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CHAPTER 6

Human Rights

A. GENERAL

1. Country Reports on Human Rights Practices

On March 3, 2017, the Department of State released the 2016 Country Reports on Human Rights Practices. The Department submits the reports to Congress annually per §§ 116(d) and 502B(b) of the Foreign Assistance Act of 1961, as amended, and § 504 of the Trade Act of 1974, as amended. These reports are often cited as a source for accounts of human rights practices in other countries. While the Country Reports describe facts relevant to human rights concerns, the reports do not reach conclusions about human rights law or legal definitions. The Country Reports are available at [State.gov/humanrightsreports](https://www.state.gov/humanrightsreports). A special briefing by an administration official previewing the release of the Country Reports is available at <https://www.state.gov/r/pa/prs/ps/2017/03/268195.htm>.

2. International Covenant on Civil and Political Rights

a. *Follow-up to Periodic Report*

As discussed in *Digest 2015* at 174 and *Digest 2014* at 168-78, the United States made its presentation to the Human Rights Committee on its Fourth Periodic Report Concerning the International Covenant on Civil and Political Rights in 2014 and conveyed its one-year follow-up response on the Committee's priority recommendations in 2015. The U.S. periodic reports and follow-up responses are available at <https://www.state.gov/j/drl/reports/treaties/index.htm#ftn2>. In 2016, the Committee posted two letters on its website regarding the U.S. follow-up response. The United States responded to those letters on October 11, 2017. U.N. Doc. No. CCPR/C/USA/CO/4/Add.1. The U.S. response is available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2F4%2FUSA%2F4%2FAdd.1&Lang=en and excerpted below. On November 20, 2017, the Committee informed the United States that it had decided to discontinue the follow-up procedure in respect of the United States and would consider the 2017 follow-up response in the next reporting cycle.

* * * *

2. The Committee's follow-up requests focus on conduct during international operations in the context of armed conflict, and particularly detention and interrogation in the aftermath of the September 11 terrorist attacks. The United States reiterates its long-standing and fundamental disagreement with the Committee's view regarding the application of ICCPR obligations with respect to individuals located outside the territory of the United States. However, in the spirit of cooperation, the United States has endeavored throughout the periodic reporting process to provide details on how the United States has conducted and will continue to conduct thorough and independent investigations of credible allegations of crimes committed during such international operations and of credible allegations of mistreatment of persons in its custody, as well as on final decisions regarding any prosecution of persons for such crimes when such disclosure is appropriate. We hope that the Committee is able to recognize that although the public disclosure of government information is often in the public interest, refraining from releasing information concerning specific individuals can also be appropriate, especially when privacy or other human rights interests counsel against disclosure.

3. In further response to the Committee's request in subparagraph (a), the United States reaffirms and continues to uphold the bedrock principle that torture and cruel, inhuman, or degrading treatment or punishment are categorically and legally prohibited always and everywhere, violate U.S. and international law, and offend human dignity, and the United States has many protections against torture and cruel, inhuman, or degrading treatment or punishment. Torture is contrary to the founding principles of our country and to the universal values to which the United States holds itself and others in the international community. All U.S. military detention operations conducted in connection with armed conflict, including at Guantanamo, are carried out in accordance with all applicable international and domestic laws. Paragraph 177 of our Fourth Periodic Report summarized Executive Order 13491, Ensuring Lawful Interrogations. The National Defense Authorization Act for Fiscal Year 2016 ("2016 NDAA") codified many of the interrogation-related requirements included in the Executive Order, including requirements related to Army Field Manual 2-22.3. It also imposed new legal requirements, including that the Army Field Manual remain publicly available, and that any revisions be made publicly available 30 days in advance of their taking effect.

* * * *

5. U.S. law provides several avenues for the domestic prosecution of U.S. Government officials and contractors who commit torture and other serious crimes overseas. ...

* * * *

7. The U.S. Government has investigated numerous allegations of torture or other mistreatment of detainees. For example, prior to August 2009, career prosecutors at the Department of Justice carefully reviewed cases involving alleged detainee abuse. These reviews led to charges in several cases and the conviction of a Central Intelligence Agency (CIA) contractor and a Department of Defense contractor....

8. In addition to the Department of Justice, and in further response to the Committee's subparagraph (a) request, there are many other accountability mechanisms in place throughout the U.S. Government aimed at investigating credible allegations of torture and prosecuting or punishing those responsible. For example, the CIA Inspector General conducted more than 25 investigations into misconduct regarding detainees after 9/11. The CIA also convened six high-level accountability proceedings from 2003 to 2012. These reviews evaluated the actions of approximately 30 individuals, around half of whom were held accountable through a variety of sanctions.

9. In addition, the U.S. military investigates credible allegations of misconduct by U.S. forces, and multiple accountability mechanisms are in place to ensure that personnel adhere to laws, policies, and procedures. ...

10. The U.S. law, policy, and procedures that we have described in the preceding paragraphs apply to U.S. Government personnel, including persons in positions of command. Persons in positions of command are not exempt from the requirement to comply with the law, nor are they exempt from investigations based on allegations of wrongdoing. As noted above, it is sometimes not appropriate to highlight the cases of particular individuals.

11. In relation to the Committee's subparagraph (a) inquiry regarding judicial remedies available to detainees in U.S. custody at Guantanamo, the United States notes that all Guantanamo detainees have the ability to challenge the lawfulness of their detention in U.S. federal court through a petition for a writ of habeas corpus. ...

* * * *

20. The United States wishes to clarify a misunderstanding of our earlier response regarding Stand Your Ground laws that is apparent from the Committee's request under paragraph (b). The review of Stand Your Ground provisions of state law, as previously reported, was not undertaken by the U.S. Government, but rather by the U.S. Commission on Civil Rights, which is an independent, bipartisan agency established by Congress to investigate, report, and make recommendations to the President and the Congress on civil rights matters. The information we reported regarding the focus of the Commission's independent review and the expectation of a final report was based on publicly available statements by participants in the Commission hearings. The United States has no role in or control over this independent undertaking. Also, our previous reports and responses, including paragraph 22 of our March 31, 2015 response, have made clear the respective roles of federal, state, and local governments and laws under our federal system of government, including criminal laws and rules governing self-defense. In our federal system, these laws are the province of state and local governments.

21. As a final note, the United States wishes to remind the Committee of the long-standing position of the United States regarding the scope of a State Party's ICCPR responsibility with respect to the private conduct of non-State actors, both in relation to gun violence and the exercise of self-defense, as noted in our response dated October 9, 2015, paragraph 10.12 Likewise, the United States does not share the Committee's view as to the applicability of such concepts as "necessity" and "proportionality" in relation to assessing the use of force or self-defense for purposes of Articles 6 and 9 of the ICCPR. These concepts are derived from domestic and regional jurisprudence under other legal systems and are not broadly accepted as legally-binding internationally, nor supported by either the Covenant text or its travaux préparatoires.

* * * *

b. *Draft General Comment 36 on right to life*

In July 2016, the Human Rights Committee completed its draft General Comment on Article 6 of the ICCPR and invited interested stakeholders to comment on the draft. On October 6, 2017, the United States provided its observations on Draft General Comment No. 36 on Article 6—Right to Life. Excerpts follow from the U.S. comments. The committee continued its discussion of Draft General Comment No. 36 in November 2017.

* * * *

3. As discussed below, the range of issues the Committee considers to fall within the scope of the inherent right to life and the obligations of States Parties under Article 6 is overly expansive and the Committee provides little or no authoritative legal support or treaty analysis grounded in established rules of treaty interpretation under international law to support many of its positions. The Committee's citations to its own work products, whether in the form of general comments, concluding observations and recommendations, or "views" on Protocol communications, do not in and of themselves provide legal support under international law. They merely represent a collection of the Committee's prior consistent, non-binding views and carry no greater weight or authority than when first published.

Treaty Interpretation

* * * *

6. The United States has previously observed in its dialogue with the Committee that many of the Committee's more ambitious opinions appear to reflect an attempt to fill what it may consider to be gaps in the reach and coverage of the Covenant. And indeed, as noted below, some of the positions advanced in draft General Comment 36 purport to interpret Article 6 in ways that were proposed and debated by various negotiating delegations, but were excluded from the final text when agreement could not be reached. If one believes there to be gaps in a treaty, the proper approach to take under international treaty law is to *amend* the treaty to fill those gaps.

It is for each Party to decide for itself, as an exercise of its sovereignty, whether it will be bound by what are, in fact, new treaty obligations.

7. In this regard, it is also of concern that the Committee has looked to interpret or fill what it may consider to be gaps in the ICCPR by importing requirements from other human rights treaties. Any such Committee interpretation, expanding on the terms of the ICCPR itself, is inconsistent with a proper interpretive analysis under VCLT Articles 31 and 32, ignores the express terms of the ICCPR, and fails to consider that not all ICCPR States Parties have ratified these other treaties or otherwise consented to such obligations. For example, the Committee's importation in paragraph 8 of requirements under the International Convention for the Protection of All Persons from Enforced Disappearance and in paragraph 28 of requirements under the Convention on the Rights of Persons with Disabilities, however they may also contribute to the right to life, ignores the terms and scope of application of those treaties. And it is unclear on what basis the Committee would suggest in paragraph 30 an implied duty under Article 6 to address "the general conditions in society that may eventually give rise to direct threats to life" or other health-related measures, as characterized by the Committee under paragraphs 9, 10, and 20 of its draft general comment. State Party obligations with respect to health-related rights, for example, are set forth in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which establishes in its Article 12 the right to the enjoyment of the highest attainable standard of physical and mental health. Given that ICESCR was negotiated and concluded in parallel with the ICCPR specifically to address such rights separately and that States party to ICESCR agreed, pursuant to Article 2 of that Covenant, to take steps "with a view to achieving progressively the full realization" of such rights, there is no basis to infer that the negotiators would have considered such measures to be required or necessary to also give effect to the right to life within the meaning of Article 6. Thus, in the context of the right to health contained in the ICESCR, which is the proper lens by which to examine rights characterized as health-related human rights, there is no obligation as part of that right to give effect to the right to life. The right to the enjoyment of the highest attainable standard of health is not commensurate with a right to be healthy or a right not to succumb to disease. It is, instead, oriented toward the progressive realization, in accordance with a State's available resources, of the right for an individual to enjoy the *highest attainable standard* of health. For these reasons, and bearing in mind the history of the negotiations of the two Covenants, any issues concerning access to abortion (paragraph 9 of the Committee's draft) are outside the scope of Article 6. Although the United States agrees that human rights treaties may be mutually reinforcing, this does not mean that the contents of obligations contained within one human rights treaty can be imputed or read into other human rights treaties. Doing so would render meaningless the right of each State to decide for itself whether to accept particular legal obligations associated with particular human rights treaties.

8. We are particularly concerned about the suggestion in paragraph 65 that obligations of States under the ICCPR and international environmental law depend on each other or are changed by each other in their interpretation or application. The Committee has no mandate to suggest that Article 6(1) obligations "must reinforce" States' relevant obligations under international environmental law, or that international environmental law should necessarily "inform the contents" of States Parties' obligations under Article 6(1). Nor can such an interpretation of Article 6(1) find any support in accepted principles of treaty interpretation reflected in VCLT Articles 31 and 32. This would set up an inaccurate description of the legal relationship between the ICCPR and international environmental law, and it would create

significant legal uncertainty about the scope and meaning of important environmental obligations if they were reinterpreted based on a separate area of law like the ICCPR. The relevant treaties cover wholly distinct areas (one of which barely existed at the time the ICCPR was negotiated) and do so with different and varied approaches that are tailored to the particular goals of each treaty. Obligations in environmental treaties, for example, generally do not take a human rights-based approach. The ICCPR thus cannot be a lens through which environmental obligations must be viewed, nor vice versa; that would be beyond the intent of the negotiators that created the ICCPR and particular environmental obligations in various agreements.

9. The United States also believes the Committee is mistaken in paragraph 69 in its view that entry of a reservation with respect to Article 6 would be incompatible with the object and purpose of the ICCPR, especially in light of the article's peremptory and non-derogable nature. The Committee relies solely on its previous General Comment No. 24 for this position. We refer the Committee to the United States' Observations on General Comment No. 24 for a detailed explanation of why the assertion is contrary to the Covenant and international law.

* * * *

II. General Issues of Overarching Concern

Territorial Scope

13. Throughout the draft general comment, references are made to the application of the Covenant to actions outside the territory of a State Party. Particularly problematic is the assertion in paragraph 66 that Covenant obligations extend to "persons located outside any territory effectively controlled by the State who are nonetheless impacted by its military or other activities in a [direct], significant and foreseeable manner." As the United States has previously advised, the Covenant applies only to individuals who are both within the territory of a State Party and subject to its jurisdiction. This interpretation is the most consistent with the ordinary meaning of Covenant text and its negotiating history, and also accords with longstanding international legal principles of treaty interpretation. ...

14. We likewise do not agree that an individual on State-Party-registered ships located beyond that State Party's territorial sea, or on State Party-registered aircraft flying in international airspace (or in another State's airspace), would be located within the territory of that State Party for purposes of application of ICCPR rights. ...

15. Although some States Parties may have accepted somewhat broader jurisdictional obligations as parties to regional human rights conventions, or because doing so might correspond with their domestic laws, the United States has not done so. To the extent that there are differing views among States Parties, the Committee has no mandate to resolve them or to interpret authoritatively the Convention's terms. Thus, we urge the Committee to refrain from any characterization of the jurisdictional and territorial scope of ICCPR obligations that deviates from the express treaty text.

Armed Conflict

16. Paragraph 67 of the Committee's draft states: "Like the rest of the Covenant, article 6 continues to apply also [to the conduct of hostilities] in situations of armed conflict to which the rules of international humanitarian law are applicable. While rules of international humanitarian law may be relevant for the interpretation and application of article 6, both spheres of law are complementary, not mutually exclusive. Uses of lethal force authorized and regulated by and complying with international humanitarian law are, in principle, not arbitrary. By contrast, practices inconsistent with international humanitarian law, entailing a risk to the lives of

civilians and persons hors de combat, including the targeting of civilians and civilian objects, indiscriminate attacks, failure to apply adequate measures of precaution to prevent collateral death of civilians, and the use of human shields, violate article 6 of the Covenant.”

17. The United States disagrees. Although the United States would agree as a general matter that armed conflict does not suspend or terminate a State’s obligations under the Covenant within its scope of application, we do not believe that the Committee’s views, reflected here or in prior general comments addressing military operations, accord sufficient weight to the well-established principle that international humanitarian law (IHL) is the *lex specialis* with respect to the conduct of hostilities and the protection of war victims (*e.g.*, prisoners of war, civilian internees, persons placed *hors de combat*) in any armed conflict. ...

18. In this regard, we reject the suggestions and assertions in paragraph 67 of the Committee’s draft, including that States Parties should disclose information on the use of weaponry and targeting, the process for identifying military targets, the degree to which it considers non-lethal alternatives, and other details concerning the means and methods of warfare. Although these particular disclosure recommendations are framed in advisory terms, the Committee offers no support for such suggestions or in stating that States Parties “must also investigate allegations of violations of article 6 in situations of armed conflict in accordance with the relevant international standards.”

19. ... The Committee should not seek to opine on issues related to IHL with respect to the study, development, acquisition, adoption, or use of various types of weapons, including non-lethal weapons, nor on the nature of obligations of parties to treaties other than the ICCPR, such as the Treaty on the Non-Proliferation of Nuclear Weapons.

* * * *

Derogation

21. There is no question that the right to life, as codified in Article 6, is a non-derogable right under Article 4(2) of the Covenant, and that it, therefore, continues to apply in any circumstance within the Covenant’s scope of application. Regardless of differing views regarding the scope of application, this phrase, “within the Covenant’s scope of application” needs to be added to the second sentence of paragraph 68 for accuracy.

* * * *

Transfers to Other Countries (Non-Refoulement)

24. ... As we have stated before, the Committee’s non-binding opinions on this matter have no legal basis in the text of the treaty or the intention of its States Parties at the time they negotiated or became parties to the ICCPR. The only obligations under international human rights and refugee law that the United States has assumed with respect to such transfers are the *non-refoulement* provisions contained in Article 33 of the Convention Relating to the Status of Refugees (applicable to the United States by virtue of its ratification of the Protocol Relating to the Status of Refugees) and in Article 3 of the Convention Against Torture.

III. Specific Issues of Concern Related to Article 6(1)

25. The Committee should conform its language throughout draft General Comment 36 to the text of the obligations set out under Article 6(1), which are to ensure, within the scope of application of the treaty: (1) that the right to life “shall be protected by law” and (2) that “no one shall be arbitrarily deprived of his life.” These obligations also must be read in conjunction with

the more general obligations under Article 2, in particular under Article 2(2) “[w]here not already provided for by existing legislative or other measures, . . . to take the necessary steps, in accordance with [a State Party’s] constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”

26. Article 2(2) is foundational to the reading of any Article setting forth ICCPR-recognized rights. It establishes, as a general matter, that the decision as to the most appropriate means of domestic implementation of ICCPR obligations is left to the internal law and constitutional processes of each State Party. Thus, to the extent that specific conditions, measures or requirements necessary to give effect to an ICCPR right are not expressly set forth in the relevant article, and therefore not an obligation undertaken upon ratification by the State Party, any elaboration of the measures necessary to give it effect are for the State Party to determine and implement in accordance with its laws and any other relevant ICCPR obligations. This is a reflection of a conscious decision of the drafters of the ICCPR, in an effort to protect human rights and secure the widest possible adherence.

Arbitrary Deprivation of Life

27. Article 6(1) provides that no one shall be arbitrarily deprived of his life. The Committee has undertaken, in paragraphs 18 and 19, to give the word “arbitrarily” a uniform meaning expressed in mandatory terms, by elaborating on how it understands the meaning of the treaty provision. The Committee states that this treaty term “must be interpreted more broadly to include” a list of specific elements apparently drawn from individualized, non-binding findings on communications it has considered under the Optional Protocol, inapplicable jurisprudence of the European Court of Human Rights, and reports of U.N. Human Rights Council Special Rapporteurs. As drafted, these elements appear intended to apply in all contexts, without any reference to or consideration of the differing legal systems and constitutional requirements and standards that may pertain in implementing Article 6(1). The Committee recognizes in paragraph 20 that the Covenant does not provide a list of permissible grounds for the taking of a life. For the same reason that the negotiators were unable or unwilling to include such specificity in the treaty, the Committee should refrain from seeking to do so through its general comment practice. As reasonable as these elements may be to consider in adopting domestic measures, assessing self-defense, or justifying the use of force by law enforcement officials in a given situation, it would be more appropriately within the Committee’s mandate for it to recommend consideration of such “elements” by States Parties as best practices in implementing their obligations within their legal systems.

* * * *

Protecting the Right to Life by Law

30. With regard to the general heading, “duty to protect life,” we note that the obligation in Article 6(1) is that “[t]his right shall be protected by law.” The Committee should conform the heading accordingly, as well as any references to this obligation throughout the text.

* * * *

32. Although it is true that Article 2(2) requires States to adopt legislation and other measures to the extent necessary to give effect to ICCPR rights, neither Article 2(2) nor Article 6(1) specifies the conduct to be criminalized, nor the elements or penalties commensurate with such crimes. Indeed, some of the provisions that the Committee appears to put forward as required would encompass dangers or threatening behavior regardless of whether the conduct to be criminalized results in deprivation of life (*e.g.*, “disproportionate use of firearms,” “blood feuds,” “death threats,” “manifestations of violence” or “incitement to violence”). These types of conduct do not clearly fall within the ordinary meaning of “deprivation of life” under Article 6(1), and although they may be worthy of criminalization, this is not expressly required within the ordinary meaning of Article 6(1). It is reasonable to expect States Parties to take steps to review their criminal codes and to adopt new laws as circumstances and threats as conditions demand; however, the ICCPR does not prescribe universal crimes or measures that each State Party “must” adopt to give effect to the right to life.

33. With respect to the Committee’s assertions that States Parties have a duty to take “reasonable positive measures” and exercise “due diligence” to respond to foreseeable threats by private persons and entities (*e.g.*, paragraph 25 of the Committee’s draft), the United States remains of the view that neither the text nor its negotiating history supports any such obligation under the ICCPR. ...

* * * *

36. What is also apparent from the debates throughout the negotiation of Article 6 is that the deprivation of life under discussion was generally understood to refer to actual killings of one person by another, whether attributable to State actors or private actors, and that the measures discussed and compromise achieved only contemplated that any protection to be afforded from the conduct of non-States actor would be pursuant to domestic criminal laws. ...

37. In light of the ordinary meaning of Article 6(1) and this negotiating history, there is no basis to seek to further expand upon an obligation to ensure the right to life that would entail a duty to protect life from all foreseeable threats to life and to ensure the “effective enjoyment of the right life” (paragraph 28). The United States does not agree that “[t]he obligation of States parties to respect and ensure the right to life extends to all threats that can result in loss of life” and that “States parties may be in violation of article 6 even if such threats have not actually resulted in loss of life” as suggested in paragraph 7 of the draft. Similarly, the United States does not agree with the Committee’s assertions of the positive measures articulated in paragraphs 25, 26, 27 and 30.

38. Any suggestion, even if only by implication, of a duty to protect life that would extend to addressing “general conditions in society that may eventually give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity” strays beyond the mandate of the Committee and is unsupported by established rules of treaty interpretation with respect to Article 6. Whatever steps a State may take to address such conditions as those addressed in the draft such as environmental pollution, life threatening disease, the adequacy of health care, traffic and industrial accidents, hunger, poverty or homelessness, natural disasters or cyber-attacks, none of these fall within the scope of ICCPR obligations. Attention spent on such issues in the context of a general comment or State Party periodic reporting diverts attention from the essential issues for which the Committee has responsibility.

IV. Death Penalty

39. Consistent with its mandate, the sole responsibility of the Committee is to advise States Parties, which have not abolished the death penalty, on issues that arise in its application to individual cases within the terms of Article 6 (2)-(5). As the Committee correctly notes in paragraph 37 of its draft, Article 6 strictly limits the application of the death penalty leaving little room for further interpretation or elaboration. Any observations or advice by the Committee regarding State practices in implementing their obligations in this area need to be expressed as best practices or in advisory “should” terms, rather than obligatory terms such as “have to” or “must.”

40. Committee views regarding abolition of the death penalty, and in particular the view that abolition is “legally irrevocable” (paragraph 38), lack legal support grounded in the interpretive rules reflected in VCLT Article 31 and 32 and should either be deleted or expressed as views of the Committee regarding best practices. The ICCPR is silent on the question of reinstating the death penalty after abolition. ...

41. The same applies to the Committee’s assertion in paragraph 38 of the draft that a State Party may not modify domestic laws after ratifying the Covenant in any way that would either create a new capital offense or remove legal conditions under an existing capital offense that would permit its imposition in circumstances not previously allowed. The article is silent and the Committee has provided no authoritative legal support or treaty analysis grounded in established rules of treaty interpretation under international law. The only relevant ICCPR obligation is the requirement in Article 6(2) that the death penalty be imposed in accordance with the law in force at the time of the commission of the crime, applied in conformity with the Article 15 obligation that a heavier penalty not be imposed than the one applicable at that time. Certainly, if the States Parties had considered or agreed to any further restriction as proposed by the Committee, these provisions would not read as they do. The Committee’s related arguments in paragraph 38 are addressed in Part II above.

Death Penalty in Relation to Other Covenant Provisions

42. We agree that under Article 6, the death penalty may not be imposed or carried out in a manner that is contrary to the provisions of the ICCPR, including Article 7 with respect to any method that would amount to torture or to other cruel, inhuman, or degrading punishment or punishment, and Article 14, with respect to fair trial and appeal guarantees. We also agree that violation of those articles in the course of applying the death penalty could also lead to a violation of Article 6. The plain language in Article 6(2) requires that it not be imposed contrary to other Covenant provisions.

43. However, the United States disagrees with several of the views expressed in paragraph 44 of the draft, particularly regarding certain methods of execution and the impact of solitary confinement or delays in carrying out the sentence. We suggest that any discussion of repercussions and potential violations of other Articles that do not lead to the death of an individual would more properly be addressed in Committee general comments on such other articles.

44. We cannot agree with the Committee’s view that “a failure to promptly inform detained foreign nationals charged with a capital crime of their right to consular notification pursuant to the Vienna Convention on Consular Relations” could “render the imposition of the death penalty contrary to article 6 (paragraph 46).” As the Committee recognizes in paragraph 46, consular notification is not expressly required under Article 14 or any other Covenant provision, and the Committee has offered no treaty analysis grounded in VCLT Articles 31 or 32

to support such a view. Consular notification is not a “right” owed to a foreign national in detention. Rather, consular access and assistance is a right exercised by the detained individual’s State of nationality. The consular notification protections under the Vienna Convention on Consular Relations (VCCR) are based on principles of reciprocity, nationality, and function. Nor is consular notification a necessary component of the right to a fair trial or the right to due process in criminal proceedings. ...

