration, which provides a framework grounded in Islamic history and law for constitutional, citizenship-based societies with equal rights, including religious liberty, for all. Such initiatives provide human rights advocates around the world with a powerful tool from within the Islamic tradition for advancing religious freedom in Muslim-majority countries.

Efforts by civil society are critical in supporting grassroots efforts to reform and repeal blasphemy laws globally. The United States strongly supports their efforts and engages with governments around to world to ensure that civil society has the necessary space to freely operate.

Third, I would like to share some additional suggested actions for consideration on the issue of blasphemy laws.

Bilaterally the U.S. government should continue to encourage countries—especially allies—with blasphemy laws on the books to repeal them. As noted earlier, a number of our allies in Europe still have such laws, and their repeal can also enhance global efforts for repeal in other regions. Beyond opposition to the laws, we could also increase emphasis on government actions to deter false accusations of blasphemy, as well as encourage specially trained rapid response police forces skilled at mediation and rescue when tensions mount and mob violence seems imminent.

Multilaterally, the U.S. should continue to promote implementation of UN Resolution 16/18. It is important to continue having expert-focused meetings to discuss best practices for implementing each step of Resolution 16/18, and to preserve the international consensus on this topic. Governments need to follow through and implement the experts' findings and recommendations as appropriate. That implementation should focus on all aspects of the comprehensive action plan, not just one prong. And the United States should continue its bilateral workshop efforts to ensure a deeper exchange on this important issue.

The U.S. should also continue to work with civil society to improve the religious freedom environment and encourage other countries to do the same. Civil society plays a critical role in promoting freedom of expression and of religion or belief, and civil society efforts to reform or repeal blasphemy laws should receive appropriate support.

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4. New U.S. Legislation on International Religious Freedom

On December 15, 2016, the President signed the Frank R. Wolf International Religious Freedom Act and it became law. Pub. L. No. 114-281. The law expresses concern about foreign countries that routinely deny visa applications for religious workers; amends the International Religious Freedom Act of 1998 (IRFA) in several ways; requires training of U.S. foreign service officers regarding religious freedom; and provides new criteria for designations by the President for violations of religious freedom, including designations of non-state actors, among other things.

5. Human Rights Council

On March 9, 2016, at a clustered interactive dialogue with the Special Rapporteur on Privacy and the Special Rapporteur on Freedom of Religion or Belief convened at the 31st Session of the Human Rights Council, Michele Roulbet delivered a statement on behalf of the United States. Her statement is excerpted below and available at https://geneva.usmission.gov/2016/03/09/clustered-interactive-dialogue-with-the-special-rapporteur-on-privacy-and-the-special-rapporteur-on-freedom-of-religion-or-belief/.

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At the conclusion of his tenure in this important mandate, the United States wants to take this opportunity to thank Special Rapporteur Heiner Bielefeldt for his exemplary work over the last six years. Our appreciation extends to his most recent report on two closely interrelated rights: freedom of religion or belief and freedom of expression. We agree with the Special Rapporteur that these rights mutually reinforce each other, facilitating free and democratic societies.

We strongly agree that, as reflected in resolution 16/18, communication is key to building trust between religious or belief communities. Resolution 16/18 and the report both reinforce the fact that "…the open public debate of ideas, as well as interfaith and intercultural dialogue, at the local, national and international levels can be among the best protection against religious intolerance."

We would also highlight other conclusions in the report that we share. These include that some governments, in efforts to combat religious intolerance, are too quick to restrict speech. Instead they should use other measures called for by resolution 16/18, such as education and interreligious communication. We also emphasize that seeking to quell open expression generally has only inflammatory effects.

We strongly support the report's encouragement of continued cooperation through the Istanbul Process to step up implementation of resolution 16/18. We also agree that states should consider reporting on their implementation of 16/18 in the Universal Periodic Review.

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L. OTHER ISSUES

1. Protecting Human Rights While Countering Terrorism

On September 16, 2016, Ambassador Mohamed Auajjar, Permanent Representative of the Kingdom of Morocco to the UN at Geneva, delivered a joint statement on behalf of the Group of Friends on Countering and Preventing Violent Extremism. The United States and Morocco co-chair the Group, which launched on September 7, 2016 and includes representation across regions. The Joint Statement is excerpted below and

available at https://geneva.usmission.gov/2016/09/16/joint-statement-on-group-of-friends-on-countering-and-preventing-violent-extremism/.

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1. …We wish to underscore our commitment to preventing and countering violent extremism in all its forms and manifestations, while respecting, protecting, and promoting human rights and fundamental freedoms.