45. We strongly disagree with the Committee’s assertion in paragraph 50 that either the requirement of a final judgment before execution under Article 6(2) or the right of the sentenced person to seek pardon or commutation under Article 6(4) can be considered to encompass appeals to any and all “available non-judicial avenues,” to include international commissions, monitoring bodies, or U.N. treaty bodies. Further, there is no support for the suggestion that a failure to implement non-binding recommendations, interim measures, or other requests in paragraph 50 by such international bodies would be contrary to any ICCPR obligation, including the reporting obligation under Article 40 to submit reports in response to the Committee’s request. The requirement under Article 6(2) that the death penalty can only be carried out “pursuant to a final judgement rendered by a competent court” can only be read in conjunction with Article 14(1) and (5) to mean a competent, independent and impartial higher tribunal established by law. The United States is not subject to the jurisdiction of any international court that would fall within such terms. It is for States that are subject to the jurisdiction of such an international court to interpret the scope of their obligation in that regard.

46. With respect to the question of abolition, there is no basis for the assertion in paragraph 54 that Article 6, paragraph 6 reaffirms the position of States Parties that there should be “an irrevocable path towards complete abolition.” Neither the wording nor the *travaux préparatoires* supports such a view, particularly in view of how controversial the subject was throughout the negotiation of Article 6. Although this may have been the view of some States during the drafting, it was not the view of all States, and the entire Article, including paragraph 6, was neutrally drafted for that reason. ...

* * * *

3. Human Rights Council

a. Overview

The United States was elected to the UN Human Rights Council as a voting member in for a three-year term starting in 2017 after spending a mandatory year off the Council in 2016. The key outcomes of each regular session of the HRC for the United States are summarized in fact sheets issued by the State Department. The key outcomes for the 34th session are described in a March 27, 2017 fact sheet, available at <https://www.state.gov/r/pa/prs/ps/2017/03/269155.htm>. They include: reducing support for anti-Israel resolutions; renewal of the mandate of the Commission on Human Rights in South Sudan; extension of the UN role in justice and reconciliation in Sri Lanka; a strengthened role of the Office of the UN High Commissioner for Human Rights (“OHCHR”) in collecting evidence of human rights abuses in North Korea; resolutions on Burma, Iran, Syria, Mali, Haiti, Libya, and Georgia; and resolutions on freedom of expression, torture, freedom of religion, and human rights defenders.

U.S. Permanent Representative to the UN Nikki Haley attended the opening of the 35th Session of the HRC, which was held June 6-23, 2017. Key outcomes for the United States from the 35th Session are summarized in a June 26, 2017 fact sheet available at <https://www.state.gov/r/pa/prs/ps/2017/06/272182.htm>. They include country-specific resolutions on: the DRC, Venezuela, Syria, Ukraine, Belarus, Eritrea, and Cote d'Ivoire; and thematic resolutions on: gender equality, trafficking in persons, child/early/forced marriage, countering terrorism, rights of persons with disabilities, independence of judges and lawyers, and human rights and transnational corporations. Other outcomes of note for the United States include country-specific resolutions and discussions on the DRC, Venezuela, Syria, Ukraine, Belarus, Eritrea, and Cote d'Ivoire. Thematic resolutions of importance include resolutions on eliminating violence against women and discrimination against women and girls; extending the mandate of the special rapporteurs on trafficking in persons and child, early, and forced marriage; protecting human rights while countering terrorism; extending the mandate of special rapporteurs on the independence of judges and lawyers and the rights of persons with disabilities; and extending the work of the working group on human rights and transnational corporations.

Key outcomes of U.S. priorities at the HRC's 36th Session are summarized in an October 3, 2017 fact sheet, available at <https://www.state.gov/r/pa/prs/ps/2017/10/274577.htm>. They include country-specific resolutions or other actions on: Yemen; Venezuela; Burundi; the DRC; Sudan; Syria; Somalia; CAR; Burma; Crimea; the Philippines; and Cambodia. Key thematic resolutions and actions at HRC 36 include: extending the mandate of the special rapporteurs on truth, justice, reparation, and guarantees of non-recurrence; the human rights of indigenous persons, women, and Sustainable Development Goals ("SDGs"); and renewing the mandate of the Working Group on Enforced and Involuntary Disappearances.

On June 6, 2017, Ambassador Haley delivered remarks at the Graduate Institute of Geneva on "A Place for Conscience: the Future of the United States in the Human Rights Council." Her remarks are excerpted below and available at <https://geneva.usmission.gov/2017/06/06/ambassador-nikki-haley-remarks-at-the-graduate-institute-of-geneva/>.

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The first chairman of the United Nations organization dedicated entirely to human rights was a chairwoman.

Eleanor Roosevelt was elected to head the Human Rights Commission when it first met in January 1947. She was a natural choice. Mrs. Roosevelt was already well known for her heartfelt advocacy for universal human rights.

She was a woman of deep faith. Her nightly prayer asked God to quote, “make us sure of the good we cannot see, and of the hidden good in the world.” Eleanor Roosevelt was an idealist. But she was no pushover.

The first item on the Commission’s agenda was drafting the Universal Declaration of Human Rights. During the debate, the United States and the Soviet Union clashed repeatedly in some of the opening skirmishes of the Cold War.

The Soviet delegate taunted Mrs. Roosevelt: How could the United States call itself a champion of human rights when African Americans were still discriminated against? To which Mrs. Roosevelt acknowledged that yes, the United States still had problems, and progress was being made.

And then she proposed a deal that quieted the Soviet delegate: She said the Soviets could send a delegation to observe the United States—if the United States could do the same to the Soviet Union.

Of course, the Soviets never did and never would give free reign to a U.S. delegation. She was making a point. She was calling out a fellow commission member for using human rights as a cover for its political agenda.

Mrs. Roosevelt’s vision of the Human Rights Commission was bigger than any one country. She saw the Commission as a place for conscience, not politics. She knew that if it was allowed to become a forum for hypocrisy and political point-scoring, it would do more to hurt the cause of human rights than to help it.

My country has a unique beginning, founded on human rights, holding self-evident the truth that all men are created equal with rights to life, liberty, and the pursuit of happiness. Of course America did not invent these rights—God did. Simply by our birth, human beings are endowed by our Creator with certain inalienable rights. These rights belong to all of us. They are not the gift of any government. They cannot legitimately be taken away by any government.

The American idea is that government exists to serve the people, not the other way around. Government should secure our rights, not violate them.

We continue striving to achieve this principle through self-government, using elections and the rule of law to hold our leaders accountable. The inherent dignity of the individual is not secured by words but by actions. This is the standard by which we judge ourselves as a nation—and by which we invite others to judge us as well.

It is this commitment to the equal worth of all human beings that leads the United States to support universal human rights. And of course we are not alone. There are many other nations, both on the Council and off, that affirm universal human rights and act to protect and extend them.

When the Human Rights Council has acted with clarity and integrity, it has advanced the cause of human rights. It has brought the names of prisoners of conscience to international prominence and given voice to the voiceless.

At times, the Council has placed a spotlight on individual country violators and spurred action, including convening emergency sessions to address the war crimes being committed by the Assad regime in Syria. The Council’s Commission of Inquiry on North Korea led to the Security Council action on human rights abuses there.

The Council is at its best when it is calling out human rights violators and abuses, and provoking positive action. It changes lives. It pushes back against the tide of cynicism that is building in our world. And it reassures us that it deserves our continued investment of time and treasure.

But there is a truth that must be acknowledged by anyone who cares about human rights: When the Council fails to act properly—when it fails to act at all—it undermines its own credibility and the cause of human rights. It leaves the most vulnerable to suffer and die. It fuels the cynical belief that countries cannot put aside self-interest and cooperate on behalf of human dignity. It re-enforces our growing suspicion that the Human Rights Council is not a good investment of our time, money, and national prestige.

Tragically, we've been down this road before.

In 2005, then-Secretary-General Kofi Annan disbanded the precursor to the Human Rights Council, the Human Rights Commission. He blamed what he called its “credibility deficit.” The description was well-earned.

Many of the world's worst human rights offenders were elected to the seats on the Commission. They used those positions, not to advance human rights, but to shield themselves from criticism or to criticize others.

In short, the Commission had lost the world's trust. It had stained and setback the cause of human rights.

These problems were supposed to have been fixed when the new Council was formed. Sadly, the case against the Human Rights Council today looks an awful lot like the case against the discredited Human Rights Commission over a decade ago.

Once again, over half the current member countries fail to meet basic human rights standards as measured by Freedom House.

Countries like Venezuela, Cuba, China, Burundi, and Saudi Arabia occupy positions that obligate them to, in the words of the resolution that created the Human Rights Council, “uphold the highest standards” of human rights. They clearly do not uphold those highest standards.

And once again, as with the disgraced and disbanded Human Rights Commission, the victims of the world's most egregious human rights violations are too often ignored by the very organization that is supposed to protect them.

In Venezuela, the government has systematically destroyed civil society through arbitrary detention, torture, and blatant violations of freedom of the press and freedom of expression. Children are starving to death. Mothers dig through trash cans to feed their families. This is a crisis that has been 18 years in the making. The Venezuelan people have been robbed of their human rights.

And yet, not once has the Human Rights Council seen fit to condemn Venezuela. Quite the contrary—the Council chose to showcase Venezuela's work while protestors were being beaten in the streets. Just two years ago, President Maduro was invited to address the Council, just weeks after Venezuela was re-elected as a member.

In Cuba, the government continues to arrest and detain critics and human rights advocates. The government strictly controls the media and severely restricts the Cuban people's access to the internet. Political prisoners by the thousands continue to sit in Cuban jails. Yet Cuba has never been condemned by the Human Rights Council. It, too, is a member country.

In fact, Cuba uses its membership in the Council as proof that it is a supporter of human rights, instead of a violator that it is. The Cuban deputy foreign minister called Cuba's 2016 re-election to the Human Rights Council, “irrefutable evidence of Cuba's historic prestige in the promotion and protection of all human rights for Cubans.”

This is a reversal of the truth that would make George Orwell blush.

The list goes on.

In 2014, Russia invaded Ukraine and took over Crimea. This illegal occupation resulted in thousands of civilian deaths and injuries as well as arbitrary detentions. No special meeting of the Human Rights Council was called, and the abuses continue to mount.

Robert Mugabe continues his decades-long campaign of repression in Zimbabwe. Nothing from Geneva. Instead, human rights violators Iran, Venezuela, and North Korea, took advantage of a Council review to commend Mugabe's so-called "promotion and protection of human rights."

The Human Rights Council has been given a great responsibility. It has been charged with using the moral power of universal human rights to be the world's advocate for the most vulnerable among us. Judged by this basic standard, the Human Rights Council has failed.

In case after case, it has been a forum for politics, hypocrisy, and evasion—not the forum for conscience that its founders envisioned. It has become a place for political manipulation, rather than the promotion of universal values. Those who cannot defend themselves turn to this Council for hope but are too often disappointed by inaction.

Once again, the world's foremost human rights body has tarnished the cause of human rights. The United Nations must now act to reclaim the legitimacy of universal human dignity.

For all of us, this is an urgent ask. Human rights are central to the mission of the United Nations. Not only are they the right thing to do, they're the smart thing to do.

I dedicated the U.S. presidency of the Security Council in April to making the connection between human rights and peace and security.

This is a cause that is bigger than any one organization. If the Human Rights Council is going to be an organization we entrust to protect and promote human rights, it must change. If it fails to change, then we must pursue the advancement of human rights outside of the Council.

America does not seek to leave the Human Rights Council. We seek to reestablish the Council's legitimacy.

There are a couple of critically necessary changes.

First, the UN must act to keep the worst human rights abusers from obtaining seats on the Council. As it stands, elections for membership to the Council are over before the voting even begins. Regional blocs nominate slates of pre-determined candidates that never face any competition for votes.

No competition means no scrutiny of candidates' human rights records. We must change the elections so countries are forced to make the case for membership based on their records, not on their promises.

Selection of members must occur out in the open for all to see. The secret ballot must be replaced with open voting. Countries that are willing to support human rights violators to serve on the Human Rights Council must be willing to show their faces. They know who they are. It's time for the world to know who they are.

Second, the Council's Agenda Item Seven must be removed. This, of course, is the scandalous provision that singles out Israel for automatic criticism. There is no legitimate human rights reason for this agenda item to exist. It is the central flaw that turns the Human Rights Council from an organization that can be a force for universal good, into an organization that is overwhelmed by a political agenda.

Since its creation, the Council has passed more than 70 resolutions targeting Israel. It has passed just seven on Iran. This relentless, pathological campaign against a country that actually has a strong human rights record makes a mockery not of Israel, but of the Council itself.

The Council's effort to create a database designed to shame companies for doing business in Israeli controlled areas is just the latest in this long line of shameful actions.

Blacklisting companies without even looking at their employment practices or their contributions to local empowerment, but rather based entirely on their location in areas of conflict is contrary to the laws of international trade and to any reasonable definition of human rights. It is an attempt to provide an international stamp of approval to the anti-Semitic BDS movement. It must be rejected.

Getting rid of Agenda Item Seven would not give Israel preferential treatment. Claims against Israel could still be brought under Agenda Item Four, just as claims can be brought there against any other country. Rather, removal of Item Seven would put all countries on equal footing.

The Council is no more justified in having a separate agenda item on Israel than it is on having one for the United States, or Canada, or France, or the United Kingdom. More appropriate would be to have an agenda item on North Korea, Iran, and Syria, the world's leading violators of human rights.

These changes are the minimum necessary to resuscitate the Council as a respected advocate of universal human rights.

For our part, the United States will not sit quietly while this body, supposedly dedicated to human rights, continues to damage the cause of human rights.

In the end, no speech and no structural reforms will save the members of the Human Rights Council from themselves. If they continue to put politics ahead of human rights, they will continue to damage the cause that they supposedly serve.

All those years ago, Mrs. Roosevelt understood this. She was engaged in building an institution to bring the nations of the world together to protect the most vulnerable. But she knew the good she was seeking would not come from that institution, but from the hearts of men and women who would work in it. Every night, she prayed: "Save us from ourselves and show us a vision of a world made new."

I believe that vision is still achievable. I believe we can come together. I know there are many who share the belief.

The status quo is not acceptable. It is not a place for countries who champion human rights.

I call on all likeminded countries to join in making the Human Rights Council reach its intended purpose.

Let the world be on notice: We will never give up the cause of universal human rights. Whether it's here, or in other venues, we will continue this fight.

Thank you.

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Along with explanations of positions for specific resolutions, the United States also made general statements at HRC 35 and HRC 36 explaining overarching concerns with regard to several resolutions under Item 3 of the Human Rights Council agendas, which address the protection and promotion of human rights. These general statements reflect broad, overarching commentary on policy and legal issues that arose in the context of multiple resolutions in Item 3.

Specifically, on June 23, 2017, at the 35th Session of the HRC, Jason Mack delivered the U.S. statement, available at <https://geneva.usmission.gov/2017/06/23/us-clarifies-position-on-issues-in-various-resolutions-at-35th-hrc/>. Similarly, on September 29, 2017, at the 36th Session of the HRC, Jason Mack delivered the U.S. statement, excerpted below and available at <https://geneva.usmission.gov/2017/09/29/general-statement-by-the-united-states-human-rights-council-item-3/>.

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The United States understands that the Human Rights Council’s resolutions do not change the current state of conventional or customary international law. Nor does the Universal Declaration of Human Rights itself create legal obligations. We do not read these resolutions to imply that states must join or implement obligations under international instruments to which they are not a party. We understand abbreviated references to certain human rights to be shorthand for the accurate terms used in the applicable international treaty, and we maintain our longstanding positions on those rights. The United States understands that any reaffirmation of prior documents applies only to those states that affirmed them initially, and, in the case of international treaties or conventions, to those States who are party. “Welcoming” a report should not be understood as acceptance of all assertions, conclusions, or recommendations contained therein.

As the International Covenant on Economic, Social, and Cultural Rights provides, each State Party undertakes to take the steps set out in Article 2(1) “with a view to achieving progressively the full realization of the rights.” We interpret references to the obligations of States as applicable only to the extent they have assumed such obligations, and with respect to States Parties to the Covenant, in light of its Article 2(1). We note that countries have a wide array of policies and actions that may be appropriate in promoting the progressive realization of economic, social, and cultural rights. Therefore, we believe that these resolutions should not try to define the content of those rights.

The concerns of the United States about the existence of a “right to development” are long-standing and well known. While we recognize that development facilitates the enjoyment of human rights, the “right to development” does not have an agreed international meaning. Furthermore, work is needed to make any such “right” 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.

The United States recognizes the 2030 Agenda as a global framework for sustainable development that can help countries work toward global peace and prosperity. We applaud the call for shared responsibility in the Agenda and emphasize that all countries have a role to play in achieving its vision. We also strongly support national responsibility stressed in the Agenda. However, each country has its own development priorities, and we emphasize that countries must work towards implementation in accordance with their own national circumstances and priorities.

In terms of the relationship between human rights and development, we recall the Vienna Declaration and Programme of Action, which recognizes that “development facilitates the enjoyment of all human rights” but that “the lack of development may not be invoked to justify

the abridgement of internationally recognized human rights.” We recognize that development, including aspects of the 2030 Agenda, and respect for human rights and fundamental freedoms can be mutually reinforcing, but emphasize that states must respect all of their human rights obligations, both in the context of development and beyond.

The United States is firmly committed to providing equal access to education. As educational matters in the United States are primarily determined at the state and local levels, we understand that when resolutions call on States to strengthen various aspects of education, including with respect to curriculum, this is done in terms consistent with our respective federal, state, and local authorities.

The United States is concerned about the growth in funding related to the Human Rights Council. UN regular budget support to OHCHR has more than tripled since the mid-2000s. In addition, significant amounts of regular budget funding support the human rights pillar via UN conference services. The United States works to contain costs where possible but is often the lone voice advocating fiscal discipline.

This general statement applies in particular to the following resolutions: The full enjoyment of human rights by all women and girls and the systematic mainstreaming of a gender perspective in the implementation of the 2030 Agenda on Sustainable Development Goals, Human Rights and Indigenous Peoples, Human Rights in the Administration of Justice, including juvenile justice, Promoting international cooperation to support national human rights follow up systems and processes including, as appropriate, national mechanisms for reporting and follow-up: their potential contribution to the implementation of the 2030 Agenda, Mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Mandate of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Mental Health and Human Rights, Unaccompanied migrant children and adolescents and human rights, World Programme for Human Rights Education.

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On September 19, 2017, the United States joined the Kingdom of the Netherlands and the United Kingdom in issuing a joint statement on reform of the HRC following a meeting co-hosted by Ambassador Haley, Dutch Foreign Minister Bert Koenders, and British Foreign Secretary Boris Johnson. That statement follows and is available at <https://usun.state.gov/remarks/7985>.

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The United States, the Kingdom of the Netherlands, and the United Kingdom co-hosted a meeting on reform of the UN Human Rights Council on the margins of the UN General Assembly on September 19, 2017. The three co-host nations thank the 37 countries that joined this meeting and helped lead a productive dialogue, making clear their commitment to achieving progress on meaningful reforms to strengthen the Human Rights Council.

We agreed that reform is urgently needed to ensure that the Council's status as a respected advocate for human rights is secured, noting that the Council cannot perform this function if serial human rights violators are continuously allowed to serve on it. We must seek reforms that help advance global human rights and ensure that the UN's premier human rights body lives up to its name.

Ten years from passing the Human Rights Council resolution that set out the Council's agenda and procedures is an appropriate moment to explore ways to make the Council more effective and we call on other UN Member States to stand with us in working to achieve progress on reforms this year, both in Geneva and New York.

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b. *Special session on Burma*

In December 2017, the HRC held a special session on the human rights situation of the minority Rohingya Muslim population and other minorities in the Rakhine State of Myanmar. The U.S. co-sponsored the resolution adopted at the session. On December 5, 2017, Ambassador Kelley E. Currie, U.S. Representative to the U.N. Economic and Social Council, made a statement regarding the session, excerpted below and available at: <https://geneva.usmission.gov/2017/12/05/unhrc-special-session-on-burma/>. In addition, at the time of the resolution's adoption, the United States also made an explanation of position, which can be found at <https://geneva.usmission.gov/2017/12/06/eov-unhrc-special-session-on-burma/>.

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The United States is pleased to cosponsor today's special session in order to shine an urgent light on the grave human rights abuses occurring in Burma. We appreciate the information shared by the High Commissioner, the Special Rapporteur, Pak Marzuki Darusman, and SRSG Patten and others who have brought to light shocking new details about the nature and scale of the violence. We again call on the Government of Myanmar to provide access for the Fact Finding Mission and other UN mechanisms. We thank Bangladesh for organizing this session and for its generosity in receiving so many refugees fleeing for their lives.

The United States again condemns the August 25 attacks. However, no provocation can justify the widespread and horrendous atrocities that have been perpetrated by Burma's security forces against the Rohingya population. The United States and other countries have deemed this to be a calculated campaign of ethnic cleansing. As we have heard today, facts continue to come to light describing the events of recent months as possibly premeditated—including actions taken well before August 25.

These are neither isolated nor unprecedented behaviors by the Tatmadaw. UN bodies have documented decades of similar, systemic abuses against ethnic communities across Myanmar. Today in Kachin and Northern Shan State, tens of thousands of IDPs are suffering yet another winter of fear and deprivation. These ethnic groups have been virtually alone within Burma in speaking out against the treatment of the Rohingya because they know this brutality so well from their own experience.

The United States again calls on Myanmar authorities to respect the rights of its entire population, provide unhindered UN, humanitarian and media access throughout Burma, especially in Rakhine State, ensure justice for victims and accountability for those responsible for human rights violations and abuses, and take all necessary measures so that all persons can safely and voluntarily return to their places of origin. We share the concerns raised by SR Lee regarding the repatriation agreement.

The United States welcomes the government's commitment to implement the Annan commission report, including with respect to access to citizenship and reform of the discriminatory 1982 Citizenship law. It is incumbent upon the security forces to respect these commitments, and to assist the civilian government in implementing them instead of undermining them. It is also essential that the hate speech, dehumanization and incitement to violence against the Rohingya come to an end. The lack of citizenship status and associated civil and political rights is the fundamental root cause of this crisis. Addressing this is an urgent imperative for the government of Myanmar in order to create conditions allowing safe, voluntary and dignified return. The first step in this is also to stop denying the seriousness of the current situation.

This Council, along with the Security Council and the General Assembly, all have an obligation to ensure that not one more Rohingya child will live through the violence we have seen in the past few months. ...

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c. *Actions regarding Sri Lanka*

On March 13, 2017 at the 34th session of the HRC, the Friends of Sri Lanka Core Group, including the United States, tabled a draft resolution on promoting reconciliation, accountability, and human rights in Sri Lanka. See March 15, 2017 State Department press statement, available at <https://geneva.usmission.gov/2017/03/16/support-for-human-rights-council-resolution-on-sri-lanka/>. Sri Lanka co-sponsored the resolution as it had in past years.

On March 23, 2017, at the 34th Session of the HRC, the United States introduced the resolution, "Promoting reconciliation, accountability and human rights in Sri Lanka." The resolution was adopted by consensus on March 23, 2017. The resolution asks the Government of Sri Lanka to continue its process of reconciliation and justice for two more years. William J. Mozdierz, head of the U.S. delegation to the HRC's 34th session, delivered the introductory statement, which is available at <https://geneva.usmission.gov/2017/03/23/statement-by-the-u-s-introducing-the-resolution-on-sri-lanka-at-the-human-rights-council/>. In the introductory statement, the United States thanked Sri Lanka and other member states and stakeholders for their cooperation on the resolution. Mr. Mozdierz said:

This resolution reflects our continued strong commitment to peace, justice, and reconciliation for all the people of Sri Lanka. It recognizes both the important steps that Sri Lanka has taken toward protecting human rights and fundamental freedoms, and also the need for full implementation of remaining steps to

ensure the consolidation of these protections. Sri Lanka's co-sponsorship of this resolution is a testament to the Sirisena administration's positive engagement with the international community and commitment to improving the lives of all Sri Lankans.

d. *Actions regarding South Sudan*

On March 24, 2017, Mr. Mozdzierz delivered the U.S. statement introducing a resolution on the situation of human rights in South Sudan. The statement is excerpted below and available at <https://geneva.usmission.gov/2017/03/24/u-s-introduces-resolution-on-human-rights-in-south-sudan/>.

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We thank South Sudan, members of the African Group, our core group members, Albania, Paraguay, and the United Kingdom, and all other member states and stakeholders for their constructive engagement on this resolution.

The human rights situation in South Sudan is deeply alarming to us all. Numerous reports and statements, including from the High Commissioner for Human Rights, the Commission on Human Rights in South Sudan, the Special Adviser of the Secretary-General on the Prevention of Genocide, and the African Union have detailed ongoing gross human rights violations and abuses and violations of international humanitarian law. Just last week, we heard from the Commission chilling accounts of whole villages burned to ashes, women gang raped, young girls held as sexual slaves, and individuals targeted because of their perceived political allegiances, as calculated by ethnicity. The report also underscores that impunity for these and other severe human rights violations and abuses remains widespread.

We are also gravely concerned about the recent declaration of famine in parts of the former Unity State, as well as severe food insecurity affecting millions as highlighted yesterday by the Secretary-General. Mass displacements continue within and outside South Sudan.

We must come together to address these atrocities and put an end to the humanitarian crisis. The Human Rights Council must condemn violence by all sides, encourage domestic and regional efforts to foster a national reconciliation process, and ensure accountability.

In response to the Commission's recommendations, we put forward today a resolution to enhance the Commission's mandate to determine and report the facts and circumstances of, collect and preserve evidence of, and clarify responsibility for alleged gross violations and abuses of human rights and related crimes. The Commission's work will be made available to transitional justice mechanisms, including the Hybrid Court, to help end impunity and lay the groundwork for accountability. In this vein, we reiterate our call for the speedy establishment of the Hybrid Court by the African Union pursuant to Chapter V of the 2015 peace agreement.

We welcome the Government of South Sudan's stated commitment to cooperate with OHCHR, UN special procedures, and the Commission on Human Rights in South Sudan. We call upon the Government to continue to cooperate fully and constructively with and to provide

unhindered access to them, as well as to provide such access to the United Nations Mission in South Sudan, the Regional Protection Force, regional, subregional, and international mechanisms, and humanitarian workers on the ground.

We are encouraged by the strong support from other delegations that have joined us in cosponsoring this resolution.

Our shared goals are to prevent this human rights crisis, dating to 2013, from intensifying and to help South Sudan establish a just and enduring peace. It is urgently important to address the ongoing atrocities in South Sudan and to renew the Commission's mandate.

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e. Actions regarding the Democratic Republic of Congo

On June 23, 2017, the U.S. Mission to the UN issued a statement by Ambassador Haley on the HRC resolution establishing an international investigation into the violence in the Democratic Republic of the Congo. That statement follows and is available at <https://usun.state.gov/remarks/7879>.

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Today, the United Nations Human Rights Council (HRC) adopted a resolution establishing an international team that will investigate mass atrocities occurring in the Kasai provinces of the Democratic Republic of the Congo (DRC). The violence in the Kasais, which has left more than 3,000 people dead and over one million displaced since last August, is the result of the DRC government's failure to hold elections in accordance with the country's constitution. It also claimed the lives of UN experts Michael Sharp and Zaida Catalan, who were investigating human rights violations in the Kasais.

"We are glad the Human Rights Council has finally taken action to investigate human rights abuses in the DRC," said Ambassador Nikki Haley. "However, there is still much work to be done to bring justice to the victims of these brutal crimes. Investigators must be able to carry out their work without interference, and the Congolese government must fully cooperate with the investigation. If they fail to do so, the Council must be prepared to act."

Last week, the United States called on the HRC to take decisive action and launch an independent investigation into the human rights violations and abuses in the DRC.

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B. DISCRIMINATION**1. Race****a. UN**

On October 31, 2017, Stefanie Amadeo, U.S. Deputy Representative to ECOSOC, delivered remarks at the Third Committee general discussion on racism and self-determination. Her remarks are available at <https://usun.state.gov/remarks/8069>, and excerpted below.

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The United States would like to reaffirm its commitment to combatting racism and racist ideology worldwide. Too many people in this lifetime and throughout history have needlessly and tragically lost their lives due to discrimination because of their race, color, ethnicity, and religion. Racism comes in many forms—in violence, mass murders, and genocide as well as in everyday intolerance, persecution, and hate. Therefore, we all have a duty to stand up, speak out, and condemn discrimination of any kind. As Ambassador Nikki Haley recently said, “Those who spew hate are few, but loud. We must denounce them at every turn and isolate them the same way they wish to isolate others.”

We are aware that combatting racism is a challenge that every nation faces, including our own, but we must acknowledge that ending racism is not achieved by government action alone—it is achieved in the hearts and minds of the people we serve. In a free society, each citizen has to choose not to hate or to tolerate those who do. And in all nations, government should not sit idly by in the face of intolerance. Instead, leaders should speak out against racism and employ domestic tools that address discrimination.

In the United States, we have established robust legal mechanisms that protect individual liberties and defend against discrimination and violence. We have a public school system that educates our children about our history and teaches the next generation of Americans the importance of respect, civil rights, and fundamental freedoms. We have developed a culture that celebrates diversity, rather than one that denounces or seeks to eliminate it.

The American spirit and the American dream are what unite us, and our differences—and the freedom to be different—make us stronger. As Secretary Rex Tillerson recently said, “Racism is evil; it is antithetical to America’s values; it is antithetical to the American idea. So, we condemn racism and bigotry in all its forms.” And because of that, we will continue to stand with those around the world who choose peace over hate.

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On November 20, 2017 U.S. Advisor to ECOSOC Mordica Simpson provided the U.S. explanation of vote on a resolution calling for concrete action for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the

comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action. That statement is excerpted below and available at <https://usun.state.gov/remarks/8157>.

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...From our own experience and history, the United States remains convinced that the best antidote to offensive speech is in fact free speech—not bans and censorship but a free society where goodness and justice have the opportunity to triumph over evil and persecution.

We regret that we cannot support this resolution on such an important topic, but our concerns are well known and have been repeated year after year. Among our chief concerns about the resolution are its endorsements of the Durban Declaration and Program of Action as well as the outcome of the Durban review conference, particularly its unfair and unacceptable singling out of Israel and its endorsement of overbroad restrictions on freedom of speech and expression. This resolution serves as a vehicle to prolong the divisions caused by the Durban conference and its follow-up, rather than providing a comprehensive and inclusive way forward for the international community to combat the scourge of racism and racial discrimination. In addition, we cannot accept the resolution's legally incorrect implication that any and all reservations to Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination are per se contrary to the object and purpose of the treaty. We reiterate that this resolution has no effect as a matter of international law.

Finally, we underscore our concerns about the additional costs this resolution will impose on the UN's regular budget through the request for reactivation of the Independent Eminent Experts' activities. In view of the significant constraints on the UN's regular budget and the limited ability of member states to provide increasing amounts of resources, we stress the need for this body to consider carefully the resource implications of such requests before making them.

For all of these reasons, we cannot support this resolution and will vote no as we have consistently done for years. We will, however, continue to denounce hate and to support free societies that promote individual liberties and defend against discrimination and violence.

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b. Human Rights Council

On March 24, 2017, at HRC 34, Mr. Mozdzierz delivered the U.S. explanation of vote on "the Elaboration of Complementary Standards to the International Convention on the Elimination of All Forms of Racial Discrimination." That explanation is excerpted below and available at <https://geneva.usmission.gov/2017/03/24/u-s-eov-on-the-elaboration-of-complementary-standards-to-the-international-convention-on-the-elimination-of-all-forms-of-racial-discrimination/>.

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The United States will call a vote and vote “no” on this resolution on the elaboration of complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination.

The United States remains committed to combatting racism and racial discrimination as well as to implementing our existing obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and we encourage other states to implement their commitments and obligations in this regard. We believe the CERD provides comprehensive protections and constitutes the primary international framework to address all forms of racial discrimination, which includes discrimination on the basis of national origin. The push to negotiate a new protocol to the CERD not only distracts from the implementation of existing obligations, but risks undermining the Convention by implying that it does not already provide comprehensive protections in this area. As several members of the CERD Committee have underscored to the Ad Hoc Committee, the CERD is sufficient to address contemporary forms of racism such as xenophobia and there is no need for a protocol on this issue.

We would also be deeply concerned if any new protocol were used as a vehicle to push for prohibiting or criminalizing protected forms of speech and expression.

The United States remains deeply concerned about speech that advocates national, racial, or religious hatred, particularly when it constitutes incitement to violence, discrimination, or hostility. From our own experience and history, the United States remains convinced that the best antidote to offensive speech is not bans and punishments but a combination of three key elements: robust legal protections against discrimination and hate crimes; proactive government outreach to racial and religious communities; and the vigorous protection of freedom of expression, both on- and off-line.

We call upon all delegations to oppose this resolution and to vote “no.”

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Also on March 24, 2017, Mr. Mozdzierz delivered the U.S. explanation of vote on the “Mandate of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action.” That statement is excerpted below and available at <https://geneva.usmission.gov/2017/03/24/u-s-eov-on-the-mandate-of-the-intergovernmental-working-group-on-the-effective-implementation-of-the-durban-declaration-and-programme-of-action/>.

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The United States will call a vote and vote “no” on this resolution extending the mandate of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action.

The United States is firmly committed to combating racism and racial discrimination. We will continue to work with civil society, international mechanisms, and all nations of goodwill to combat racism and racial discrimination, xenophobia, intolerance, anti-Semitism, and bigotry, at home and abroad.

We regret that we cannot support this resolution on such an important topic due to our concerns about the Durban Declaration and Program of Action (DDPA) and the outcome of the Durban review conference, which are well-known.

We believe this resolution serves as a vehicle to prolong the divisions caused by the Durban conference and its follow-up rather than providing a comprehensive and inclusive way forward for the international community to combat the scourge of racism and racial discrimination.

For these reasons we cannot support this resolution and will vote “no.”

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2. Gender

a. 2017 UN Commission on the Status of Women

Matthew Dolbow, Counselor for Economic and Social Affairs for the U.S. Mission to the United Nations, delivered the U.S. explanation of position on the agreed conclusions at the 2017 UN Commission on the Status of Women on March 24, 2017. The U.S. explanation of position follows and is available at <https://usun.state.gov/remarks/7724>.

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Thank you, Mr. Chair. The United States thanks our facilitator Egypt, all participating delegations, civil society partners, and the untiring staff of UN Women on their diligent efforts toward developing a substantive, action-oriented set of Agreed Conclusions that were ... adopted by consensus.

While we are not a CSW member this year, we engaged constructively in the negotiations because the topics of women’s economic empowerment and women in the workplace are of high importance to the United States. We would like to outline our views on certain portions of the text.

The United States understands the intention of inclusion of “equal pay for equal work and work of equal value” to promote pay equity between men and women, and accepts the formulation on that basis. The United States implements it by observing the principle of “equal pay for equal work.”

We recognize the importance of unpaid care work and have released periodic time-use surveys and estimates of the monetary value of unpaid work, but do not factor the value of unpaid work into our core national accounts, including GDP.

On a gender-responsive approach to public financial management, not all countries take this approach in shaping public expenditures. We recognize that in cases when it has been applied, there is potential for beneficial results for women and girls.

The United States would like to underscore the critical importance of the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work to women’s economic empowerment in the changing world of work. The Declaration represents the solemn commitment of all ILO Member States to respect, promote, and realize workplace principles and rights in the areas of

freedom of association and the effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labor; effective abolition of child labor; and elimination of discrimination in respect of employment and occupation.

With respect to “temporary special measures,” the U.S. position is that each country must determine for itself whether they are appropriate. The best way to improve the situation of women and girls is often through legal and policy reforms that end discrimination against women and promote equality of opportunity.

We regret that the final text does not mention some of the groups most vulnerable to discrimination like those discriminated against based on sexual orientation and gender identity, race, color, or religion or belief. We are, however, pleased to see that the text includes language about the establishing or strengthening of social protection systems “without discrimination of any kind.”

The United States views sexual harassment as a form of employment discrimination that may amount to gender-based violence in the form of sexual assault, although most sexual harassment does not rise to the level of sexual assault. U.S. law recognized that sexual harassment is a form of gender discrimination.

We recognize that sexual harassment can occur not only in the workplace, but in work-related situations and in digital and online spaces, and that women, girls, men, and boys can be targeted.

The United States believes that women should have equal access to reproductive health care. We remain committed to the commitments laid out in the Beijing Declaration and Program of Action. As has been made clear over many years, there was international consensus that the Beijing documents do not create new international rights, including any “right” to abortion. The U.S. fully supports the principle of voluntary choice regarding maternal and child health and family planning. We do not recognize abortion as a method of family planning, nor do we support abortion in our reproductive health assistance. Let me reiterate that the U.S. is the largest donor of bilateral reproductive health and family planning assistance.

Pending review of U.S. policies relating to climate change and the Paris Agreement, the United States reserves its position on language in paragraph 23 of these Agreed Conclusions relating to these issues.

The United States does not support the Agreed Conclusion’s references to technology transfer.

The United States views unilateral and multilateral sanctions as legitimate means to attain foreign policy, security, and other national and international objectives. Sanctions regimes are consistent with the UN Charter and international law, and are an alternative to the use of force. We disagree that sanctions adversely affect civilians or lead to humanitarian crises.

On illicit financial flows, we would like to point out that this term has no agreed upon international meaning. Our preference is to focus on the underlying illegal activities that constitute illicit financial flows, such as bribery, tax evasion, money laundering, and other corrupt practices. We support taking concrete actions to combat these illegal activities, and have actively participated in many multilateral processes addressing these issues, including the UN Convention Against Corruption. Discussions of these topics are best left to technical experts with the appropriate expertise and mandate to address these issues. We believe it is not appropriate to consider illicit financial flows in the CSW.

Our views about the “right to development,” which lacks an internationally accepted definition, are long-standing and well-known. Further 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 government.

The United States joins consensus on these Agreed Conclusions with the understanding that its provisions do not imply that states must become parties to instruments to which they are not a party, or implement obligations under such instruments without first becoming a party. For example, the United States is not a party to the International Covenant on Economic, Social and Cultural Rights. Accordingly, we interpret this document's references to rights under that Convention to be limited to States Parties to that covenant, in light of its Article 2(1).

We also underscore that these Agreed Conclusions do not change or necessarily reflect the United States' or other states' obligations under treaty or customary international law.

Thank you, Mr. Chair, and we ask that this statement be made part of the official records of these proceedings.

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b. *Women, Peace, and Security*

Ambassador Michele J. Sison, U.S. Deputy Permanent Representative to the United Nations, delivered remarks at a UN Security Council open debate on "Women, Peace, and Security" on October 27, 2017. Ambassador Sison's remarks are excerpted below and available at <https://usun.state.gov/remarks/8054>.

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Dr. Bhimrao Ambedkar, the esteemed Indian jurist and social activist, once said, "I measure the progress of a community by the degree of progress which women have achieved." So as we engage in this debate today, I think we should keep Dr. Ambedkar's simple but important idea in mind.

The role of women in maintaining international peace and security is more critical than ever, but we must continue to move from rhetoric to reality when it comes to fully implementing the Women, Peace, and Security Agenda. Today's debate should remind us all of the collective work that is still required to see more women gain positions of leadership in government, civil society, and gain seats at the negotiating table. As the Secretary-General's report makes clear, we have so much more to do to achieve inclusivity.

For our part, the United States remains committed to advancing full implementation of UN Security Council Resolution 1325. Earlier this month, the United States took a major legislative step to advance the Women, Peace, and Security Agenda. On October 6th, the U.S. Women, Peace, and Security Act of 2017 was signed into law. This reflects a growing body of evidence confirming that the inclusion of women in peace processes helps reduce conflict and advance stability over the long term. This act, for example, requires my government to develop a comprehensive strategy to expand women's participation in security operations. This law reflects a now indisputable fact – when women are involved in efforts to bring about peace and security, the results are more sustainable.

We are taking other important steps to advance this agenda, particularly through women's economic empowerment. We know that women's full participation in the economy leads not only to national growth and prosperity—it also bolsters stability for all. That is why the United States has helped spearhead the Women Entrepreneurs Finance Initiative, or “We-Fi.” This initiative, which already has \$340 million in donor commitments, will support women entrepreneurs in developing countries by increasing their access to finance, markets, technology, and networks—everything needed for them to start and grow a business.

I'd like to turn now to the Secretary-General's report. First, we were disheartened to learn that the number of women participating in UN co-led peace processes has gone down. Research shows that the participation of women and civil society groups in a peace negotiation makes the resulting agreement 64 percent less likely to fail, and 35 percent more likely to endure at least fifteen years. We welcome the Secretary-General's commitment to addressing this, but I must underscore that we all need to do more to improve women's meaningful participation in peace processes. In this regard, we welcome the development of the High-Level Advisory Board on Mediation, and we hope it will find effective ways to achieve equal representation of women in mediation.

Now we cannot talk about the involvement of women in peace processes without applauding one recent example—Colombia. In large part because of the inclusion of women in Colombia's peace negotiations—women like Ms. Rojas—Colombia's peace agreement includes over 100 gender-specific provisions. So when women effectively influence a peace process, it's more likely that an agreement will be reached, will be implemented, and will be sustained, and we are confident Colombia will continue to be important example of this.

Second, we welcome the Secretary-General's commitment to improve impact evaluation of gender-inclusion efforts. Whether on corporate boards, in government, or in ... post-conflict zones, we know that gender parity makes teams more effective and makes women more empowered. We look forward to results being included into next year's annual report.

And, third, we welcome increased attention on the nexus between violent extremism and women, peace, and security. In our view, women continue to be an underutilized and under-tapped resource in the fight against violent extremism. Women are, of course, local peacebuilders and grassroots civil society activists. They are in touch with their communities, and thus should be seen also as a first line of defense in detecting radicalization in their communities. My country is dedicating increased focus and resources to understanding the variety of roles that women play in this space—including how women can play more vital roles in preventing terrorist ideologies from taking root.

We are grateful that there are women defying terrorist ideologies across the globe—oftentimes putting their own lives at risk to do so. For example, when the Taliban attacked Kunduz in 2015 and attacked again in 2016, they tried each time to kill Ms. Sediqa Sherzai, a brave journalist who runs Radio Roshani in Afghanistan. Ms. Sherzai leads discussion programs and call-in shows, and she urges women to assert their rights to an education and to lead as vital voices in their communities. Courageous women activists like Ms. Sherzai are making a difference, and thanks to the Women, Peace, and Security Agenda at the UN, we are hopeful these gains will continue.

In conclusion, Mr. President, the United States remains fully committed to robust implementation of the Women, Peace, and Security Agenda. We welcome the Secretary-General strong commitment to this issue, and we look forward to continuing to partner with the UN and other member states to advance these goals.

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c. UN Third Committee

U.S. ECOSOC Advisor Mordica Simpson delivered remarks at a Third Committee meeting on the advancement of women on October 5, 2017. Her remarks are excerpted below and available at <https://usun.state.gov/remarks/8049>.

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Our remarks today focus on the importance of supporting economic opportunities for women, particularly women entrepreneurs. At a March 2017 roundtable with women small business owners, President Trump declared, “Empowering and promoting women in business is an absolute priority... because I know how crucial women are as job creators, role models, and leaders all throughout our communities.” The President further said, “We will continue to address the barriers faced by women professionals and entrepreneurs, including access to capital, access to markets, and access to networks.”

We would like to highlight several United States government initiatives to promote women’s success in business by helping women overcome some of those barriers. Our approach is to collaborate with the private sector, which is essential for addressing complex challenges, reducing duplication, and leveraging limited resources.

In July 2017, the United States announced its intent to provide \$50 million to the Women Entrepreneurs Finance Initiative, or We-Fi. We-Fi is an innovative new multi-donor facility for which the World Bank will serve as Trustee, aimed at expanding access to financial services for women entrepreneurs as well as technical assistance, covering such areas as skills enhancements and market access. The initiative will support projects that address the legal and policy barriers women face in starting and growing successful businesses in a variety of sectors.

The United States has collaborated with the private sector to develop programs that link women business owners with others in their regions. These include Women’s Entrepreneurship in the Americas, WEAmericas; African Women’s Entrepreneurship Program, AWEP; and Women’s Entrepreneurship in APEC, WE-APEC.

The Alliance for Artisan Enterprise helps artisan enterprises throughout the world reach their full economic potential, including through financing mechanisms and coaching on efficient business practices. The artisan sector is the second largest employer in the developing world after agriculture, generating over \$32 billion each year, and women make up a large number of its employees. The United States, Aspen Institute, and over 125 artisan businesses and support organizations, corporations, foundations, governments, and multilateral agencies partner through the Alliance.

The United States and private sector partners have established business centers to help women business owners’ transition from the informal economy to establish formally registered companies, thereby contributing to a country’s economic growth and societal change. Training,

mentoring, capacity building, and technology support are among the activities that take place. Some centers have engaged men and boys to prevent and respond to gender-based violence.

The United States and India will co-host the November 2017 Global Entrepreneurship Summit, GES, in Hyderabad, India. Since 2010 this annual summit has brought together entrepreneurs, investors, and other stakeholders to encourage new initiatives and economic growth, promote collaboration across borders, and increase economic opportunities. This year's summit will focus on women entrepreneurs under the theme "Women First, Prosperity for All," which recognizes the tremendous promise for economic growth and prosperity that women represent.

In conclusion, enabling women's economic participation has substantial benefits, including increased economic opportunities for all and greater security and stability. When women succeed, we all succeed. The United States intends to remain strongly engaged in this area.

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d. Human Rights Council

On June 22, 2017, at the 35th Session of the HRC, Jason Mack delivered the U.S. Explanation of Position on the resolution on discrimination against women. The explanation of position is excerpted below and available at <https://geneva.usmission.gov/2017/06/23/explanation-of-position-on-resolution-l-29-on-discrimination-against-women/>

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The United States thanks Mexico and Columbia for their efforts to craft a strong resolution on this important topic. Eliminating discrimination against women worldwide is a key foreign policy goal of the United States, as reflected among other programs in the U.S. Strategy to Prevent and Respond to Gender-Based Violence Globally and our Let Girls Learn initiative. Therefore, the United States strongly supports the spirit of this resolution on the elimination of discrimination against women and girls. However, we must dissociate from operative paragraph 12 due to our concerns about issues related to reproductive rights. The U.S. position on reproductive health, abortion, and comprehensive sexual education was stated earlier when we dissociated from OP9(d) of the Violence Against Women resolution and applies to this resolution as well.

With respect to the "temporary special measures" referenced in operative paragraphs 5(b) and 6, the U.S. position is that each country must determine for itself whether such measures are appropriate. The best way to improve the situation of women and girls is often through legal and policy reforms that end discrimination against women and promote equality of opportunity.

The United States finds it essential to mention "women's human rights defenders" in the resolution, and therefore voted "no" on proposed amendment L.41. Women human rights defenders play a strong role in combating discrimination against women and are uniquely

vulnerable in their efforts to defend human rights on the frontlines. Therefore, it is important to specifically recognize them.

We are pleased that the oral amendment to PP9 did not pass. The United States views international human rights law to be inclusive of gender. We note that many recent consensus documents, such as those from the recent Commission on the Status of Women, speak in terms of “gender equality” and “gender discrimination.”

In closing we note that additional comments will be provided in the United States’ Statement to be delivered at the end of Item 3.

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e. *Violence Against Women*

The U.S. explanation of position on the resolution on violence against women at the Human Rights Council is excerpted below and available at <https://geneva.usmission.gov/2017/06/22/u-s-explanation-of-position-on-human-rights-council-resolution-on-violence-against-women/>.

[W]e must dissociate from the consensus on operational paragraph 9(d). The United States believes that women should have equal access to reproductive health care. We remain committed to the commitments laid out in the Beijing Declaration and International Conference on Population and Development Programme of Action. As has been made clear over many years, there was international consensus that these documents do not create new international rights, including any “right” to abortion. The United States fully supports the principle of voluntary choice regarding maternal and child health and family planning. We do not recognize abortion as a method of family planning, nor do we support abortion in our reproductive health assistance. The United States is the largest bilateral donor of reproductive health and family planning assistance.

3. *Sexual Orientation and Gender Identity*

On September 25, 2017, Scott Busby, Deputy Assistant Secretary of State for the Bureau of Democracy, Human Rights, and Labor, addressed a hearing on LGBTI rights outside the EU and implementation of EU guidelines on the LGBTI rights. Mr. Busby’s remarks are excerpted below and available at <https://www.state.gov/j/drl/rls/rm/2017/274413.htm>.

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Today I'd like to highlight three points...