2. We reaffirm that violent extremism is a global threat, which cannot and should not be associated with any religion, nationality, civilization, political or ethnic group. We also underscore that actions by states to prevent or counter violent extremism must not infringe on human rights. In this context, we are of the view that only a holistic and inclusive approach, based on international cooperation, and where education, security, development, human rights, democracy and the rule of law are interlinked, could have a tangible impact in preventing and countering violent extremism, while promoting and protecting human rights.

3. This Group of Friends has joined together to promote and help advance the implementation of the Secretary General's Plan of Action to Prevent Violent Extremism on topics relevant to our work in Geneva. In particular, this Group of Friends promotes substantive dialogue on the human rights dimensions of preventing and countering violent extremism in Geneva with the aim of sharing lessons learned and best practices, promoting international cooperation and collaboration, and developing and implementing approaches to prevent and counter violent extremism. We hope to serve as a platform for promoting this agenda in Geneva and work with other States, National Human Rights Institutions, experts, and civil society. We underline the need for effective coordination and information sharing within the UN and between States, the relevant UN entities and the relevant international, regional, and sub-regional organizations and forums.

4. We thank the Office of the High Commissioner for Human Rights for the Report on best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism (A/HRC/33/29). We believe that preventing and countering violent extremism and the effective promotion and protection of human rights are mutually reinforcing. In the context of the work of the Human Rights Council, we attach particular importance to international human rights education and capacity building as a means of countering all forms of violent extremism; and we commend the work of the High Commissioner in this regard.

5. As members and observers of the Human Rights Council, we believe that the international community should continue to build upon the UN Charter and prior work of this and other UN bodies on this critical issue. We intend to work to promote and continue to advance better understanding of and strong language in appropriate resolutions on respecting, protecting, and human rights in preventing and countering violent extremism, consistent with Pillars I, III, and IV of the UN Global Counter-Terrorism Strategy. We look forward to further attention to this topic in the Council.

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2. Privacy in the Digital Age

The United States provided an explanation of position on the resolution on the right to privacy in the digital age at the 71st UN General Assembly. The resolution was adopted on December 19, 2016 without a vote. UN Doc. A/RES/71/199. The explanation of position is excerpted below.

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The United States appreciates the efforts of Germany and Brazil, and we join consensus on today's resolution because it again reaffirms privacy rights and their importance for the exercise of the right to freedom of expression and to hold opinions without interference, and the right of peaceful assembly and to freedom of association. These rights, as set forth in the International Covenant on Civil and Political Rights (the ICCPR) and protected under the U.S. Constitution and U.S. laws, are pillars of democracy here in the U.S. and globally.

We are pleased the resolution recognizes that the same rights people have offline must also be protected online, including the right to privacy, as well as recognizing that effectively addressing the challenges related to the right to privacy requires ongoing multi-stakeholder engagement. It is worth noting that data flows and the use of data analytics have the potential to create great benefits for economies and societies when high standards of online data protection and safeguards against the discriminatory use of such data are applied. Further, the references to "free, explicit and informed consent" do not take into account other appropriate mechanisms for choice, such as opt-outs; or situations where appropriate policy or inferences from consumers' behavior reduces the need for consent; or legitimate business models that condition the provision of goods or a service on consent. Further, the United States believes that the UN Guiding Principles on Business and Human Rights provide a valuable, important, and universal framework for working through a wide range of challenges. In that regard, we underline that we understand the responsibility of business enterprises raised in this resolution to be set out in UN Guiding Principles.

We reaffirm our explanation of position provided when we joined consensus on this text in 2014. We also reaffirm those human rights instruments we have long affirmed, in particular the ICCPR. We understand this resolution to be consistent with longstanding U.S. views regarding the ICCPR, including Articles 2, 17, and 19, and interpret it accordingly. Further, we reiterate the appropriate standard applied under Article 17 of the ICCPR as to whether an interference with privacy is permissible is whether it is lawful and not arbitrary, and welcome the resolution's reference to this key concept. An interference with privacy must be reasonable given the circumstances. Article 17 does not impose a standard of necessity and proportionality.

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

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Cross References

Tuau *case regarding citizenship in unincorporated territories*, **Chapter 1.A.2.**
Asylum, refugee, and migration issues, **Chapter 1.C.**
Consideration of torture allegations in extradition case, **Chapter 3.A.3.a.**
Trafficking in persons, **Chapter 3.B.3.**
Treaties generally, **Chapter 4.A.1.**
Meshal v. Higginbotham, **Chapter 5.A.1.**
Alien Tort Statute and Torture Victim Protection Act, **Chapter 5.B.**
Inter-American Commission on Human Rights (IACHR), **Chapter 7.D.**
Sanctions, including relating to human rights violators, **Chapter 16.A.**
Atrocities prevention, **Chapter 17.C.**
International humanitarian law, **Chapter 18.A.3.**
Unmanned aerial vehicles, **Chapter 18.B.**
Detainees, **Chapter 18.C.**