First, the Department of State remains committed to protecting and promoting the human rights and fundamental freedoms of all persons around the world, and this of course includes members of the LGBTI community. We recognize that societies are more stable, prosperous and secure when all people within them live freely without fear of violence or discrimination. In this regard, it is especially important that we pay attention to the rights of historically vulnerable groups such as religious, racial and ethnic minorities, persons with disabilities, survivors of gender-based violence and LGBTI persons.

In June of this year, U.S. Secretary of State Rex Tillerson issued a statement recognizing LGBTI Pride Month.* The Statement underscored that violence and discrimination against any vulnerable group undermines our collective security as well as our values. Also in June, the Department issued formal guidance to our diplomatic missions around the world affirming that Pride Month could be recognized, depending of course on the local context. I personally have been heartened to see our Embassies—including in hostile environments—take steps to promote the human rights of LGBTI persons. U.S. diplomats meet with LGBTI activists, march in Pride Parades, fly the Pride Flag, sponsor training workshops, and use their convening power to bring different allies together in support of human rights and fundamental freedoms. In undertaking this work, we of course recognize that every context is unique—and that our role is to support local activists and human rights defenders as they develop their own strategies and tactics to achieve their own priorities. We strive to do no harm and as a result we do not always publicize our engagement.

Some examples of this work include the engagement of our Embassy in Ukraine, who together with like-minded diplomatic missions signed a statement affirming support for LGBTI rights and successfully urged the Ukrainian government to ensure the safety of a peaceful pride celebration. The Embassy in Kyiv also hosted an LGBTI Art Exhibit. In Brazil, our Embassy once again supported the LGBTI International Film Festival in Brasilia, now in its second year. The Embassy's Public Affairs Section also conducted training for transgender activists on the use of traditional and social media. In Ghana, our Embassy held a reception for Pride bringing together representatives of the government, civil society and diplomatic partners. Over 60 individuals attended. These are just a few examples and there are many more in all regions.

On my second point, the United States remains deeply concerned about the safety and security of LGBTI persons and their advocates, including in crisis zones. No one should be targeted just because of who they are or whom they love. We continue to follow the human rights situation in Chechnya very closely, including the allegations of widespread extrajudicial detentions and torture, and in some cases killings of LGBTI persons. In July, Secretary Tillerson sent a letter to Russian Foreign Minister Lavrov, noting the opening of a criminal investigation by the Russian government and an inquiry by the Human Rights Ombudsman, and encouraging swift and independent investigations into these troubling allegations. The Secretary urged that any perpetrators of violations be held accountable under Russian law. The letter from Secretary Tillerson followed multiple U.S. statements condemning the violence in Chechnya, including from U.S. Ambassador to the UN Nikki Haley, the U.S. representative to the OSCE, and the State Department Spokesperson in Washington. We were also proud to sign on to a joint statement of the Equal Rights Coalition—the first such statement from this new, like-minded

* Editor's note: The statement is available at <https://www.state.gov/secretary/20172018tillerson/remarks/2017/06/271626.htm>.

group of governments committed to equality and dignity for all—and that statement called for a stop to the violence in Chechnya and an immediate investigation.

Our concern about violence targeting LGBTI persons of course extends beyond Russia. Addressing violence and discrimination targeting the LGBTI community is global challenge, which includes of course the United States. We remain particularly concerned about violence targeting transgender persons, including in Turkey, where transgender refugees from Syria have been particularly targeted. We also remain deeply saddened to learn of transgender persons who have been killed in Pakistan and elsewhere this year.

To strengthen the rule of law for LGBTI persons and members of other vulnerable groups, the U.S. government supports the training of law enforcement officers and other criminal justice practitioners on countering bias-motivated violence, sometimes referred to as hate crimes. In some cases these trainings are led by active serving police officers from U.S. police departments who have developed considerable expertise in responding to and preventing hate crimes. Working with the Council of Europe and other institutions, we are also supporting the American Bar Association to develop a new framework to assist governments and civil society groups to reduce violence. In partnership with other governments, foundations, and corporations through the Global Equality Fund, we are supporting civil society's efforts to reduce violence and increase protection for vulnerable groups. And finally we are pleased to see continued UN attention to addressing violence and discrimination targeting the LGBTI community, including the important work of Vitit Muntarbhorn, the first UN Independent Expert on sexual orientation and gender identity. We were disappointed to learn recently Mr. Muntarbhorn needs to step down from that position, but we will be working hard with the supporters of this mandate to identify other qualified candidates for the job.

In addressing all of these issues, the European Union plays a fundamental role. The U.S. strongly supports the EU Guidelines to Promote and Protect the Human Rights of LGBTI Persons and their full dissemination and implementation. The Guidelines are similar to internal State Department guidance that provides examples of steps U.S. diplomats at embassies can take to support the human rights of LGBTI persons. The Guidelines rightly emphasize the importance of working with civil society organizations—and note they should be consulted before taking public action or issuing public statements. This mirrors our approach. Do no harm is the most important principle of our work.

In closing, I want to emphasize that while I've highlighted some incidents of violence and discrimination against LGBTI persons, there are many rays of hope and positive steps in the advancement of LGBTI rights. For example, Belize decriminalized consensual same-sex conduct in 2016 and India's Supreme Court ruled in April of this year that the right to privacy is fundamental under India's constitution. In June, Timor-Leste's Prime Minister publicly supported LGBTI persons and the country's first-ever Pride celebration in Dili, Timor-Leste's capital. We as the international community should be mindful of these exciting developments and encourage similar actions by other governments.

Dignity and equality for all persons are among the founding constitutional principles of U.S. democracy, and they will continue to drive U.S. diplomacy as well. Thank you.

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On October 27, 2017, Ambassador Kelley Currie, U.S. Representative for Economic and Social Affairs, delivered remarks at a Third Committee interactive dialogue with Vitit Muntarbhorn, independent expert on protection against violence and discrimination based on sexual orientation and gender identity. Ambassador Currie's remarks are excerpted below and available at <https://usun.state.gov/remarks/8057>.

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The United States thanks the Independent Expert for his service as the first-ever UN Independent Expert on protection from violence and discrimination based on sexual orientation and gender identity. This is a mandate that is of critical importance to the United States, especially at a time when LGBTI individuals around the world are being murdered, tortured, and attacked.

Dignity and equality are core universal human rights values, and they are American values underpinned by our Constitution. The United States will continue to stand up for the human rights of all persons. The United States opposes all forms of discrimination, and we appreciate the Independent Expert's focus on grave human rights violations. In 2017, it is unacceptable that LGBTI persons face criminal charges related to LGBTI status or conduct in around 80 countries. It is intolerable that same sex conduct is punishable by the death penalty in some countries around the world. We appreciate the Independent Expert's focus on this important issue.

When we receive reports of the murder, kidnapping, and torture of LGBTI individuals, we must all call out those violations and the governments perpetrating them. The recent cases in several countries of arbitrary arrests, disappearances, and crackdowns on the fundamental freedom of LGBTI persons are incredibly disturbing.

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C. CHILDREN

1. Rights of the Child

a. U.S. Appearance before the Committee on the Rights of the Child

On May 16, 2017, the United States appeared before the UN Committee on the Rights of the Child in Geneva to answer the Committee's questions with respect to the 2016 U.S. periodic report on its implementation of the two Optional Protocols to the Convention on the Rights of the Child to which the United States is a party. For discussion of the 2016 U.S. periodic report, see *Digest 2016* at 212-14. In March 2017, the United States filed written answers to the Committee's questions in follow-up to the 2016 report. Those can be found at <https://www.state.gov/j/drl/reports/treaties/> and are also available at <https://www.state.gov/s/l/c8183.htm>.

U.S. delegation statements at the May appearance are excerpted below and available at <https://geneva.usmission.gov/2017/05/17/u-s-statements-before-the-un-committee-on-the-rights-of-the-child/> and at <https://www.state.gov/s/l/c8183.htm>. Chargé d’Affaires Ted Allegra of the U.S. Mission to the United Nations in Geneva introduced the U.S. delegation, which was composed of several federal and state officials, including: Richard Visek, the Acting Legal Adviser to the U.S. Department of State; Susan Coppedge, Ambassador-at-Large to Monitor and Combat Trafficking in Persons; and Cynthia Coffman, Attorney General of the State of Colorado. Mr. Visek’s opening statement at the May 2017 appearance is excerpted below.

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Today’s review is the latest in a series for the United States since we last appeared here in January 2013. In 2014, the United States presented our record before three different international human rights treaty bodies: the Human Rights Committee, the Committee on the Elimination of All Forms of Racial Discrimination, and the Committee Against Torture. And, in May 2015, we appeared before the UN Human Rights Council for a Universal Periodic Review.

These treaty presentations and the numerous reports we have submitted demonstrate the United States’ ongoing commitment to protecting human rights and fundamental freedoms domestically through the operation of our comprehensive system of laws, policies, and programs at all levels of government—federal, state, local, insular, and tribal. They also demonstrate our willingness to look at our own practices with the goal of deepening our efforts to promote and protect human rights and fundamental freedoms for all. And, throughout these reporting processes, we are proud that we have continued to consult openly with members of civil society. Since our last review in 2013, the State Department alone has helped facilitate more than 15 consultations with civil society specifically on issues related to international human rights obligations or commitments.

In short, we value the reporting process; we value our engagement with the Committee; and we value our engagement with the international human rights community, including civil society.

We turn our attention today to the Optional Protocols. Before addressing the Protocols, I would like to acknowledge that the United States has not ratified the Convention on the Rights of the Child (CRC), although we agree with its underlying goal of protecting some of humanity’s most vulnerable persons. As you know, the United States has a robust system of federal and state laws to protect and promote children’s rights, which often serves as a model for other countries. Our not having ratified the Convention does not in any way indicate a lack of commitment to protecting children.

Throughout our presentation, you will hear from dedicated public servants who will attest to our efforts—as well as the challenges we face—to combat child trafficking, child pornography, and the unlawful recruitment and use of child soldiers. We are especially proud to be joined by Attorney General Cynthia Coffman from the State of Colorado, a state that has made important strides in combatting human trafficking and other forms of child

exploitation. Her presence underscores our national commitment to combatting child exploitation at every level of our federal system.

In her remarks this morning, Ambassador Susan Coppedge will provide an introduction to U.S. efforts related to the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (OPSC). Attorney General Coffman will then provide an overview of Colorado's efforts to combat these forms of exploitation.

Following Attorney General Coffman's remarks, Tara Jones of the Department of Defense will provide a brief introduction to U.S. efforts under the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC).

Alexandra Gelber, from the Department of Justice, and Jeff Rezmovic, from the Department of Homeland Security, will also offer brief opening remarks that introduce their agencies' key roles in implementing U.S. obligations under the Protocols.

On behalf of the entire U.S. delegation, I thank the Committee for its commitment to protecting children around the world, as well as for the care and constructive spirit with which it has approached this review.

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The presentation by Ambassador Susan Coppedge on the U.S. government's efforts to implement the Optional Protocols to the Convention on the Rights of the Child is excerpted below.

* * * *

I will briefly highlight some steps the U.S. government has taken to combat human trafficking—including child trafficking—through collaboration with survivors, interagency coordination, and support programs to protect children.

In December 2015, the U.S. government appointed its first U.S. Advisory Council on Human Trafficking. All 11 Council members are survivors, some of whom were exploited as children, with a diverse range of backgrounds. This Council provides a formal platform for survivors to advise the President's Interagency Task Force on human trafficking. In its first report, released in October 2016, the Council recommended, among other things, that the U.S. government provide training to relevant employees on human trafficking, including forced child labor and specifically child begging.

In 2016, the U.S. government issued a report on activities of federal and state governments to deter and prevent child trafficking in the United States. One highlight is the work of the Department of Health and Human Services to develop guidance on providing services to and reducing trafficking vulnerabilities for youth under the age of 18 who come in contact with programs for runaway and homeless youth.

In my Office, we have initiated Child Protection Compact Partnerships aimed at reducing child trafficking by working bilaterally with partner governments to build effective systems of justice, prevention, and protection. In 2015, we entered into our first such partnership, with Ghana, and my Office awarded \$5 million to two NGO partners who are working with Ghanaian ministries and civil society organizations. In its first year, the program developed standards for

child victim identification and screening; a plan to refurbish a children's shelter; and coordination with local communities to remove 68 children from labor trafficking situations.

Last month, we signed our second Partnership with the Philippines, which aims to increase prevention efforts and protections for child victims of online sexual exploitation and forced child labor and hold perpetrators of these crimes accountable. My office and the Philippine government will provide funding to help achieve these objectives.

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The remarks of Tara Jones, advisor for humanitarian policy of the U.S. Department of Defense, are excerpted below.

* * * *

Since 1973, the U.S. military has been an all-volunteer force. Ensuring this professional force is manned with individuals of high caliber is a demanding task—as recruiters must compete with myriad opportunities available to our nation's young men and women. In taking on this challenge, our highly trained, professional recruiters serve as military ambassadors in their communities, and their integrity and demeanor are of great importance to the Department of Defense. Through clear rules, training, and rigorous oversight mechanisms, we have been successful in implementing our prohibition on the entry into the U.S. Armed Forces of any person under the age of 17.

In fact, the overwhelming majority of new recruits have attained 18 years of age, and most have at least a high school diploma. As young people in the United States typically begin to consider career options during their final years of high school, recruiters offer them information about serving in the military, including information about additional educational opportunities and other lifelong benefits of service.

The Department of Defense and each military service has policies in place to ensure that all feasible measures are taken that no one under the age of 18 engages directly in hostilities, and the military departments have checks in their personnel systems to ensure adherence to the provisions of those service policies.

* * * *

The opening remarks of Alexandra Gelber, National Coordinator for Child Exploitation Prevention and Interdiction at the Department of Justice, summarizing the Department's work to protect children, are excerpted below.

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In 2016, the Department released the second National Strategy for Child Exploitation Prevention and Interdiction. The Strategy highlights emerging threats against children, and sets forth a response that addresses investigations and prosecutions, victim services, outreach and education, and policy and legislation.

Next month, the Department is hosting the National Law Enforcement Training on Child Exploitation, which will be attended by over 1300 federal, state, tribal, and local law enforcement, prosecutors, digital investigative analysts, and victim service providers. The specialized training focuses on technology-facilitated crimes against children, as well as best practices for working with victims and for prevention.

Among its many programs to enhance victim services, DOJ has allocated \$2 million for grants to provide services for child pornography victims, and \$4.75 million to fund a solicitation to improve Outcomes for Child and Youth Victims of Human Trafficking.

The Department brings high-impact prosecutions against the most serious offenders. In a recent case, the Department obtained a 30-year sentence against an individual who created and administered a website called Playpen that was only accessible on the Tor anonymity network. In the U.S., this investigation has led to the arrest of at least 350 defendants, including 25 producers of child pornography and 51 molesters, and the identification or rescue of 55 children. International leads have yielded at least 548 arrests and identification or rescue of at least 296 children.

The Department of Justice remains deeply committed to domestic and international efforts to prevent child exploitation.

* * * *

b. *Rights of the Child Resolution*

On November 21, 2017, U.S. Adviser Greg Staff delivered the explanation of vote on resolution A/C.3/72/L.21/Rev.1 on the rights of the child. The U.S. statement is available at <https://usun.state.gov/remarks/8162>, and excerpted below.

* * * *

The United States supports and voted for this resolution to underscore the priority we place on our domestic and international efforts to protect and promote the well-being of children.

In supporting the resolution today, we wish to clarify our views on several provisions therein. We will not comment explicitly on all of our concerns about the text but instead focus on its most problematic elements. Other general concerns were addressed in the General Statement we delivered on November 20, 2017.*

First, we 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, including with respect to language in preambular paragraph 16, as well as operative paragraphs 2, 9, 10, 11, 23, 37(c), 37(n), and 37(q). With respect to operative

* Editor's note: The November 20 general statement is excerpted in Section E.1. *infra*.

paragraph 2, 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. Finally, with respect to operative paragraph 37(i) 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.

The United States is firmly committed to providing equal access to education. We also note that within the federal structure of the United States, education is primarily a state and local responsibility. We therefore voted in favor of this resolution on the understanding that the United States will continue to address the goals and recommendations of this resolution with respect to curriculum, programs, training, and other aspects of education as appropriate and consistent with current U.S. law and the federal government's authority.

With regard to this resolution's references to the 2030 Agenda for Sustainable Development and Paris Agreement, we addressed our concerns in the General Statement we delivered on November 20, 2017.**

As for operative paragraph 13, we understand its language to refer the "production" of child pornography.

Any reaffirmation of prior documents in this resolution and other resolutions applies only to those States that reaffirmed them initially. Furthermore, with specific reference to the reaffirmation of paragraphs 40 to 87 of General Assembly resolution 71/177, concerning migrant children, contained in operative paragraph 9 of this resolution, we underscore that the United States fulfills its applicable international obligations to promote and protect the human rights of migrants by providing substantial protections under the U.S. Constitution and domestic laws to individuals within the territory of the United States, regardless of their immigration status. We interpret resolution 71/177's references to due process and other protections, including for persons seeking to cross an international border and in the context of returns, to be consistent with our existing national laws and policies in this regard. We also reiterate the well-settled principle under international law that all States have the sovereign right to regulate the admission and expulsion of foreign nationals from [their] territory, subject to international obligations.

The United States dissociates from the language in operative paragraph 10. As we underscored in our separate November 20 General Statement,*** we do not read this resolution to imply that states must join human rights or other international instruments to which they are not a party, or that they must implement those instruments or any obligations under them. Among other things, this understanding applies to this resolution's references to the principle of the best interests of the child, which is derived from the Convention on the Rights of the Child. In this regard we would further reiterate that any reaffirmation of prior documents in this resolution and other resolutions apply only to those States that reaffirmed them initially.

In addition, with respect to operative paragraph 67 of General Assembly Resolution 71/177, which is reaffirmed in operative paragraph 9 of this resolution and was drawn from operative paragraph 33 of the New York Declaration for Refugees and Migrants, we reiterate the concerns in our Explanation of Position on that declaration, which are set forth in UN Document A/71/415.

** Editor's note: The November 20 general statement is excerpted in Section E.1. *infra*.

*** Editor's note: The November 20 general statement is excerpted in Section E.1. *infra*.

Furthermore, we underscore our view that no language in this resolution or any others adopted by this Committee at its current session will pre-judge or prejudice the upcoming negotiation of a global compact on safe, orderly, and regular migration.

With respect to operative paragraph 37(h) of this resolution, we understand this provision to call on States to work to ensure that marriage is entered into only with the informed, free, and full consent of the intending spouses. Moreover, we understand that when the resolution calls on States to enact and enforce laws concerning the minimum age of consent and marriage, this is done in terms consistent with our respective federal and state authorities.

With respect to the reference to “foreign occupation” in preambular paragraph 17. We reaffirm our abiding commitment to a comprehensive and lasting resolution 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 as they pursue a more sustainable future.

Second, we dissociate from the phrase “ensuring that the best interests of the child are a primary consideration in policies on integration, return and family reunification in operative” in operative paragraph 10 for the reasons set forth above and in the U.S. Explanation of Position on the “Protection of Migrants” resolution adopted on November 20.

We request that the U.S. dissociations be reflected in the record for this meeting and for this resolution.

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2. Children in Armed Conflict

a. Child Soldiers Prevention Act

Consistent with the Child Soldiers Prevention Act of 2008 (“CSPA”), Title IV of Public Law 110-457, as amended, the State Department’s 2017 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 2017 report are the governments of the Democratic Republic of the Congo, Mali, Nigeria, Somalia, South Sudan, Sudan, Syria, and Yemen.

The full text of the TIP report is available at <https://www.state.gov/j/tip/rls/tiprpt/2017/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 listed in accordance with the CSPA are subject to restrictions applicable to certain security assistance and licenses for direct commercial sales of military equipment for the subsequent fiscal year. In a memorandum for the Secretary of State dated September 30, 2017, the President determined:

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 Mali and Nigeria; to waive the application of the prohibition in section 404(a) of the CSPA with respect to the Democratic Republic of the Congo to allow for provision of Peacekeeping Operations (PKO) assistance, to the extent the CSPA would restrict such assistance or support; to waive the application of the prohibition in section 404(a) of the CSPA with respect to Somalia to allow for the provision of International Military Education and Training assistance, PKO assistance, and support provided pursuant to 10 U.S.C. 333, to the extent the CSPA would restrict such assistance or support; and to waive the application of the prohibition in section 404(a) of the CSPA with respect to South Sudan to allow for PKO assistance, to the extent the CSPA would restrict such assistance or support. Accordingly, I hereby waive such applications of section 404(a) of the CSPA.

82 Fed. Reg. 49,085 (Oct. 23, 2017).

b. *Statements at the UN*

On October 13, 2017, Ambassador Sison delivered remarks at an open “Arria” meeting on children and armed conflict. Her remarks are excerpted below and available at <https://usun.state.gov/remarks/8014>.

* * * *

So, hearing from you today and learning from the Secretary-General’s report, we are seeing that children in conflict situations are still faced with inestimable challenges around the world. The number of children killed, kidnapped, maimed, used, abused is even more staggering today than it was 20 years ago when the Children and Armed Conflict mandate was created. And of course the impact on the girl child is especially telling and distressing. But all of these children need to be protected.

The U.S. considers the work of the [UN] Special Representative [for Children and Armed Conflict Virginia Gamba] to be of paramount importance to international peace and security, and it really is appropriate that we are gathered here as Security Council members and civil society and other member states to talk about this issue today. ...

And when Special Representative Gamba was in Washington last week, she made very clear to my colleagues that the preventative aspects of her mandate—protecting children today—means staving off future conflict and staving off radicalization to violence of scores of young people. That was important. These children can emerge from the horrors of war only to find themselves without family, without acceptance in the community, without access to basic services, or without access to the resources they need for reintegration into society. And this was an issue that we did discuss on our visit to the Lake Chad Basin and to Maiduguri....

The U.S. remains deeply committed to the mandate and mission of the UN's work to end the suffering of children in conflict situations. Not only is this work essential—absolutely essential—to putting a stop on the ongoing atrocities faced by children in such situations, but this work is also essential to secure international peace and security for future generations. ...

In the past two decades, we've come together numerous times to express our outrage at the blatant and reckless attacks on schools, and today is no different. Of course, attacks on schools not only can constitute a violation of international humanitarian law, but they also shock our conscience. ... Such attacks have lasting effects on society. Such attacks have lasting effects on children. And of course, we also condemn armed actors who unlawfully convert schools for military use. All of these practices that we're talking about today deeply impact a child's right to learn.

I want to mention and turn for a moment to the drawn-out conflict in Syria, where we've seen devastating of the conflict on children. One in three casualties in the Syrian conflict has been a child under the age of 15. One in three schools in Syria is out of commission; the school has either been destroyed or been damaged or is now sheltering the displaced or is being used for military purposes. And more than half of Syria's public health facilities have been completely destroyed in the conflict. In more than 75 percent of Syrian households, we see children now having to work to help support their families, and many of these children are the sole breadwinners for their families. And these children, then, have not only lost their childhood, of course, many have lost their lives.

The use of schools, as I said, by armed groups is completely unacceptable. We've seen this practice in northeastern Nigeria, ...but also in Central African Republic, in the DRC, and in other global conflicts.

Former Special Representative Olara Otunnu, in his first address as the first [Special Representative] for Children and Armed Conflict, called on the Security Council to ensure that schools and hospitals be considered "battle-free zones." And we all need to continue working toward this goal.

The U.S. is committed to doing everything possible to protect educational institutions and students in time of conflict. Over two decades, of course, the UN has established a robust multilateral framework to help protect children affected by armed conflict. And again, the mandate of the SRSG is an essential element of this framework because it reflects all of our steadfast determination to end these devastating effects on children in armed conflict situations.

* * * *

Ambassador Sison delivered additional remarks at a UN Security Council open debate on "Children in Armed Conflict" on October 31, 2017. Her remarks are excerpted below and available at <https://usun.state.gov/remarks/8059>.

* * * *

We should all be disturbed by the Secretary-General's report on children and armed conflict this year. The report shows that in conflicts around the world, children are being killed and maimed, abducted, and attacked in schools and hospitals, recruited to fight, sexually abused, and denied

humanitarian aid—by state and non-state actors alike. All parties to armed conflict should share the goal of protecting children from violence, and yet, all too often, violations and abuses of international law affecting children in armed conflict are rampant.

Of particular concern to the United States is the scale and gravity of such violations and abuses against children by terrorist organizations including the Taliban, ISIS, Boko Haram, and al-Shabaab. These groups are responsible for many of the most barbaric attacks, committing over 6,800 violations and abuses against children, as documented by the UN.

South Sudan also remains a major cause for concern. The number of children who have been recruited by armed groups is around 17,000—coincidentally about the same number of staff as the UN peacekeeping mission in South Sudan. Ambassador Haley just returned from that country, where she issued a stern warning to President Kiir: “The hate and the violence that we are seeing has to stop.” She also told President Kiir during their meeting that he could not deny the actions of his military, whether it was related to violence or rape or child soldiers. Sexual violence against girls and boys in particular, including mass gang rape, has intensified, even in parts of the country that were once deemed safe for them. The UN and this Council should bring all of our influence and tools to bear to ensure that all parties to the conflict in South Sudan immediately end committing all violations and abuses against children.

This month Ambassador Haley also visited the Democratic Republic of the Congo, DRC, where she witnessed the plight of children caught in the cross-fire of conflict firsthand. The DRC, which has never witnessed a democratic, peaceful transfer of power, has been plagued by dozens of armed groups vying for power and control, with rape used as a weapon of war and children recruited as soldiers. As reported by the Secretary-General, recruitment and use of children by non-state actors in DRC remains rampant, and child casualties in DRC are up by 75 percent as compared to 2015. And sexual violence as a weapon of war is endemic, with more than 60 percent of survivors in DRC being children. Every day, displaced women and girls in DRC fear being assaulted and their children abducted. This must end.

As Ambassador Haley emphasized on her recent trip, “We cannot turn a blind eye to all of this. No one should live like this.” To better help children victimized by armed conflict, the United States would like to emphasize three points.

First, we need to demand that all parties to a conflict—including state actors—fulfill their obligations under international law that bear on the protection of children. These obligations include avoiding the unlawful recruitment of children. All of us must do more to make sure parties to conflicts understand these responsibilities and fulfill them.

Second, when parties to conflict fail to comply with these obligations that bear on the protection of children in conflict, we must hold them accountable. Atrocities committed by the Assad regime—enabled by Iran, Hizballah, and Russia—show what happens when this Council fails to demand accountability. In 2016, the Assad regime slaughtered thousands of civilians in Aleppo and gassed its own people using banned chemical weapons. Schools and hospitals have been repeatedly attacked. The immediate and long-term impact on children in Syria of these atrocities is impossible to calculate. We must not stop pushing to bring the perpetrators of these acts to justice and to get help to the civilians who need it.

Similarly, in Yemen, the Houthis, Al-Qa’ida, and militias on all sides reportedly continue to recruit children in spite of our numerous demands to stop. The Yemeni government must also urgently take further steps to stop any unlawful recruitment of children in its ranks.

All parties to the conflict in Yemen need to do more to ensure the protection of civilians.

Third, the UN, humanitarian partners, and member states should do more to focus on what happens to children after they are released from recruitment or suffer wartime atrocities. For example, we must ensure resources are available to meet the needs of all children subject to grave violations and abuses, including survivors of sexual violence. These children desperately need assistance, including psychological support, food and shelter, or medical assistance. We must not let them down or allow them to return to the battlefield.

The proliferation of child deaths, abuses, attacks on hospitals and schools, and unlawful recruitment in armed conflict shows the importance of the UN's capacity to alleviate the suffering of these children. As we consider our Security Council mandates, the United States recognizes the importance of maintaining the role of child protection officers in UN field missions, as the report recommends.

In closing, even in this grim landscape, it is important to note progress. Over 60 countries have action plans in place with the UN. From Afghanistan to Chad, a number of governments have continued their good-faith work toward full implementation of these action plans to end abuses suffered by children in conflict.

We still have a long way to go in stemming the tide of abuse and horror faced by children in conflict situations. The United States will continue to stand behind the important work being done by the United Nations to protect these children.

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3. Third Committee

Senior Policy Advisor for the U.S. Mission to the UN Kelly Razzouk delivered remarks to the UN General Assembly Third Committee on the promotion and protection of the rights of children on October 10, 2017. Her remarks are excerpted below and available at <https://usun.state.gov/remarks/8007>.

* * * *

Thank you, Mr. Chair. Every year we come together during this annual debate to discuss the state of the world's children. As member states, we must acknowledge that often it is the innocent and vulnerable among us, our children, who suffer the most from the human rights challenges that plague our societies.

This year, yet again, all over the world, children's rights continue to be violated due to crisis and conflict. As we sit here today, a child in North Korea is starving to death because of a regime that sees no value in taking care of its own people. As we sit here today, a child in Syria wakes up surrounded by the violent sounds of bombings and attacks. The ongoing violence has led UNICEF to name Syria as one of the most dangerous places in the world to be a child.

Children in Syria suffer daily from physical wounds, and the psychological scars they bear could take years to heal. The constant psychological strain on children in Syria has manifested itself in speech impediments, and, in some, even losing their ability to speak altogether. In January 2017, the Syrian Network for Human Rights reported that no fewer than

26,000 children had been killed in Syria since the start of the conflict. Barbaric attacks against schools in Syria account for half of all the worldwide attacks from 2011-2015, and 43 percent of Syrian children are out of school.

To support our children around the world, much more must be done to help meet their basic, immediate needs. We must continue to invest in quality education. Girls, in particular, face challenges and barriers to receiving an education, including threats of violence and access to sanitary facilities, among other critical concerns.

Children in displaced situations are particularly vulnerable to trafficking and other forms of abuse such as rape, torture, and forced marriage. Children suffered from human rights violations in situations of conflict in 14 countries last year.

Education for displaced children remains a high priority for the United States government. We are a leading advocate in ensuring humanitarian response includes access to quality education. Growing evidence shows that education in emergencies and protracted crises can save lives. Education is also a long-term investment in individual child growth, a country's future, and sustainable peace.

As part of our efforts to provide quality and safe education for children, we must ensure global focus includes substantive discussions on bullying, including cyberbullying. Collectively, we want children to be good stewards of the world, which extends to messaging and content that children are exposed to on a daily basis. The consequences of activities like cyber bullying are severe and can include mental health concerns, substance abuse, exploitation, violent or self-destructive behavior, and even suicide.

Our children should receive the best that we, as governments, can offer them. They are the future leaders who will one day be sitting right here where we are today and we must all redouble our efforts to ensure that the world they inherit is the one they deserve.

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4. Resolution on the Girl Child

On November 20, 2017, Laurie Shestack Phipps, U.S. Adviser for Economic and Social Affairs, provided the U.S. explanation of position on Agenda Item 68(a), resolution A/C.3/72/L.19/Rev. 1 on "The Girl Child." The U.S. explanation of position follows and is also available at <https://usun.state.gov/remarks/8140>.

* * * *

The United States joins consensus on "The Girl Child" Resolution, and we thank South Africa and the other countries of [the Southern African Development Community] for their efforts to find agreement on a strong text. We would like to deliver the following Explanation of Position.

When the resolution addresses "trafficking and slavery like practices," such as in operative paragraph 15, it is important to include commercial sexual exploitation in a list along with forced and bonded labor. Forcing women to engage in prostitution and inducing children to

do the same is a central form of exploitation and defined in international law as a form of human trafficking.

On operative paragraph 23, the wording “trafficking and forced migration” seem to imply movement. The crime of trafficking in persons, however, as defined in the widely ratified Trafficking Protocol, is not movement-based.

The United States is firmly committed to providing equal access to education and the importance of fostering safe, supportive school environments and positive school climates, including preventing and addressing violence directed against girls. We understand that when the resolution calls on States to strengthen various aspects of education such as curriculum, programs, training, and other aspects of education, this is done in terms as appropriate and consistent with our respective federal, state, and local authorities.

We understand that the provisions of this resolution and the others adopted by this Committee do not change the current state of conventional or customary international law, nor do they imply that States must become parties to instruments to which they are not a party or implement obligations under such instruments. As the International Covenant on Economic, Social, and Cultural Rights provides, each State Party undertakes to take the steps set out in Article 2(1) “with a view to achieving progressively the full realization of the rights.” We interpret references to the obligations of States as applicable only to the extent they have assumed such obligations, and with respect to States Parties to the Covenant, in light of its Article 2(1). Any reaffirmation of prior documents in this resolution and other resolutions applies only to those states that reaffirmed them initially.

We understand the reference to education in the areas of sexual and reproductive health in preambular paragraph 20 to refer to age appropriate education as determined by parents or legal guardians. Therefore, we voted against the amendment proposed by Argentina.

Finally, we understand this resolution’s operative paragraph 17 to call on States to work to ensure that marriage is entered into only with the informed, free and full consent of the intending spouses. Moreover, we understand that when the resolution calls on States to enact and enforce laws concerning the minimum age of consent and marriage, this is done in terms consistent with our respective federal and state authorities.

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5. Human Rights Council

At the HRC’s 34th session, on March 6, 2017, U.S. Delegate Kathryn Keeley delivered the statement of the United States at the annual full-day meeting on the rights of the child. The U.S. statement is excerpted below and available at <https://geneva.usmission.gov/2017/03/07/hrc-34-annual-full-day-meeting-on-the-rights-of-the-child/>.

* * * *

The United States supports efforts to protect the best interests of children in the 2030 Agenda for Sustainable Development implementation process. We agree that children should get their best start in life to thrive. Children are the agents of change and should have the capacity to be active partners in realizing the Sustainable Development Goals.

Since the adoption of the 2030 Agenda, there has been significant discussion on the enormous potential of young persons to change the world for the better. Each day we are reminded that every young person is a key driver of prosperity, security, and democracy, both today and into the future.

The global youth bulge, rise of violent extremism, and high global youth unemployment demonstrate the urgency to invest in young persons. The generation of 1.8 billion young persons in the world today is the largest youth population in history.

This is a key moment for governments, aid agencies, and youth themselves. The United States Agency for International Development has been implementing the Youth in Development Policy since 2012. The agency has been engaging young persons as partners across sectors and working to ensure their needs are met in health, education, economic opportunity, and security. USAID also launched the program YouthPower last year. This is a 447 million dollar project which focuses on empowering young persons at the local, national, and global levels.

The U.S. government also supports the Young African Leaders Initiative, the DREAMS Partnership, Young Leaders of the Americas, and the Young South East Asian Leadership Initiatives. We also are a partner in the Global Partnership to End Violence Against Children along with UNICEF and other organizations, with a focus to directly address the causes and consequences of violence in the home, school, and community with children both as beneficiaries and partners. We will continue to work with young persons wherever they are, and to encourage them as full partners in our efforts to foster sustained and inclusive economic growth and promote resilient, democratic societies.

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Also at HRC 34, on March 24, 2017, Mr. Mozdierz delivered the U.S. explanation of position on the resolution on the rights of the child. That statement is excerpted below and available at <https://geneva.usmission.gov/2017/03/24/u-s-explanation-of-position-on-the-rights-of-the-child-resolution/>.

* * * *

The United States joins consensus on the Rights of the Child resolution with the understanding that the provisions of this resolution, and the others adopted by this Council, 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 Council applies only to those States that affirmed them initially. We also underscore that this resolution and the others adopted by this Council do not change or necessarily reflect the United States or other States' obligations under treaty or customary international law, nor does the use of the term "agreed" with respect to previous instruments necessarily suggest that they do

so. This or other resolutions cannot change, and do not necessarily reflect private parties' legal obligations. We thus read [operative paragraph] 3's statement that "the best interest of the child shall be the guiding principle of those responsible for his or her nurture and protection" as recommendatory.

We understand the terms "human trafficking" and "modern slavery" to be synonymous, umbrella terms that describe the totality of the crime of "trafficking in persons," i.e., the various acts, means, and forms of exploitation used to control another person. We underscore that the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children has 170 State Parties. Within the Palermo Protocol definition of trafficking in persons, "forced labor or services, slavery or practices similar to slavery" are included in the forms of exploitation. We also note that human trafficking can include, but does not require, movement. Additionally, it is unfortunate that the references to "trafficking" in OP 21 do not accurately refer instead to "trafficking in persons" or "human trafficking."

Pending review of U.S. policies relating to climate change and the Paris Agreement, the United States reserves its position on language in this resolution relating to these issues.

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D. SELF-DETERMINATION

In October and November 2017, the UN General Assembly's Fourth Committee adopted its annual resolutions on decolonization. While the United States joined consensus on 15 of these resolutions, including the annual resolutions on the U.S. territories of the Virgin Islands and American Samoa, it voted "no" on six others. These six included the annual resolution on Guam, which was adopted by the General Assembly as Resolution 72/102 on December 7, 2017. This was the first time the United States had voted "no" on that annual resolution on Guam since 1996. The other five on which the U.S. voted no were Resolutions 72/91, 72/92, 72/93, 72/110, and 72/111, also adopted by the Assembly on December 7.

The resolution on Guam requested that the United States work with Guam to facilitate its "decolonization" and keep the Secretary General informed of progress to that end. The 2017 Guam resolution included language suggested by Venezuela criticizing, *inter alia*, the U.S. military presence on Guam, the fact that Guam is "involuntarily place[d]" in the midst of an "ongoing conflict" between the U.S. and the DPRK, and a recent federal district court injunction (*Davis v. Guam*, 2017 WL 930825, Mar. 8, 2017) of Guam's planned self-determination plebiscite where the court found that the plebiscite unconstitutionally restricted the vote effectively to indigenous Guamanians. The resolution on Guam was adopted despite "no" votes by nine states (the United States, the United Kingdom, France, Israel, Japan, Iraq, Morocco, Ukraine, and Malawi) and 62 abstentions, including the majority of European member states.

The Fourth Committee adopted all but three of these resolutions on October 10, 2017. U.S. delegate Max Kendrick delivered the U.S. joint explanation of votes and positions on various of the resolutions—including "Implementing the Declaration on the

Granting of Independence to Colonial Countries and Peoples” (Resolution 72/110) and “Information from Non-Self-Governing Territories Transmitted Under Article 73 e of the Charter of the United Nations” (Resolution 72/91)—on that day. This explanation is excerpted below. This explanation is summarized at U.N. Doc. A/C.4/72/SR.9, paragraph 65 *et seq.*

* * * *

We are proud to support the right of self-determination and will continue to uphold the full application of Article 73 of the UN Charter. But we must also reiterate our well-known concerns that these resolutions continue to place too much weight on independence as a one-size-fits-all status option for a territory’s people in pursuit of their right of self-determination.

As correctly stated by the Declaration on Principles of International Law Concerning Friendly Relations of 1970, the people of a Non-Self-Governing Territory may, as an alternative to independence, validly opt for free association or any other political status — including integration with the Administering State — provided such status is freely determined by the people.

In other words, the territories can speak for themselves and it is not for this Assembly to put its thumb on the scale toward any particular outcome. Leaving the decision, whatever it may be, to the free will of the people is the essence of the right of self-determination.

Moreover, we are dismayed at this resolution’s resurrection in operative paragraph 14 of an outdated call to terminate all military activities and bases in non-self-governing territories. The United States Government has a sovereign right to carry out its military activities in accordance with its national security interests, and it is facile to assume that military presence is necessarily harmful to the rights and interests of the people of the territory, or incompatible with the wishes of the people.

In light of the debate that was held [before the Special Committee on Decolonization] last week, we also find it necessary to reiterate the longstanding U.S. view that the right of self-determination of the people of a non-self-governing territory is to be exercised by the *whole* people, not just one portion of the population.

In this connection, we hold that self-determination decisions should be conducted consistently with applicable human rights obligations and commitments, including the commitments set forth in the Universal Declaration on Human Rights. As we are all aware, among these are important commitments relating to non-discrimination and universal and equal suffrage.

With respect to the resolution on Information from Non-Self-Governing Territories Transmitted Under Article 73(e) of the Charter, we underscore that it is for Administering State to determine whether a territory has achieved self-governance under the terms of the Charter, and whether to transmit information under Article 73(e) of the Charter.

Finally, we reiterate and incorporate by reference the other concerns we have expressed in years past about these resolutions.

We stress that the statements in these resolutions, as well as those in prior resolutions of the General Assembly—including Resolution 1514 of 1960—are nonbinding and do not

necessarily state or reflect conventional or customary international law. Any reaffirmation of prior documents in these resolutions applies only to those States that affirmed them initially.

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The Fourth Committee adopted the other three decolonization resolutions—“Economic and Other Activities Which Affect the Interests of the Peoples of the Non-Self-Governing Territories” (“Resolution II,” ultimately adopted as General Assembly Resolution 72/92); “Question of Guam” (“Resolution X,” Resolution 72/102); and Question of New Caledonia (Resolution 72/104)—on November 8, 2017. The U.S. explanation of vote on the former two resolutions is excerpted below.

* * * *

We are deeply disappointed today to have been forced, as a result of counterproductive additions primarily on the part of the Venezuelan delegation, to call a vote and vote against the resolution on the Question of Guam for the first time in over 20 years. While we endeavored to work with Committee members to resolve problematic language so that we could join consensus, we were ultimately rebuffed by some members’ insistence on using this resolution to launch a political attack. Problematic language added this year to Resolution II [on Economic and Other Activities] also forced the United States to vote “no” on that resolution.

We take this opportunity to draw attention to some of the elements in the texts on Guam and Economic and Other Activities that made it impossible for the United States to join consensus.

First, on the new language with the unfounded claim that the people of Guam are uniformly opposed to U.S. military activities, this allegation has no basis in fact, nor does the suggestion that these activities harm the environment or contravene the wishes of Guam’s people. We must also reject as a waste of UN resources the unnecessary new request for a UN environmental study on the impacts of military activities in Guam.

The resolution on Economic and Other Activities broadens presumptions about military presence in non-self-governing territories with language in operative paragraph 5 urging avoidance of military activities. To this we would reiterate that the United States has a sovereign right to carry out its military activities in accordance with its national security interests, and it is facile to assume that military presence is necessarily harmful to the rights and interests of the people of the territory, or incompatible with the wishes of the people.

Second, new language in the Guam resolution also dangerously mischaracterizes the situation regarding North Korea. While we must continue to address the Kim regime’s incessant provocations, it is incorrect to say we are “in the midst of an ongoing conflict.” The only North Korea reference that belongs in this resolution is a condemnation of the threats Kim Jong Un has made against Guam and condemnation of North Korea’s continued unlawful development of its unlawful nuclear and ballistic missile programs which threaten international peace and security.

Third, ... [the United States is compelled to] object to the criticism of a recent U.S. court

ruling that halted Guam's planned plebiscite on its political status. Guam is one of the United States' most multicultural societies, counting among its residents not only indigenous Chamorros and migrants from other parts of the United States, but also the descendants of immigrants from across East Asia. The United States has long supported the right of self-determination for the people of Guam and continues to do so. Guam's legislature passed a law, however, that restricts the plebiscite on its political status to those with roots on Guam since 1950 [effectively omitting all Guamanians who fall outside of this category]. The court found these limitations incompatible with U.S. constitutional guarantees against restricting suffrage on the basis of race. Guam has appealed this ruling to a federal appeals court, and for this reason alone it is inappropriate for the Assembly to comment on the case.

We also find it necessary to repeat a basic axiom about self-determination ...: the right of self-determination of the people of a non-self-governing territory is to be exercised by the whole people, not just one portion of the population. As Resolution 1514 and many of the other self-determination resolutions recognize, such decisions should be conducted consistently with applicable human rights obligations and commitments, including those related to universal and equal suffrage without distinction on the basis of race or ethnicity.

F[ourth], we would recall the words of the Chair at the conclusion of [the October 10] session, in which he noted that Venezuela's support for territorial peoples is rooted in its own colonial experience. We, too, once fought a bloody war to free ourselves from colonialism, and we have long championed the cause of self-determination. Since shortly after our own independence, we have supported countries that choose independence, and we have been proud to welcome them as equal and sovereign partners in this body.

[Fifth, the United States does not support a mission by the [Special Committee on Decolonization] to Guam. It serves to recall that General Assembly Resolution 850(IX) stipulates that any such visits are to be conducted "in agreement with" the Administering State.]

But we also support the right of peoples in other territories to choose other paths, including integration or simply maintenance of the status quo, if that is what the people prefer. It is long past time for this body to eschew one-size-fits-all solutions, when we can all clearly see that many peoples prefer various options.

Finally, we reiterate that this resolution and the other "decolonization" resolutions, including Resolution 1514, are nonbinding and do not necessarily state or reflect international law.

For these reasons, the United States called this vote and will vote "no" on this resolution.

* * * *

Separate from the Fourth Committee decolonization resolutions, the Third Committee, and then the General Assembly in plenary, adopted annual resolutions on self-determination (Resolutions 72/158, 72/159, and 72/160). The United States voted "no" on 72/158 and 72/160 and joined consensus on 72/159. On November 16, 2017, before the Third Committee, U.S. ECOSOC Advisor Mordica Simpson delivered the U.S. explanation of its position on 72/160 (then labeled as draft resolution A/C.3/72/L.58) on the "Universal Right of Peoples to Self-Determination." The U.S. explanation, available at <https://usun.state.gov/remarks/8153>, states:

The United States considers the right of self-determination of peoples to be important and therefore joins consensus on this resolution. We note, however, as has frequently been stated by the U.S. and other delegations, that this resolution contains many misstatements of international law and is inconsistent with current state practice.

E. ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

1. General

On March 23, 2017 at the 34th session of the HRC, Mr. Mozdierz delivered the explanation of position for the United States on the resolution on the “Realization of Economic, Social, and Cultural Rights.” The U.S. explanation of position follows and is available at <https://geneva.usmission.gov/2017/03/23/u-s-explanation-of-position-on-the-realization-of-economic-social-and-cultural-rights/>.

* * * *

The United States is pleased to join consensus on this resolution concerning the realization of economic, social, and cultural rights. We engaged in the negotiations that developed this resolution and join consensus today as part of our efforts to work constructively with delegations on these important issues. We in particular thank the main cosponsors for their cooperative and collaborative approach to the development of this text.

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

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

The principle of non-discrimination that underpins the very concept of human rights is critical, and one the United States strives continually to fulfill. We read the references to non-discrimination in this resolution as consistent with Article 2.2 of the Covenant.

While we recognize the importance of social protection floors, we note that countries have a wide array of policies and actions that may be appropriate in promoting the progressive realization of economic, social, and cultural rights. Therefore, we think that this resolution should not try to define the content of those rights.

The United States also takes this opportunity to reinforce the need for all States to promote, protect, and respect human rights when carrying out their development goals and policies. In that regard, human rights mechanisms may have the potential to inform national efforts to leave no one behind. We regret, however, that additional references to “the right to

development” were introduced into this resolution and several others under this agenda item. The concerns of the United States about the existence of a “right to development” are long-standing and well-known—the “right to development” does not have an agreed international meaning, such that its reference in this resolution with respect to issues covered in the Sustainable Development Goals is vague and undefined. Furthermore, work is needed to make it consistent with human rights, which the international community recognizes as universal rights held and enjoyed by individuals.

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

* * * *

On November 20, 2017, U.S. Adviser for Economic and Social Affairs Laurie Shestack Phipps delivered the general statement at the UN Third Committee meeting on the 2030 Agenda. This November 20 general statement applied to multiple resolutions considered by the Third Committee, as indicated at the end of the statement, which is excerpted below and available at <https://usun.state.gov/remarks/8216>.

* * * *

Mr. Chair, as this Committee continues to take action on the resolutions negotiated during this session, we take this opportunity to make important points of clarification on some of the language we see reflected across multiple resolutions. We underscore that General Assembly resolutions, and many of the outcome documents referenced therein, including the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda, are non-binding documents that do not create rights or obligations under international law, nor bind states to any financial commitments.

Regarding the reaffirmation of the 2030 Agenda, the United States recognizes the Agenda as a global framework for sustainable development that can help countries work toward global peace and prosperity. We applaud the call for shared responsibility in the Agenda and emphasize that all countries have a role to play in achieving its vision. We also strongly support national responsibility stressed in the Agenda. However, each country has its own development priorities, and we emphasize that countries must work toward implementation in accordance with their own national policies and priorities.

We also highlight our mutual recognition, in paragraph 58 of the 2030 Agenda, that implementation of this Agenda must respect and be without prejudice to the independent mandates of other processes and institutions, including negotiations, and does not prejudice or serve as precedent for decisions and actions underway in other forums. For example, this Agenda does not represent a commitment to provide new market access for goods or services. This

Agenda also does not interpret or alter any WTO agreement or decision, including the Agreement on Trade-Related Aspects of Intellectual Property, TRIPS Agreement.

We take this opportunity to make important points of clarification regarding the reaffirmation of the Addis Ababa Action Agenda. Specifically, we note that much of the trade-related language in the AAAA outcome document has been overtaken by events since July 2015 and is immaterial. Indeed, some of the intervening events happened just months after the release of the outcome document. Therefore, any reaffirmation of the outcome document has no standing for ongoing work and negotiations involving trade.

The United States notes that our President announced his intention to withdraw from the Paris Agreement as soon as the U.S. is eligible to do so, unless we can identify terms that are more favorable to American businesses, workers, and taxpayers. While our climate policy is under review, we must note our concerns with language related to the Paris Agreement across many of the resolutions this committee is considering. We recognize that climate change is a complex global challenge and affirm our strong commitment to an approach that lowers emissions while supporting economic growth and improving energy security needs.

This statement applies to all resolutions on which the United States joins consensus during this session of the Third Committee, including several applicable resolutions we intend to or already have cosponsored. For the sake of brevity, we will not name all of these resolutions here but instead we will supply a list of these resolutions to the Third Committee Secretariat separately. The document numbers of these resolutions are also indicated in the heading of this statement.

Furthermore, the United States understands that the General Assembly's resolutions do not change the current state of conventional or customary international law. We do not read any resolution acted upon by this Committee to imply that states must join or implement obligations under international instruments to which they are not a party. We understand abbreviated references to certain human rights to be shorthand for the accurate terms used in the applicable international treaty, and we maintain our longstanding positions on those rights. The United States understands that any reaffirmation of prior documents applies only to those states that affirmed them initially, and, in the case of international treaties or conventions, to those States who are party. Finally, "welcoming" a report should not be understood as acceptance of all assertions, conclusions, or recommendations contained therein.

We request that this statement, along with the specific list of resolutions below, be made part of the official record of this meeting and incorporated by reference for subsequent meetings where all relevant resolutions are adopted.

Thank you.

Relevant resolutions covered by this statement:

A.I. 27 A/C.3/72/L.10/Rev.1 Persons with Albinism

A.I. 27(a) A/C.3/72/L.12/Rev.1 Implementation of the outcome of the World Summit for Social Development and of the 24th special session of the General Assembly

A.I. 27(b) A/C.3/72/L.7/Rev.1 Promoting social integration through social inclusion

A/C.3/72/L.13/Rev.1 Follow-up to the Second World Assembly on Ageing

A/C.3/72/L.14/Rev.1 Follow-up to the 20th anniversary of the International Year of the Family and beyond

A/C.3/72/L.15/Rev.1 Policies and programs involving youth

A.I. 28 A/C.3/72/L.17 /Rev.1 Violence against women migrant workers

A/C.3/72/L.22/Rev.1 Improvement of the situation of women and girls in rural areas

A.I. 64 A/C.3/72/L.61 Assistance to refugees, returnees and displaced persons in Africa
A.I. 68(a) A/C.3/72/L.21/Rev.1 Rights of the child
A.I. 70(a) A/C.3/72/L.56/Rev.1 Combating glorification of Nazism, neo-Nazism and other practices that contribute to fueling contemporary forms of racism, racial discrimination, xenophobia and related intolerance
A.I. 72(a) A/C.3/72/L.18/Rev.1 Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto: Situation of women and girls with disabilities
A.I. 72(b) A/C.3/72/L.26/Rev.1 The right to development
A/C.3/72/L.28/Rev.1 Enhancement of international cooperation in the field of human rights
A/C.3/72/L.29/Rev.1 Human rights and cultural diversity
A/C.3/72/L.31 Promotion of a democratic and equitable international order
A/C.3/72/L.32/Rev.1 The right to food
A/C.3/72/L.39/Rev.1 The human rights to safe drinking water and sanitation
A/C.3/72/L.43/Rev.1 Protection of Migrants
A/C.3/72/L.45 National institutions for the promotion and protection of human rights
A/C.3/72/L.46/Rev.1 Protection of and assistance to internally displaced persons
A/C.3/72/L.50/Rev.1 Declaration on Human Rights Defenders
A/C.3/72/L.51/Rev.1 Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
A/C.3/72/L.52 Globalization and its impact on the full enjoyment of all human rights
A.I. 107 A/C.3/72/L.6/Rev.1 Improving the coordination of efforts against trafficking in persons
A/C.3/72/L.11/Rev.1 Strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity

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On November 21, 2017, Marguerite Walter provided the U.S. explanation of position at the World Summit for Social Development at the UN. Ms. Walter's statement is excerpted below and available at <https://usun.state.gov/remarks/8133>.

* * * *

The United States is disappointed that issues remain in this resolution which are not clearly linked to social development or the work of this Committee. The Secretary-General has called for UN reform to increase efficiency and effectiveness, and the consideration of issues not within the topic of this resolution is a misuse of resources. We must express our concerns over portions of this resolution that attribute supposed negative impacts on economic and social development to vague and sweeping references to some trade practices and trade barriers; and inappropriately call upon international financial institutions and other non-UN organizations to take actions that are beyond the scope of what this resolution should properly address. For these reasons, we are calling for a vote and voting no on this resolution, and encourage other member states to vote no as well.

We 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. A few paragraph-specific observations and explanations follow.

Regarding reference to foreign occupation in preambular paragraph 15, we reaffirm our abiding commitment to a comprehensive and lasting resolution 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 as they pursue a more sustainable future.

In reference to operative paragraph 37, the United States believes the UN Guiding Principles on Business and Human Rights provide a valuable, universal framework for working through a wide range of issues and challenges. In that regard, we understand the responsibility of business enterprises raised in this resolution to be consistent with the UN Guiding Principles. We further emphasize that the responsibility is not artificially limited to "transnational" or "private" corporations, but applies to all kinds and forms of business enterprises regardless of their size, sector, location, ownership and structure.

Regarding economic and trade issues, it is inappropriate for the UN General Assembly to call on international financial institutions to provide debt relief, as this resolution does in operative paragraph 45. Further, the demands in operative paragraph 57 that the international community "shall" increase market access or provide debt relief are wholly unacceptable in a resolution such as this one. We note that General Assembly resolutions should refrain from using language such as "shall" in reference to action by member states, in that such terminology is only appropriate with respect to binding texts. In the view of the United States, this language has no standing in this or in any other forum, including in future negotiated documents.

Further, the United States understands that all references to transfer of, or access to, technology in this resolution—or any others this Committee adopts at this session—refer to voluntary technology transfer on mutually agreed terms and conditions, and that all references to access to information and/or knowledge are to information or knowledge that is made available with the authorization of the legitimate holder.

We note that the term "equitable" is used in multiple contexts in this resolution. While the United States fully endorsed the importance of universal access to open and transparent markets 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.

We appreciate that the sponsors of the resolution removed language in the zero draft which offered an additional example of China's attempts to impose its national view of multilateralism and world geopolitics on the international system. The United States cannot agree to this language, but looks forward to working with China and others in the months and years ahead to sustain and strengthen the international norms on which the global system is based.

With regard to this resolution's references to the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda, we addressed our concerns in a General Statement delivered previously, on November 20.^{****}

^{****} Editor's note: The November 20 general statement is excerpted in Section E.1. *supra*.

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2. Food

The explanation of vote by the United States on the right to food resolution at HRC 34 is excerpted below and available at <https://geneva.usmission.gov/2017/03/24/u-s-explanation-of-vote-on-the-right-to-food/>.

* * * *

This Council is meeting at a time when the international community is confronting what could be the modern era's most serious food security emergency. Under Secretary-General O'Brien warned the Security Council earlier this month that more than 20 million people in South Sudan, Somalia, the Lake Chad Basin, and Yemen are facing famine and starvation. The United States, working with concerned partners and relevant international institutions, is fully engaged on addressing this crisis.

This Council, should be outraged that so many people are facing famine because of a manmade crisis caused by, among other things, armed conflict in these four areas. The resolution before us today rightfully acknowledges the calamity facing millions of people and importantly calls on states to support the United Nations' emergency humanitarian appeal. However, the resolution also contains many unbalanced, inaccurate, and unwise provisions that the United States cannot support. This resolution does not articulate meaningful solutions for preventing hunger and malnutrition or avoiding its devastating consequences. This resolution distracts attention from important and relevant challenges that contribute significantly to the recurring state of regional food insecurity, including endemic conflict, and the lack of strong governing institutions. Instead, this resolution contains problematic, inappropriate language that does not belong in a resolution focused on human rights.

For the following reasons, we will call a vote and vote "no" on this resolution. First, drawing on the Special Rapporteur's recent report, this resolution inappropriately introduces a new focus on pesticides. Pesticide-related matters fall within the mandates of several multilateral bodies and fora, including the Food and Agricultural Organization, World Health Organization, and United Nations Environment Program, and are addressed thoroughly in these other contexts. Existing international health and food safety standards provide states with guidance on protecting consumers from pesticide residues in food. Moreover, pesticides are often a critical component of agricultural production, which in turn is crucial to preventing food insecurity.

Second, this resolution inappropriately discusses trade-related issues, which fall outside the subject-matter and the expertise of this Council. The language in paragraph 28 in no way supersedes or otherwise undermines the World Trade Organization (WTO) Nairobi Ministerial Declaration, which all WTO Members adopted by consensus and accurately reflects the current status of the issues in those negotiations. At the WTO Ministerial Conference in Nairobi in 2015, 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. The United States also does not support the resolution's numerous references to technology transfer.

We also underscore our disagreement with other inaccurate or imbalanced language in this text. We regret that this resolution contains no reference to the importance of agricultural innovations, which bring wide-ranging benefits to farmers, consumers, and innovators. Strong protection and enforcement of intellectual property rights, including through the international rules-based intellectual property system, provide critical incentives needed to generate the innovation that is crucial to addressing the development challenges of today and tomorrow. In our view, this resolution also draws inaccurate linkages between climate change and human rights related to food.

Furthermore, we reiterate that states are responsible for implementing their human rights obligations. This is true of all obligations that a state has assumed, regardless of external factors, including, for example, the availability of technical and other assistance.

We also do not accept any reading of this resolution or related documents that would suggest that States have particular extraterritorial obligations arising from any concept of a right to food.

Lastly, we wish to clarify our understandings with respect to certain language in this resolution. 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. Domestically, the United States pursues policies that promote access to food, and it is our objective to achieve a world where everyone has adequate access to food, but we do not treat the right to food as an enforceable obligation. The United States does not recognize any change in the current state of conventional or customary international law regarding rights related to food. The United States is not a party to the International Covenant on Economic, Social and Cultural Rights.

Accordingly, we interpret this resolution's references to the right to food, with respect to States Parties to that covenant, in light of its Article 2(1). We also construe this resolution's references to member states' obligations regarding the right to food as applicable to the extent they have assumed such obligations.

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.

* * * *

The U.S. explanation of vote on draft UN General Assembly resolution A/C.3/72/L.32/REV.1 on the right to food was delivered by U.S. Advisor Robin Brooks on November 16, 2017. That statement follows and is available at <https://usun.state.gov/remarks/8149>.

* * * *

We thank the delegation of Cuba for conducting a transparent negotiating process and for its efforts to address many of our concerns.

This Committee is meeting at a time when the international community is confronting what could be the modern era's most serious food security emergency. Over 20 million people in South Sudan, Somalia, the Lake Chad Basin, and Yemen are facing famine and starvation. The United States, working with concerned partners and relevant international institutions, is fully engaged on addressing these conflict-related crises.

This Committee, and all members of the international community, should be outraged that so many people are facing food insecurity because of manmade crises caused by instability and armed conflict. The resolution before us today rightfully acknowledges the calamity facing millions of people and importantly calls on States to support the United Nations' emergency humanitarian appeal. However, the resolution also contains many unbalanced, inaccurate, and unwise provisions that the United States cannot support. In other words, this resolution does not articulate meaningful solutions for preventing hunger and malnutrition or avoiding its devastating consequences.

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. Domestically, the United States pursues policies that promote access to food, and it is our objective to achieve a world where everyone has adequate access to food, but we do not treat the right to food as an enforceable obligation. The United States does not recognize any change in the current state of conventional or customary international law regarding rights related to food. Moreover, we note that as the International Covenant on Economic, Social, and Cultural Rights provides, each State Party undertakes to take the steps set out in Article 2(1) "with a view to achieving progressively the full realization of the rights."

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

However, we underscore our disagreement with other inaccurate or imbalanced language in this text. We regret that this resolution contains no reference to the importance of agricultural innovations, which bring wide-ranging benefits to farmers, consumers, and innovators. Strong protection and enforcement of intellectual property rights, including through the international rules-based intellectual property system, provide critical incentives needed to generate the innovation that is crucial to addressing the development challenges of today and tomorrow. The United States also does not support the resolution's numerous references to technology transfer.

Moreover, this resolution inappropriately discusses trade-related issues, which fall outside the subject-matter and the expertise of this Committee. As we have stated on many occasions, it is not acceptable to the United States for the UN to speak to ongoing or future work of the World Trade Organization, to reinterpret WTO agreements and decisions, or to seek to shape WTO negotiations and its agenda. The WTO is an independent organization with a different membership, mandate, and rules of procedure. The language in paragraph 28 in no way supersedes or otherwise undermines the WTO Nairobi Ministerial Declaration, which all WTO Members adopted by consensus and accurately reflects the current status of the issues in those negotiations. At the WTO Ministerial Conference in Nairobi in 2015, WTO Members could not agree to reaffirm the Doha Development Agenda. As a result, WTO Members are no longer

negotiating under the DDA framework. Paragraph 28 also inaccurately links trade negotiations at the WTO to the right to food.

The United States rejects operative paragraphs 29 and 35. Paragraph 29 inaccurately suggests there is a tension between international trade agreements and the right to food. Regarding paragraph 35, we cannot accept the UN opining on what WTO Members should do or consider in implementing a WTO agreement. The UN has no voice on these matters. For this same reason, we cannot accept the attempts made in paragraphs 24 and 37 for the UN to shape the agenda and negotiating priorities of the WTO.

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.

For the foregoing, we will call a vote and vote "no" on this resolution.

* * * *

3. Water

ECOSOC Advisor Simpson delivered the U.S. explanation of position on draft resolution A/C.3/72/L.39/Rev.1 on the "Human Rights to Safe Drinking Water and Sanitation" on November 17, 2017. That statement follows and is available at <https://usun.state.gov/remarks/8196>.

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

In voting yes on this resolution today we reaffirm the understandings in our statement in New York at the UN General Assembly's meeting on this topic in 2015, as well as in our explanations of position on the Human Rights Council's September 2012, 2013, 2014, and 2016 resolutions on the human right to safe drinking water and sanitation.

The United States joins consensus on the understanding that this resolution does not imply that states must implement obligations under human rights instruments to which they are not a party. The United States is not a party to the International Covenant on Economic, Social, and Cultural Rights, ICESCR, and the rights contained therein are not justiciable in U.S. courts. We interpret references to the obligations of states as applicable only to the extent they have assumed such obligations, and with respect to States Parties to the ICESCR, in light of its Article 2(1). We also note that water resource management is a technical function that is distinct from international human rights law and underscore our view that preambular paragraph 21 of this resolution should not be understood as creating any international legal obligations.

We disagree with any assertion that the right to safe drinking water and sanitation is inextricably related to or otherwise essential to enjoyment of other human rights, such as the right to life as properly understood under the International Covenant on Civil and Political Rights, ICCPR. To the extent that access to safe drinking water and sanitation is derived from the right to an adequate standard of living, it is addressed under the ICESCR, which imposes a different standard of implementation than that contained in the ICCPR. We do not believe that a state's duty to protect the right to life by law would extend to addressing general conditions in society or nature that may eventually threaten life or prevent individuals from enjoying an adequate standard of living.

In addition, while the United States agrees that safe water and sanitation are critically important, we do not accept all of the analyses and conclusions in the Special Rapporteur's reports mentioned in this resolution. We would also note, with respect to preambular paragraph 25, that although climate models project that there may be changes in the patterns of natural disasters in the future, at this time there is no consensus within the scientific community on the presence of an observable trend in key types of sudden onset natural disasters.

Finally, we regret that the United States must dissociate from operative paragraph 2 of this resolution. The language used to define the right to water and sanitation in that paragraph is based on the views of the Committee on Economic, Social, and Cultural Rights and the Special Rapporteur only. That language does not appear in an international agreement and does not reflect any international consensus.

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4. Housing

At HRC 34, on March 23, 2017, Mr. Mozdierz delivered the U.S. explanation of position on the resolution on the right to adequate housing. U.N. Doc. A/HRC/34/L.12. The U.S. statement is available at <https://geneva.usmission.gov/2017/03/24/u-s-explanation-of-position-on-the-right-to-adequate-housing/> and excerpted below.

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Thank you, Mr. President. In the spirit of our shared policy objective, to make adequate housing available to all of our people, we are pleased to join consensus on this resolution today.

The United States supports the need to promote, protect, and respect human rights in carrying out housing policies. We note the importance of mainstreaming human rights in urban development. We understand that approach to mean one anchored in the rights established by international human rights law. To that end, we read the references in the resolution to non-discrimination as reflecting the prohibition under the international covenants on human rights of discrimination on the basis of all protected grounds and as articulating important policy goals.

We join consensus on this resolution with the express understanding that it does not imply that states must become party to or implement obligations under human rights instruments to which they are not party, or signal any change in the current state of conventional or

customary international law. We interpret this resolution's reaffirmation of previous documents as applicable to the extent countries affirmed those documents in the first place. We consider the resolution's phrase "the right to adequate housing" to be synonymous with the longer phrase in its title, and with similar language in Article 25 of the Universal Declaration of Human Rights.

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5. Health

At HRC 35, on June 23, 2017, Jason Mack delivered the U.S. explanation of position on the resolution on the "Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health in the Implementation of the 2030 Agenda for Sustainable Development." U.N. Doc. A/HRC/35/L.18. That statement is excerpted below and available at <https://geneva.usmission.gov/2017/06/23/explanation-of-position-on-resolution-l-18/>.

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The United States greatly appreciates the extensive consultations conducted by Brazil, Portugal, Mozambique, Paraguay, and Thailand on this resolution and will join consensus on it.

However, the United States disassociates from the reference to technology transfer in operational paragraph 9. For the United States, this language will have no standing in future negotiations. The United States continues to oppose language that we believe undermines intellectual property rights.

With respect to the High Commissioner for Human Rights report called for under operational paragraph 13, the United States would like to express disappointment. We are concerned with the report's focus on the "contributions of the right to health framework to the effective implementation and achievement of the health-related Sustainable Development Goals." We do not see this as an appropriate task and responsibility for the High Commissioner, and we do not wish to frame the SDGs in a "right to health framework" when there is no "right to health framework" language in the SDGs themselves. We encourage governments and public institutions to work closely on implementation with regional and local authorities, subregional institutions, international institutions, academia, philanthropic organizations, volunteer groups, and others, as appropriate. Furthermore, we note that certain recent UN reports have put forward a flawed understanding on issues of healthcare access, particularly with respect to access to medicines, and have generated divisiveness among member states and the UN. We strongly urge the UN to consider a new approach to analyzing healthcare that seeks to unite all of the parties responsible for delivering critical healthcare solutions to patients around the world. To this end, the UN Secretary-General's High-Level Panel on Access to Medicines should not be used as a model for this new work.

The United States would also like to note that we were pleased to see language specifically addressing persons with psychosocial disabilities in this text and continue to support the work that the Special Rapporteur does to advance the human rights of all persons with disabilities.

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On September 29, 2017, Jason Mack delivered the U.S. explanation of position on the resolution considered at HRC 36 on mental health. U.N. Doc. A/HRC/36/L.25. That statement is excerpted below and available at <https://geneva.usmission.gov/2017/09/29/explanation-of-position-on-mental-health-hrc36-resolution-l-25/>

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The United States thanks Brazil and Portugal for their continued dedication to an issue of tremendous importance to all countries. The United States strongly supports the right to the enjoyment of the highest attainable standard of mental health.

While we share the broad aims of this resolution, the United States believes there is a need to clarify a few key points. We interpret this resolution's references to obligations as applicable to States only to the extent they have assumed such obligations, and to the extent that they accurately reflect the rights as articulated in the Convention on the Rights of Persons with Disabilities and the International Covenant on Civil and Political Rights. Moreover, we understand "international human rights norms" to refer to the human rights and fundamental freedoms that are set forth in international human rights covenants and conventions, as applicable.

Despite these and other concerns with the resolution, we join consensus on this resolution because we support its focus on encouraging States to take measures to address the challenges faced by persons with mental health and psychosocial conditions. We believe these persons should be respected and treated as equal members of the community, and we maintain a high priority on identifying solutions that alleviate those challenges.

Other concerns regarding this resolution will be addressed in the United States' general statement delivered at the end of Item 3.*

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F. HUMAN RIGHTS AND THE ENVIRONMENT

On June 22, 2017, at the HRC's 35th session, the United States provided an explanation of position on an HRC resolution on climate change. That explanation of position is excerpted below and available at <https://geneva.usmission.gov/2017/06/22/u-s-explanation-of-position-on-hrc-climate-change-resolution/>.

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* Editor's note: The U.S. general statements at the HRC in 2017 are discussed in section A.3, *supra*.

We thank the members of the core group for their continued dedication to an issue of importance to many countries. Climate change is a complex global challenge. As we said with respect to a prior Human Rights Council resolution on this topic, we agree that the effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights. On that basis, we are joining consensus on this resolution.

At the same time, this resolution raises some serious concerns for the United States. We regret that the sponsors missed an opportunity to highlight the need for States to promote and respect the human rights of persons on their territories when they take action to address climate change. We also regret that the resolution fails to focus on the core mandate of the Council. Regarding the resolution's references to the Paris Agreement, the United States notes that President Trump announced on June 1 that the United States will withdraw from or renegotiate U.S. participation in the Paris Agreement or another international climate deal.

Certain language in the resolution goes beyond a human rights focus and intrudes on matters that are properly addressed in fora with specific expertise related to climate change, and the resolution takes out of context the resolutions and actions resulting from such negotiations. This is particularly inappropriate in light of ongoing work in the UN Framework Convention on Climate Change (UNFCCC). The resolution's unnecessary and selective quotations from the UNFCCC, the Paris Agreement, and decisions of the Conference of the Parties (COP) cannot be understood to change or interpret the meaning or applicability of these instruments, nor can it prejudge ongoing or future negotiations in other fora in any way. Similarly, any calls for climate action in this resolution can only affirm actions that countries choose to take.

While the effects of climate and weather phenomena may be one factor, among others, that influences human movement, the resolution text ignores, to its detriment, additional factors. The omission of reference to the important diversity of drivers of migration cannot be understood to suggest a broad, direct and singular path of causation between climate change and migration.

We understand the reference in OP10 to certain constituted bodies related to the UNFCCC to mean an invitation to the UNFCCC Secretariat, which may draw on relevant UNFCCC bodies as appropriate; these constituted bodies have no independent international standing and have limited mandates prescribed by UNFCCC Parties.

We understand the research the OHCHR is being requested to undertake pursuant to OP 12 to be related solely to addressing human rights protection gaps in the context of migration and displacement. We do not see any role for OHCHR to research adaptation and mitigation plans or their related means of implementation.

Other concerns regarding this resolution will be addressed in the United States' General Statement, which will be delivered at the end of Item 3.**

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G. BUSINESS AND HUMAN RIGHTS

On November 27, 2017, the State Department Bureau of Democracy, Human Rights, and Labor released a fact sheet on U.S. government efforts to advance respect for human

** Editor's note: The U.S. general statements at the HRC in 2017 are discussed in section A.3, *supra*.

rights among business enterprises in 2017. The fact sheet follows. It is also available at <https://www.state.gov/j/drl/rls/fs/2017/275861.htm>.

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The U.S. government is committed to supporting and advancing respect for human rights among businesses, and has continued to take steps toward this objective in 2017. This document is meant to provide a snapshot of a few examples of the work undertaken in this regard.

Laws and Policies

[U.S. government enacts Countering America's Adversaries Through Sanctions](#)

Act. Under this law, any foreign person or company that utilizes North Korean labor, which is presumed to be forced labor, in their supply chains could be subject to sanctions. The law is an example of how the U.S. government takes action to promote internationally recognized labor rights for all workers and creates consequences for entities complicit in human rights abuses. U.S. Customs and Border Protection has a [factsheet](#) to guide companies on supply chain due diligence, including under this law.

USAID launches global alliance to promote legal and sustainable seafood. Launched in October, the Seafood Alliance for Legality and Traceability "SALT" brings together the seafood industry, governments, and non-governmental organizations to collaborate on innovative solutions for legal and sustainable seafood, with the goal of increased transparency in seafood supply chains and strengthened management of fisheries.

U.S. government addresses trafficking in persons in federal supply chains. The U.S. government continues to implement the Federal Acquisition Regulation (FAR), "Ending Trafficking in Persons," which prohibits federal contractors, sub-contractors, and their agents from engaging in human trafficking or activities known to facilitate trafficking. The Department of State continues to conduct training for new acquisition personnel on their roles and a responsibility related to the FAR, and engages other governments to encourage them to examine their own supply chains.

U.S. government commits to publishing a fourth Open Government Partnership (OGP) National Action Plan. In October, the U.S. government notified OGP that it would publish its fourth National Action Plan, and related documents, in early 2018. This extension will allow the additional time needed to work with trusted civil society partners to develop a comprehensive plan reflective of our national priorities.

U.S. National Contact Point undertook a Peer Review September 28-29, 2017. The Peer review assessed how the National Contact Point process is working in practice and how it helps to promote responsible business conduct within the United States.

U.S. government joins G20 leaders' summit declaration, which includes a commitment to labor, social, and environmental standards. Leaders convened in Hamburg on July 7-8 to address major global economic challenges and to contribute to prosperity and well-being. Commitments included establishing and fostering the implementation of policy frameworks on business and human rights and underlining the responsibility of business to exercise due diligence.

U.S. government co-sponsored UN Human Rights Council resolutions that advance business and human rights. In June 2017, the U.S. co-sponsored a resolution extending the

mandate of the UN Business and Human Rights Working Group to promote dissemination and implementation of the UN Guiding Principles (GPs). The resolution also calls upon all business enterprises to meet their responsibility to respect human rights in accordance with the GPs. In March 2017, the United States co-sponsored a [resolution](#) renewing the mandate of the Special Rapporteur for Human Rights Defenders. The Special Rapporteur's 2017 [annual report](#) focused on defenders in the field of business and human rights. In its interactive dialogue on the issue, the U.S. noted the important role that human rights defenders play in protecting and advancing the fundamental freedoms that create the enabling environment for successful businesses to thrive around the world.

[U.S. government submits amicus brief in *Jesner et. al. v. Arab Bank*](#). The *Jesner* case asked whether a corporation can ever be held liable under the Alien Tort Statute. The U.S. took the position, consistent with its position in *Kiobel*, that the court below “erred in holding that a corporation can never be subject to a ‘civil action’ for a ‘tort’ in violation of the law of nations” under the Alien Tort Statute, but that other obstacles might prevent this particular case from moving forward.

[U.S. government joins U.K. Call to Action on Human Trafficking](#). The U.S. government endorsed U.K. Prime Minister Theresa May's Call to Action to end Forced Labour, Modern Slavery and Human Trafficking. Released on September 20, 2017, and endorsed by 37 states, the Call To Action expresses a political commitment to “combating the exploitation of human beings for the purposes of compelled labour or commercial sex through the use of force or other forms of coercion, or fraud.”

Tools

[U.S. Department of Labor releases new “Comply Chain” mobile app](#). The app is designed to help companies and business groups develop robust social compliance systems to root out child labor and forced labor from global supply chains.

[U.S. Department of State awards \\$25M to Global Fund to End Modern Slavery](#). This award is for a three-year program to reduce the prevalence of modern slavery in specific countries or regions around the world. A portion of the \$25 million will support grants focused on combating human trafficking in select industries. The Program will seek to raise commitments of \$1.5 billion in support from other governments and private donors.

[U.S. Department of State updates tools to prevent human trafficking in global supply chains](#). The State Department and NGO Verité are adding new sector-specific materials to the Responsible Sourcing Tool, an online platform with resources to help federal contractors, acquisitions officers, and businesses identify, prevent, and address human trafficking risks in their global supply chains. The site contains information on sectors and commodities at risk for trafficking or trafficking-related activities, as well as 10 risk management tools and a set of seafood sector specific tools. Recent efforts include increased data analytics, marketing, and evaluations to analyze current usage, drive new users to the site, and enhance the tools' effectiveness.

[USAID undertakes Three Responsible Land-Based Investment Pilots](#). The three pilots are with Illovo Sugar in Mozambique, the Moringa Partnership in Kenya, and Hershey in Ghana. USAID partners with the private sector to better understand and mitigate land tenure risks associated with agribusiness investments in the developing world. Through these partnerships, USAID works to secure legitimate land rights and to improve livelihoods and other outcomes for communities in the investment areas.

U.S. Department of Labor supports project to reduce child labor in production of vanilla in Madagascar. The project works with vanilla exporters to develop a supply chain traceability system to ensure their supply chains are free of child labor.

U.S. Department of State and USAID renew Public-Private Alliance for Responsible Minerals Trade. It was renewed for another 5 years. The U.S. Department of Labor also joined. The Alliance consists of thirty members from NGOs, trade associations, and private companies to address conflict minerals in the Great Lakes Region of Africa.

USAID launches a second Land Tenure and Property Rights Massive Open Online Course (MOOC) in 2017. The course, publicly available, includes three new modules on geospatial data and technology, customary and community tenure, and USAID programming as it relates to land tenure and property rights.

USAID updates Land Governance Profiles. USAID creates and/or updates 15 such profiles (Afghanistan, Burkina Faso, Burma, Colombia, Cote d'Ivoire, Iraq, Jordan, Kenya, Mexico, Mozambique, Nepal, Pakistan, Philippines, Rwanda, Ukraine and Zambia) to be completed by May of 2018. These profiles are an invaluable introduction for businesses that are looking to make land-based investments in a given country, and are conscientious about investing in an ethical and responsible manner.

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H. INDIGENOUS ISSUES

1. Expert Mechanism on the Rights of Indigenous Peoples

On July 10, 2017, Legal Adviser to the U.S. Mission in Geneva Katherine Gorove delivered a U.S. intervention at the first annual session of the Expert Mechanism on the Rights of Indigenous Peoples ("EMRIP") since its expansion to seven members as a result of the HRC mandate reform resolution (33/25) adopted in September 2016. See *Digest 2016* at 229-40 for discussion on the resolution on EMRIP reform. Ms. Gorove's remarks are excerpted below and available at <https://geneva.usmission.gov/2017/07/11/item-3-new-mandate-of-the-expert-mechanism-on-the-rights-of-indigenous-peoples-activities-and-methods-of-work/>.

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The United States thanks the EMRIP Chair for his presentation on EMRIP's mandate, as amended by Human Rights Council Resolution 33/25. We would like to join others in welcoming new members to the mandate this week. We are at the stage when stakeholders are determining how the resolution will be implemented, and we offer the following comments for your consideration.

The U.S. government and U.S. tribal leaders place priority on reforming EMRIP so that it can better help member states achieve the goals of the UN Declaration on the Rights of Indigenous Peoples. In this regard, tribal leaders say that EMRIP can usefully call attention to immediate and systemic concerns of indigenous peoples and suggest ways to address them. The

activities in the resolution's [operative paragraphs] 2 and 9—including identifying and promoting good practices, providing technical advice upon States' request, and requesting and receiving information from relevant sources—empower EMRIP to do this. We recommend that the technical advice offered should further awareness-raising and capacity-building.

Although EMRIP's involvement with a particular Member State is voluntary, as a country has to initiate requests for technical assistance, we encourage States to utilize this tool to better the situation of their indigenous peoples. With EMRIP's revised functions, we have a mechanism in place ready to assist some of the world's most vulnerable populations.

Many stakeholders support a coherent, coordinated approach throughout the UN to promote and protect the rights of indigenous peoples. The resolution reinforces this by calling for coordination between EMRIP, the Special Rapporteur on the Rights of Indigenous Peoples, the Permanent Forum for Indigenous Issues, the UN Voluntary Fund for Indigenous Peoples, and other UN bodies and processes. It also asks that EMRIP and the Special Rapporteur not duplicate each other's work. We suggest that the topics of EMRIP's annual studies to the HRC differ from the subjects of the Special Rapporteur's reports. Both the EMRIP and Special Rapporteur reports can examine situations that are inconsistent with the ends of the Declaration as well as good practices.

Although the EMRIP reform resolution came with a [Program Budget Implication] of roughly \$2.5 million, we accepted this because EMRIP needs additional resources to carry out its expanded mandate. Duplicative functions among UN entities working on indigenous peoples will gradually be reduced, and the near-term PBI will result in savings in the long run.

Stakeholders can be proud of the EMRIP reform resolution of last fall. Developing and adopting the resolution allowed stakeholders to reform an existing UN institution to help fulfill an important purpose: achieving the ends of the Declaration. It is not often that opportunities arise in the UN to do this.

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2. Enhanced Participation

See *Digest 2016* at 240-51 and *Digest 2015* at 226 regarding the UN General Assembly's dialogue on "ways to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them," or "enhanced participation." This endeavor followed up on a recommendation made in the Outcome Document of the 2014 World Conference on Indigenous Peoples. The U.S. State Department continued its conversations with U.S. tribal representatives about enhanced participation and other topics in 2017. The United States also continued to engage with the four advisers on enhanced participation, appointed by the President of the General Assembly in 2016, and actively participated in negotiations that resulted in the adoption of General Assembly Resolution 71/321 in September 2017.

On January 26, 2017, the United States held another consultation with U.S. tribal representatives. The remarks by James Bischoff of the Department of State's Office of the Legal Adviser at the consultations are excerpted below.

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[Selection Criteria]

Because this GA process is focused on indigenous representative institutions, the selection criteria must identify those who truly represent indigenous peoples. Some indigenous peoples have governments, like those in the United States, while other indigenous peoples organize themselves differently and lack formal governments. Because of these diverse indigenous organizational structures, it is often not easy to distinguish entities that actually represent an indigenous people or peoples from those who falsely make that claim.

The United States has said that the selection body should use a non-exhaustive and flexible set of criteria to evaluate applications for enhanced participation. Self-identification would be an indispensable factor. Government recognition would be important, but cannot be an absolute requirement. In some countries, there is no recognition process. In others, the government refuses to acknowledge that indigenous peoples live in the country. ... India's view is that the entire population is indigenous. We think that approach is not sufficiently precise. Other factors we suggested include ancestral connections with lands, territories, or resources; a shared history, indigenous language, or indigenous culture; and self-governance. Other countries have made similar proposals.

But certain countries want more control over the process. They want the final say over which groups within their countries, if any, get to participate in the UN in their own right. This viewpoint has manifested itself in two different ways.

First, some countries—notably China—want some sort of government veto power over the accrediting body's selection of an indigenous institution for enhanced participation. This could take the form of a "non-objection" procedure. When the accrediting body designates a particular indigenous institution for enhanced participation status, the government of [the] country where the indigenous institution is located would have a certain amount of time to object to the accreditation, essentially vetoing it.

A variation on this process is that an indigenous representative institution could not receive accreditation without state recognition. Under this scenario, a country's government could prevent accreditation by withholding domestic recognition.

Second, other nations—notably India—have proposed that the UN General Assembly resolution establishing this process provide a definition of what constitutes an "indigenous people." The accrediting body would then use this definition when evaluating applications.

As a definition, India has suggested using language drawn from Article 1(b) of [International Labor Organization] Convention 169 on Indigenous and Tribal Peoples. This wording says that the Convention applies to peoples regarded as indigenous because they descended from populations that inhabited the country at the time of conquest, colonization, or the establishment of present state boundaries.

India's proposal omits the Convention's Article 1(a), which says that the Convention also applies to "tribal peoples" in independent countries whose conditions distinguish them from other sections of the national community and whose status is regulated by their own customs or traditions.

... India has hundreds of tribal peoples which it does not regard as distinct indigenous peoples. According to India, all Indians are indigenous and the central government adequately protects their rights. India does not want every culturally and linguistically distinct group to claim greater status through the UN's enhanced participation process. Many Asian nations share this concern, fearing that if certain groups are given enhanced status in the UN, they will use that

status to amplify their concerns both internationally and domestically, potentially leading to ethnic strife or even conflict in their countries.

But arriving at a definition of “indigenous” that satisfies everyone is extremely difficult to do. That is why the UN Declaration does not contain a definition of indigenous peoples.

The U.S. delegation had initial reactions to India’s call for a definition. We noted that if only the second prong of the ILO definition is used, most Asian and African indigenous peoples would be excluded. Unlike the Americas and Australia, for example, those countries are not populated today by a majority of European descent. If this definition is used in other contexts, the UN Declaration would not apply to what we and others regard as a significant portion of the world’s indigenous populations. The U.S. position has always been that indigenous peoples exist throughout the world. This is consistent with the view of Special Rapporteurs and many independent experts.

We suggested that perhaps the draft UNGA resolution could specify that the accrediting body’s determinations would only be for the purposes of enhanced participation, and would not definitively determine who is an indigenous people for any other purpose. Some ... nations, indigenous representatives, and the four advisers also spoke against having a definition.

But such a solution will likely not satisfy India, China, and other states. They are concerned about the prospect of a UN body granting enhanced participation to certain tribal groups in their countries without the central government’s consent.

At the end of the day, we may be faced with a stark choice: acquiesce to a procedure that allows states to veto accreditation decisions; make state recognition a requirement for accreditation; or define “indigenous” such that it applies only to indigenous peoples in “colonized” countries. The alternative may be that the entire exercise ends in failure due to lack of consensus.

Several months of consultations and negotiations remain. In order to arrive at a definitive position on this difficult question, we want to flag it for your consideration and hear your views. We also welcome any other views you may have about selection criteria.

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On January 30, 2017, the United States met bilaterally with the four advisers to share its views on enhanced participation. On January 31, the advisers held public consultation sessions with states and indigenous peoples’ representatives on the effort’s four main topics. The United States delivered interventions on each topic. The U.S. interventions are excerpted below and available at <https://www.state.gov/s/l/c8183.htm>. First, below is the U.S. intervention on “venues of participation,” delivered by U.S. Delegate Linda Lum.

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The United States supports enhanced participation procedures for appropriate UN bodies and meetings throughout the entire UN system. These are meetings on issues affecting indigenous peoples, and on which indigenous peoples have perspectives which can inform the discussion,

There are many UN entities working on the diverse set of topics which affect or are of particular interest to indigenous peoples and their governing institutions. Along with the Permanent Forum on Indigenous Issues and EMRIP, examples of these are ECOSOC and its subsidiaries; the Human Rights Council which is a GA subsidiary; and certain sessions of the General Assembly Second and Third Committees. Among the UN funds and programs, these would include UNCTAD, UNDP, UNEP, UNFPA, UN-HABITAT, UNHCR, UNWRA, UN Women, and WFP. Among the specialized agencies, these would include the ILO, FAO, UNESCO, ICAO, IMO, WIPO, and IFAD.

This is not an exhaustive listing. Rather, these organizations strike us as the ones most relevant to indigenous peoples. The United States welcomes continued dialogue with indigenous peoples on what additional UN bodies are of particular interest to them.

As others have said, the General Assembly is, of course, not authorized to establish procedures for the other UN Charter-based organs—namely ECOSOC and the Security Council—or for many of the UN programs, funds, and specialized agencies.

To accommodate this reality, we see merit in the idea of including language along the lines of other General Assembly resolutions that “request the Secretary-General” to take certain actions and then “urge,” “encourage,” or “invite” other UN entities to do the same.

On whether indigenous institutions should participate in both open and closed UN meetings, the United States supports indigenous institutions’ participation in open UN meetings. Closed meetings should be reserved for member states and member state observers, as there are some issues which may require deliberations among state-centered actors only in order to be productively resolved.

We agree that granting enhanced participation privileges to indigenous institutions should not undermine the intergovernmental nature of the UN.

On the appropriate nomenclature, the terms “permanent observer status” and “consultative status” have connotations that are unhelpful to our present aim of enhancing participation for indigenous governing institutions. Because this is uncharted territory, we can reflect further on the appropriate terms to use in the draft General Assembly resolution.

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Next follows the U.S. intervention on “Participation Modalities” (Segment 2), delivered by Ms. Lum on January 31, 2017.

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On participation modalities, the United States supports a new and separate category for indigenous representative institutions. They would have this unique status and be identified in the UN as such, and have their own participation procedures and selection criteria.

Establishing this new category for indigenous representative institutions would not affect how NGOs working on indigenous issues participate in the UN now. NGOs can seek to participate through the NGO accreditation process.

During the April 2016 online consultation, the United States suggested a new set of participation procedures that uses the current PFII procedures as a template and makes appropriate modifications. The new procedures would identify representatives of indigenous governing or analogous institutions and set forth rules for how they may participate. We have

brought copies of that mark-up with us today, and would be happy to share it with anyone who wants to see it.

We envision that the new procedures would enable indigenous governing institutions to attend sessions of the relevant UN bodies, submit written input, and make oral statements in accordance with a meeting's rules of procedure.

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Next follows the U.S. intervention on "Selection Mechanism" (Segment 3), delivered on January 31, 2017 by Mr. Bischoff.

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We continue to believe that a new body is needed, as opposed to using existing bodies such as the PFII, EMRIP, and the NGO Committee. The new body should consist of state and indigenous representatives.

It would appear that the body would have to exist within the General Assembly as opposed to ECOSOC, because of the institutional division of responsibilities within the UN.

Both the member state and indigenous members be chosen from the UN's seven indigenous socio-cultural regions, rather than the UN's five geographic regions, following the lead of the Permanent Forum and now EMRIP. Focusing on the seven regions for the selection mechanism would make it appropriately representative of the world's indigenous population.

We do not have an exact number of members in mind. There should be enough members to handle the workload, but not so many that decision-making would be unwieldy. Fourteen—seven indigenous representatives and seven state representatives—may be workable at first. The appropriate number would depend on the number of incoming applications. It also seems likely that even if 14 are needed to handle an initial surge of applications, this number may need to be reduced as time goes on and we settle into a more steady state.

We do not yet have a set position on the number of annual in-person meetings the body would have—whether one, two, or three would be enough. Video meetings and other electronic means can and should augment the in-person sessions to increase efficiency and keep costs down.

The selection body should determine its own working methods, guided by cost considerations, fair decision-making, and efficiency. Because the PFII Secretariat has expertise in vetting applications, it may be able to provide important support to the selection mechanism, though this needs further thought since the Permanent Forum is an ECOSOC subsidiary and this is a General Assembly body.

We envision that an applicant seeking enhanced participation privileges would respond to a questionnaire and submit supporting documentation. This process would probably be better than oral testimony, at least in most instances. Oral testimony is expensive to arrange.

Deliberations on the applications should be private to allow for frank discussion, but to further transparency into how decisions are made, the selecting mechanism should provide the reasons for its negative decisions in writing.

The body should aim to work by consensus. Because the selection mechanism cannot be efficient unless decisions are made in a timely way, firm deadlines should be set for processing applications.

The selection mechanism should have the final say on who receives enhanced participation privileges, without the General Assembly having to affirmatively approve its decisions, or being able to veto its decisions.

On financial considerations, we would follow the usual practice and ask the Secretariat about the UN budgetary implications associated with the selection mechanism. Containing costs and ensuring efficiency remains a U.S. priority.

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Next follows the U.S. intervention on “Selection Criteria” (Segment 4),
delivered on January 31, 2017 by Mr. Bischoff.

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The United States agrees with most of the Selection Criteria section of the Elements for Discussion paper. Because this General Assembly process is focused on indigenous representative institutions, the selection criteria must identify those who truly represent indigenous peoples. Indigenous peoples, of course are not the same thing as ethnic or national minorities.

The selection body should use a non-exhaustive and flexible set of criteria to evaluate applications for enhanced participation. Self-identification would be an essential factor. Government recognition would be important, but cannot be an absolute requirement because some countries do not have a domestic recognition process. We agree with the Elements Paper that other relevant factors include, but are not necessarily limited to, ancestral connections with lands, territories, or resources; a shared history, indigenous language, or indigenous culture; and self-governance.

As Professor Anaya said, these flexible factors are drawn from decades of UN practice and that of regional human rights bodies, and they have been applied to identify indigenous peoples in all regions of the world. So we are not in completely uncharted waters.

Once given enhanced participation status, indigenous institutions should have the authority to designate their own representatives through their own procedures.

We agree that the goal should be to extend enhanced participation status to indigenous peoples’ representatives from all regions. But we should not require that an equal number of indigenous governing institutions be accredited for each of the seven socio-cultural regions. Because of variations in population, numbers of indigenous peoples and their distribution, and how many actually apply for enhanced participation, the number of indigenous institutions ultimately accredited will almost certainly vary from region to region.

The accrediting body’s determinations are only for the purpose of enhanced participation, and not for any other purpose. It may be useful to state this clearly in an [operative] paragraph of the draft GA resolution.

Some countries want a government veto power over the accrediting body's selection of an indigenous institution for enhanced participation. We do not support having states use a non-objection procedure in the General Assembly to decide on accreditation. A non-objection procedure would potentially exclude 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.

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On February 15, 2017, the four advisers released an updated Elements Paper and they hosted a further round of UN consultations on February 28, 2017. Excerpts follow from the U.S. interventions on the Elements Paper's sections entitled "Decision," "Venues of Participation," and "Participation Modalities," delivered by Ms. Lum.

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In the Paper's "Decision" section, the United States supports establishing a distinct participatory status for indigenous peoples' representative institutions. This new status would be unique to indigenous institutions, and would not set a precedent for any other action or status for any other group. The new status would in no way undermine the UN's intergovernmental character. The Elements Paper's explicit language to this effect should be enough to assuage any remaining concerns to the contrary.

The "Decision" correctly goes beyond the suggestion of some member states that it would be enough simply to fine-tune existing indigenous mechanisms, rather than establish a new status for indigenous representative institutions' participation in other UN bodies. It serves to recall that all member states committed, by consensus, to the goals set forth in the World Conference outcome document. This includes the goal that led to the process we are currently undertaking. So it is unfortunate that a number of States have stepped forward recently to express skepticism about this entire exercise. ...

[We also suggest adding language clarifying that] the selection mechanism is not empowered to decide who is indigenous or who is a people for any purpose or status other than participation in UN bodies on issues affecting them. The selection mechanism does not, and cannot, have the power to make such sweeping determinations.

... It is particularly important to make clear that indigenous representative institution status in no way undermines the participatory rights that NGOs currently enjoy.

On the "Venues of Participation" section, the verbs in the chapeau paragraph should be changed so that UNGA itself decides to enable participation in UNGA and its subsidiary bodies, and "urges/encourages/invites other bodies and organizations throughout the UN system to consider enabling participation." ...

The "Options" paragraphs that follow attempt alternative solutions to two of the most complicated issues still before us in these consultations, but which are still underdeveloped.

First, in what UN bodies would indigenous representative institutions participate? Second, what do we mean by “issues affecting them?” This is a vague term that comes directly from the World Conference outcome document. Who decides what issues affect indigenous peoples? Would such decisions be made on a meeting-by-meeting basis, or *ex ante* in this UNGA resolution?

We may be able to avoid having to answer the question about “issues affecting them” by allowing indigenous representative institutions to participate in any open meeting or conference in specified UN bodies. This was our proposal during the previous rounds of consultations last month. We had named UNGA subsidiaries and other entities that seemed to us to be the most relevant to indigenous peoples, adding that our list was not exhaustive and welcoming suggestions on refining the list. That remains the U.S. position. ...

* * * *

[With respect to “Participation Modalities,] [t]he United States agrees that the new participation procedures should enable indigenous representative institutions to attend sessions of the relevant or specified UN bodies, submit and distribute written input, and make oral statements in accordance with the venue or meeting’s rules of procedure.

We also concur that the resolution should specify that indigenous representative institutions would not be allowed to vote; raise points of order; deliver rights of reply; propose draft resolutions or new agenda items; routinely negotiate resolutions; or submit, propose amendments to, or co-sponsor resolutions. These are responsibilities reserved for member states, and in some instances, non-member observers. ...

On how to equitably allocate speaking slots and time limits, it would be more fair and efficient to have indigenous governing institutions inscribe on a first-come, first-served basis, rather than trying to divide the time equally among the seven indigenous regions. As we have emphasized at past consultations, indigenous representative institutions from all seven regions should always have the opportunity to be selected for participatory status and to provide input at meetings, but it may be that not all regions are equally represented in each meeting. ...

* * * *

At the February 28, 2017 consultations, Mr. Bischoff delivered additional U.S. interventions on other sections of the advisers’ February 15 Elements Paper, including on “Selection Criteria” and some states’ suggestion that a definition of “indigenous” was needed. Excerpts follow.

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... It is important to underscore that the enhanced participation process originates from a consensus decision by member states, particularly since some states, based especially on what was said in interventions during the January consultations, seem to be skeptical about this entire exercise. ...

Paragraph 12, on ensuring that indigenous peoples from all regions have the opportunity to participate in the United Nations, is also needed. This relates to a point we have stressed numerous times. This process is about giving indigenous peoples from all regions the opportunity for enhanced participation, a point well made by this formulation. The process should not require precise geographical parity among indigenous representative institutions ultimately selected, nor precise parity in speaking slots in discrete meetings.

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... The selection mechanism's determinations are only for the purpose of granting enhanced participation privileges for indigenous representative institutions. The body's decisions should not be interpreted as sanctioning broader determinations about who is and who is not indigenous—or a “people”—for any other purpose, nor should its decisions affect any other groups' participatory rights in UN bodies. This resolution should not serve as a precedent for affecting or expanding the participatory rights of any other group. We can draft it so that it does not create any such precedent. Concerns that we cannot safeguard against unintended consequences are misplaced.

We agree the correct approach to selection determinations is a set of criteria flexibly applied, not a prescriptive definition. I will speak more to this in a moment.

The two paragraphs about the diversity of indigenous peoples across the world are helpful. This same language was critical in order to satisfy concerns of the Africa Group during Declaration negotiations. We would add, after “is in fact indigenous,” “... for purposes of indigenous representative institution status.”

We agree that self-identification is a key criterion and that state recognition is important but not indispensable. We agree with the other criteria, which derive from decades of consistent UN practice dating at least as far back as 1986.

We are not certain, though, that self-identification plus state recognition would, in all cases, be sufficient if none of the other criteria were present. So we would suggest adding language to give the mechanism the ability to look at the other criteria exceptionally even where the state recognizes the applicant. ...

We also agree with language on review of these procedures, perhaps after five years, to improve them as appropriate. This seems far better than the tepid “wait and see” approach that several have advocated today.

If I may take a moment to turn back to one of the key questions in these consultations: whether we need a prescriptive definition of “indigenous,” as several of our Asian friends have posited. This idea resurrects a very contentious debate from negotiations of the Declaration, where some governments insisted on a definition, but most governments and indigenous peoples felt that a definition was neither necessary nor desirable.

Amid this phase, the late Chairperson Erica-Irene Daes conducted two analyses, in 1995 and 1996. She concluded that indigenous peoples are “not capable of a precise, inclusive definition, which can be applied in the same manner to all regions of the world.” She proposed instead a programmatic approach that flexibly considers certain factors that may distinguish indigenous peoples from other groups, such as whether the group was already present at the time of the arrival of other groups with different cultures, voluntary perpetuation of cultural distinctiveness, self-identification, and an experience of subjugation. As time went on, the debate

over a definition became less and less central to the negotiations. Eventually, governments dropped their insistence on a definition. The Declaration contains no definition.

Professor Anaya, in his capacity as Special Rapporteur [on the Rights of Indigenous Peoples], opined in several studies that certain Asian and African groups were indigenous, despite the adjacent presence of other ethnically similar groups for centuries, due to factors such as self-identification, a history of subjugation within a pattern of encroachment, and a set of human rights problems they commonly face related to their distinct group identities.

The African Commission on Human and Peoples Rights has also opted to follow what it deemed the “UN approach,” focusing not on a strict definition but on the major characteristics that identify indigenous peoples in Africa—those whose cultures and ways of life differ from the dominant society and are under threat, and who are marginalized and subjugated by the dominant parts of society, even where that dominant society is itself primarily of African descent.

It is true that ILO Convention 169’s Article 1—which is not a definition but a “scope of application” provision unique to that treaty—could be read to create a dichotomy between “indigenous” peoples (basically, those who live in countries overtaken by settlers from Europe or elsewhere) and “tribal” peoples (those who live in countries whose societies were not overrun from afar).

But we should recall two points. First, that Convention is very sparsely ratified, with only 22 parties, and even its predecessor Convention 107 only had 27 parties. Second, in practice the two prongs have not generally been applied in isolation from one another. As Chairperson Daes said in her 1996 study, the indigenous/tribal distinction “is of no practical consequence, since the Convention guarantees both categories of people exactly the same rights.” We are aware of no precedent for excising one prong of Article 1 for use in another context to the exclusion of the other prong. Daes also opined that drawing a line between “colonized” groups and other groups would create an “unjustified distinction” between long- and short-distance subjugation, and that it was “logically impossible to establish a cut-off distance.” Daes concluded there was “no satisfactory reasoning for distinguishing between ‘indigenous’ and ‘tribal’ peoples” in the UN’s practice. The Secretariat of the Permanent Forum reached the same conclusion in a 2004 study.

In sum, decades of practice in the international arena have favored the programmatic approach of applying flexible criteria in addition to self-identification. Past attempts at a prescriptive and exclusive definition of “indigenous” have failed, and they will likely meet a similar fate if pursued further in this setting.

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On April 21, 2017, the four advisers released a “zero draft” of an enhanced participation General Assembly resolution, taking into account input received during the several rounds of consultations. In April 2017, the annual UN Permanent Forum on Indigenous Issues session was held with the theme of celebrating the 10th anniversary of the UNDRIP. The United States held a listening session with U.S. tribal representatives on April 26 at which enhanced participation was discussed, among other topics. During an April 28 plenary meeting of PFII, States and indigenous peoples’ representatives discussed enhanced participation, among other topics. U.S. delegate Linda Lum delivered the U.S. intervention, excerpted below.

* * * *

The topic of enhancing the participation of indigenous representative institutions at the UN has been on stakeholders' minds for decades. Indigenous representative institutions should not, as current procedures dictate, be required to obtain ECOSOC nongovernmental organization status to take part in UN meetings. The fact that disagreement remains on how to correct this demonstrates that the issue raises extremely complex legal and policy considerations.

It would benefit us all to find appropriate ways to enhance the participation of indigenous representative institutions. We have seen instances when a broader range of views have informed UN debates. ... During the consultation process with the four advisers, it was reiterated that the UN must remain an organization that is intergovernmental in nature; that the sovereignty and territorial integrity of states must be respected; and that the current process focused on indigenous representative institutions must not serve as a precedent for affecting or expanding the participatory rights of any other group. No one has challenged these principles.

While disagreements remain on certain proposals put forward for enhanced participation, there are some areas that have attracted broad agreement. This gives us hope that there will be significant progress on enhancing the participation of indigenous representative institutions as appropriate when the exercise concludes. The United States is committed to working toward this goal.

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Separately during the PFII session, the four advisers held two consultations (on April 26 and May 3, 2017) to hear states' and indigenous representatives' initial views on the zero draft. The four advisers also held one-on-one meetings with member states to discuss the zero draft.

State-to-state negotiations began on May 5, 2017, and continued into the summer. The negotiations revealed significant disagreements among states, far more than states had apparently been willing to publicly express during the winter 2016–17 consultations. The advisers released a revised draft of the resolution on May 19, 2017 that was the subject of further state-to-state negotiations on May 25 and 26. Some states expressed concerns about unforeseen consequences from granting broad participatory rights to indigenous peoples' representative institutions in the General Assembly, and the negotiations demonstrated persistent disagreement about how states might object to accreditation for participation by a particular representative institution.

A further round of state-to-state negotiations took place on June 9, 2017, in which an influential group of states continued to oppose the initiative entirely or to express serious concerns about key elements. A final round of negotiations on a revised draft of the resolution likewise failed to result in consensus on a substantive text.

On July 12, 2017, as part of EMRIP's annual meeting, a public session was held that took stock of enhanced participation negotiations. The United States delivered a statement expressing disappointment that the negotiations on enhanced participation

had not resulted in consensus. The U.S. intervention is available at <https://geneva.usmission.gov/2017/07/12/emrip-item-7-indigenous-peoples-participation-in-the-un-system/>. Excerpts follow.

* * * *

Indigenous peoples' effective participation in the UN system is a top priority for the United States, and we have long championed hearing indigenous peoples' perspectives at the UN. For more than a year, stakeholders have considered how to enhance the participation of indigenous peoples' representative institutions in UN sessions. Demonstrating our commitment to this process, the U.S. government regularly held consultations with U.S. tribal leaders and NGO representatives to determine how best to proceed in advancing a UN General Assembly resolution on enhanced participation of indigenous peoples' representative institutions in UN bodies. Last week intergovernmental negotiations in New York drew to a close. Despite the best efforts of the four advisers, many member states, and indigenous peoples to craft a substantive consensus Chair's text, agreement could not be reached. Instead, the UN General Assembly will likely adopt a short and procedural text that calls for continued consideration of the topic.

The United States is disappointed that these differences could not be resolved, in part due to extremely complex policy considerations, but also due to many states' concerns about the consequences of UN participation for indigenous communities in their territories.

Despite this unfortunate setback, the United States takes a firm view the participatory rights that indigenous peoples already have at the UN—exercised by indigenous peoples' representative institutions and non-governmental organizations—as the baseline requirement that should not be diminished. We will continue to support and encourage indigenous groups to participate in meetings of interest to them, through non-governmental organizations or other means, in Geneva, New York, or elsewhere. The United States will continue to work to advance the rights of indigenous peoples set forth in the UN Declaration on the Rights of Indigenous Peoples, and encourages other member states to do the same.

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On July 20, the advisers released a much shorter draft resolution that removed the key substantive elements of the prior drafts. This draft called for, *inter alia*, further discussion of the issue in the UN General Assembly and a report by the Secretary-General on enhanced participation.

On August 10, the advisers circulated a final compromise draft of the resolution. In its key parts, the resolution welcomed the dialogue that had occurred since 2016; encouraged PFII, EMRIP, and the Special Rapporteur on the Rights of Indigenous People to "continue addressing enhanced participation;" encouraged further efforts by UN bodies to address enhanced participation through inclusion of indigenous representatives in modalities meetings, and the like; requested the Secretary General to report to the General Assembly by 2019 to issue a report with recommendations on further measures to enable participation, and to seek input from States and indigenous

peoples in compiling the report; and decided to continue consideration of the issue in 2020.

The General Assembly adopted this resolution, with minor modifications, by consensus on September 8, 2017 as Resolution 71/321. The United States joined consensus on the resolution and did not issue an explanation of position, having already expressed its disappointed views during the July EMRIP session.

3. U.S. Visit and Report by Special Rapporteur on the Rights of Indigenous Peoples

In February 2017, the Special Rapporteur on the Rights of Indigenous Peoples conducted a country visit to the United States. In August 2017, she submitted her report to the HRC on her visit to the United States (U.N. Doc. A/HRC/36/46/Add.1). At the 36th session of the HRC in September, during the annual dialogue with the Special Rapporteur and the EMRIP Chair, the United States provided a statement on the Special Rapporteur's report, delivered by Katherine Gorove. That statement follows and is available at <https://geneva.usmission.gov/2017/09/20/interactive-dialogue-with-the-special-rapporteur-on-the-rights-of-indigenous-peoples-and-emrip/>.

* * * *

The United States thanks Special Rapporteur Tauli-Corpuz for her presentation. During the Special Rapporteur's ... visit to the United States, our federal agencies welcomed the opportunity to outline their efforts on behalf of U.S. indigenous peoples. We would like to comment on her report on the SR's visit, which focused on extractive industries.

The report makes helpful recommendations on actions the U.S. government can take to assess the environmental and health effects of infrastructure projects on indigenous peoples. It also contains useful proposals on how to address violence against indigenous women and girls.

There are, however, some assertions and conclusions in the report with which the United States respectfully disagrees. For example, the report concludes that the U.S. government's framework for consultations with tribal leaders—including those on energy and infrastructure projects—result in ad hoc application on an agency-by-agency basis, lack accountability, and are ineffective [para. 14]. We would like to clarify and highlight that several U.S. government agencies routinely consult with tribal governments on energy and infrastructure issues in accountable and effective ways that allow for tribes' timely and good faith involvement. We take our tribal consultation responsibilities seriously and strive to involve senior-level officials and other subject-matter experts, as appropriate. The United States has a complex statutory and regulatory framework in place governing federal decisions on various aspects of energy and infrastructure projects that affect when and how consultations with federally recognized tribes may occur. Each statute, regulation, order, policy, and protocol must be considered individually and in relationship with each other to determine how best to conduct government-to-government consultations with Indian tribes. Moreover, the uniqueness of each tribal entity must also be taken into account. Because of these factors, there is no single consultation model appropriate

for all situations, and the form a particular consultation should take needs to be tailored to each instance.

The United States also respectfully disagrees with the assertions and conclusions in the report that the U.S. government did not hold the required consultations on the Dakota Access Pipeline [paras 26 and 64]. We conducted numerous consultations with affected Indian tribes over a period of three years for the areas under our jurisdiction.

Finally, the report's closing section, entitled "Criminalization of Indigenous Dissent" [paras. 93-95], gives the misimpression that dissent by indigenous persons is criminalized in the United States. No indigenous activist has been jailed on charges of dissent in the United States. While the U.S. Constitution's First Amendment protects disagreement with policies of the U.S. government, violent acts in response to government policies are illegal and subject to all lawful sanctions.

Turning now to the thematic report and presentation of the Special Rapporteur, focusing on climate change and its impacts on indigenous peoples, we wish to highlight a few of our efforts. We have acted to reduce the impacts of climate change on indigenous communities. A partnership of federal agencies and organizations led by the National Oceanic Atmospheric Administration (NOAA) established the online Climate Resilience Toolkit, which helps the general public and indigenous tribes plan for and adapt to climate change. In 2016 the [Department of the Interior's] Bureau of Reclamation provided tribes with more than \$6 million in grants and technical assistance to adapt to the impact of severe drought affecting tribes in several U.S. states. The funds helped tribes create comprehensive drought response plans and improve existing water facilities. The DOI also gave almost \$3 million in technical assistance grants to help tribes develop, maintain, and protect their water and related resources.

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4. Annual Thematic Resolutions on the 10th Anniversary of the UNDRIP

2017 marked the 10th anniversary of the UN Declaration on the Rights of Indigenous Peoples ("UNDRIP"). U.S. statements at the Permanent Forum on Indigenous Issues ("PFII") annual session, the EMRIP's annual session, the HRC's September session, and the UN General Assembly made note of the anniversary and U.S. support for the UNDRIP. As discussed in Chapter 7, the United States also confirmed its support for the UNDRIP in proceedings before the Inter-American Commission on Human Rights in September 2017.

On April 25, 2017, U.S. delegate Linda Lum delivered a statement at the PFII session addressing the anniversary and the measures taken to implement the UNDRIP. That statement follows.

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On the tenth anniversary of the UN Declaration on the Rights of Indigenous Peoples, the United States joins all stakeholders in highlighting progress toward achieving its goals. The U.S. government maintains a government-to-government relationship with U.S. federally recognized

tribes, and honors its trust responsibility to federally recognized tribes. U.S. agencies look to the Declaration as they work to help improve conditions in federally recognized and, as appropriate, other indigenous communities. Moreover, agencies consult regularly with tribes about proposed actions implicating tribal interests. At this time, ten federal agencies collaborate on supporting the Declaration. In a December 2016 interagency training session, participants developed a deepened understanding of the Declaration and identified opportunities for further cooperation.

At the 2016 White House Tribal Nations Conference, Secretaries in the Executive Branch of the U.S. government, other senior U.S. officials, and tribal leaders gathered to have constructive discussions, including on issues that are prominent within the UN Declaration. The most recent 2016 White House Tribal Nations Conference Progress Report, entitled “A Renewed Era of Federal-Tribal Relations,” is online and describes the many tribal-related policies and programs in place in the United States.

Bearing in mind that international repatriation, environmental protection, and cultural preservation are areas that the Declaration covers, we would like to mention some recent developments.

Led by the Departments of State, Interior, Justice, and Homeland Security, the U.S. government works to strengthen mechanisms for international repatriation. We support Native American tribes and Native Hawaiian organizations in their efforts to repatriate sensitive cultural items, including sacred objects, objects of cultural patrimony, ancestral remains, and funerary objects. U.S. officials have initiated dialogue with French authorities regarding auction sales held in Paris which are of great concern to Native American tribes. The U.S. government also supports tribal efforts to repatriate ancestral remains and other cultural heritage items held by foreign museums or collectors in several European nations. We appreciate cooperation from other member states on these efforts.

Nine government agencies signed a September 2016 Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights, which commits to protecting tribal treaty rights in agency decision-making processes.

Consistent with its 2013 “Plan to Support the UN Declaration on the Rights of Indigenous Peoples,” the Advisory Council on Historic Preservation has issued formal guidance for federal agencies on how the Declaration and U.S. historic preservation regulations intersect. The Advisory Council is preparing a report on “The National Historic Preservation Act as a Model for the Protection of Sacred Places in Other Nations,” and plans to complete the report this year.

As a final point, we applaud the adoption of the September 2016 HRC resolution on the Expert Mechanism on the Rights of Indigenous Peoples. That resolution empowers EMRIP members to call attention to abuses and other areas requiring attention, enabling it to respond more effectively to member states and indigenous peoples’ concerns. Kristen Carpenter, a U.S. expert, will be serving a one-year term on EMRIP.

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On July 12, 2017, the U.S. intervention at EMRIP addressed the topic: “Ten Years of the Implementation of the UN Declaration on the Rights of Indigenous Peoples: Good Practices and Lessons Learned.” That intervention is excerpted below.

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The United States is pleased to take part in this interactive dialogue, and thanks EMRIP for its preliminary report on implementing the UN Declaration on the Rights of Indigenous Peoples. We are committed to improving the situation of indigenous peoples in the United States and throughout the world, including through achieving the objectives of the Declaration. While progress has been made toward achieving the ends of the Declaration, we recognize that more must be done. We are pleased that, as the draft report notes, the UN human rights treaty bodies and the Universal Periodic Review process are examining the situation of indigenous peoples throughout the world, including with regard to the aspirational goals set out in the Declaration. We commend the report's mention of human rights defenders who work in defense of the Declaration's goals.

In the United States, U.S. agencies across the federal government look to the Declaration as they work to improve conditions for federally recognized tribes and, as appropriate, for other indigenous communities. In addition, agencies consult regularly with tribes about proposed actions affecting tribal interests.

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The U.S. Agency for International Development is expanding its engagement with indigenous peoples by integrating consideration of their rights into all of its projects and programs. USAID is in the process of drafting an Indigenous Peoples Policy and developing ways to facilitate its effective implementation.

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On September 29, 2017, Jason Mack delivered the U.S. explanation of position on the annual resolution on human rights and indigenous peoples at the 36th session of the HRC. U.N.Doc. A/HRC/RES/36/14. His statement explains why the United States could join consensus on the resolution but could not, for the first time in several years, cosponsor it. The U.S. explanation of position is excerpted below and available at <https://geneva.usmission.gov/2017/09/29/u-s-explanation-of-position-on-indigenous-peoples-hrc36-resolution-l-27/>.

* * * *

We thank Guatemala and Mexico for the annual resolution on human rights and indigenous peoples. We were disappointed that we could not reach a compromise on language that would have allowed us to co-sponsor this resolution. The United States welcomes the tenth anniversary of the UN Declaration on the Rights of Indigenous Peoples—an instrument with significant moral and political force that the United States looks to in its dealings with federally recognized Native American tribes—even though the Declaration is not itself binding and does not state or reflect international law.

While the Declaration has helped inspire the development of domestic laws in some countries and has influenced the development of guidelines such as the World Bank Safeguards and the Organization of American States' nonbinding American Declaration on the Rights of Indigenous Peoples, the phrase "progressive development" in preambular paragraph 3 could have broader implications than would be appropriate or factually accurate.

For this reason, we asked for the removal of the word "progressive" and it is unfortunate that our recommendation was not accepted.

As is well known, the United States places priority on promoting the rights and well-being of indigenous peoples in relevant UN processes and forums. We were pleased to play an active role in reforming the mandate of the Expert Mechanism on the Rights of Indigenous Peoples and in the UN General Assembly Process to enhance the participation of indigenous peoples at the UN. We hope to continue our active work in this body, promoting the rights of indigenous peoples.

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On December 19, 2017, the UN General Assembly adopted Resolution 72/155 on the rights of indigenous peoples. U.N. Doc. A/RES/72/155. Laurie Shestack Phillips had provided the U.S. explanation of position on the draft resolution on November 20, 2017. That statement is excerpted below and available at <https://usun.state.gov/remarks/8137>.

* * * *

Mr. Chair, the United States joins consensus on L.16, Revision 1 on the "Rights of Indigenous Peoples" Resolution and thanks Ecuador and Bolivia for helping us arrive at a consensus text.

In explanation of position, the United States reaffirms its support for the UN Declaration on the Rights of Indigenous Peoples, as explained in our 2010 Announcement of Support.

With regard to this resolution's references to the 2030 Agenda for Sustainable Development, we addressed our concerns in a detailed statement delivered earlier this morning.***

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

The United States made two submissions to the Committee Against Torture on the Draft Revised General Comment on the implementation of Article 3 of the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment ("the CAT"), in the context of Article 22. Written submissions to the Committee are available at <http://www.ohchr.org/EN/HRBodies/CAT/Pages/Submissions2017.aspx>.

*** Editor's note: The general statement delivered on November 20 is discussed in Section E.1, *supra*.

First, on March 31, 2017, the United States filed a joint response discussing Paragraphs 19-20 of Draft General Comment No.1 (2017), on behalf of itself along with Canada, Denmark, and the United Kingdom. The joint response, discussing non-refoulement, with a particular focus on diplomatic assurances, is excerpted below (with most footnotes omitted).

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3. It is the view of these States Parties that paragraphs 19 and 20 of the draft General Comment do not reflect the current practice of many States Parties to the CAT, and that the treatment of diplomatic assurances in the draft General Comment should take into consideration the many circumstances in which States Parties may use them to promote respect for the prohibition on torture and consistent with their obligations under Article 3.

4. Regarding paragraph 20, these States Parties also do not agree with, and are not aware of an accepted basis for, the assertion that diplomatic assurances are inherently “contrary” to the principle of non-refoulement provided for in Article 3. Although we agree with the Committee that assurances must not be used as a loophole to undermine the principle of non-refoulement, we note that when used appropriately, diplomatic assurances have served as an effective tool for States Parties to help ensure compliance with Article 3, including as a means of confirming that an individual would not face torture in a receiving State.

5. First, paragraph 20 refers specifically to assurances *provided by a State Party to the CAT*. Although the circumstances of every case must be assessed individually, it cannot as a logical matter be *per se* unlawful for a State Party to transfer² an individual to another State Party with an assurance that the receiving State Party will comply with its preexisting CAT obligations. Reaffirming CAT obligations is consistent with the object and purpose of the CAT, which is to “make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world.” The Committee’s recommendation as it stands may actually undermine the efforts of States Parties in certain situations to promote respect for the prohibition on torture in the context of transfers, both in an individual case and by encouraging improved standards more generally.

6. Second, as matter of practice, some States Parties might seek diplomatic assurances as a purely prudential matter, even in the absence of particular concerns that the individual in question is at risk of torture. This may be done for a variety of policy reasons, including to emphasize to a receiving State the importance that the transferring State Party places on humane treatment generally, independent of whether the transferring State Party has reached the conclusion that the specific individual in question may be in danger of being subjected to torture.

7. Third, as noted above, we agree with the Committee that diplomatic assurances cannot be used as a “loophole” to undermine the principle of non-refoulement, and we do not view them as appropriate in all cases. We strongly reject the suggestion that all transfers accompanied by such assurances are contrary to Article 3. Indeed, diplomatic assurances can be used precisely so as to avoid breaching the principle of non-refoulement. Article 3 itself states that “[f]or the purpose of determining whether there are [substantial] grounds, the competent authorities shall

² For purposes of this document, we refer to ‘expel, return (‘refouler’) or extradite’ as used in Article 3 collectively as “transfer” for ease of reading.

take into account *all relevant considerations*” (emphasis added). We do not agree that the commitments of a receiving State with regard to humane treatment of the individual or individuals to be transferred cannot constitute a “relevant consideration” for the purposes of Article 3. The essential question in evaluating any particular use of diplomatic assurances is whether, taking into account the content of the assurances, their credibility and reliability, and the totality of other relevant factors relating to the individual and the government in question, there are substantial grounds for believing that the individual would be in danger of being tortured in the country to which he or she is being transferred.

8. With respect to the definition of diplomatic assurances in paragraph 19, the Committee should account for the fact that, in practice, such assurances may include an express commitment by the receiving State to permit monitoring by the transferring State Party or by an independent third party for the purpose of verifying that the individual is being treated humanely, rather than simply an “undertaking” by the receiving State. Such monitoring mechanisms are intended to ensure that any diplomatic assurances can be verified as a safeguard against torture. Diplomatic assurances may be relied upon by a transferring State Party as one consideration in determining whether there are substantial grounds for believing that an individual would be in danger of being subjected to torture in the receiving State.

9. In light of these observations, these States Parties recommend that the Committee reconsider its sweeping conclusion in paragraph 20, and focus instead on the risk that diplomatic assurances could be used to undermine the principle of non-refoulement in certain circumstances. We urge the Committee to acknowledge that diplomatic assurances that are used properly and that are assessed to be credible and reliable can appropriately be considered as one factor in the analysis conducted by the transferring State Party as to whether there are substantial grounds for believing that an individual would be in danger of being subjected to torture in the receiving State.

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On April 5, 2017, the United States filed its observations on the Draft General Comment. That submission is excerpted below (with some footnotes omitted).

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2. The observations of the United States focus on those paragraphs in the draft General Comment that, in the view of the United States, should be revised or, in some cases, deleted, from the final text. These observations make a number of specific points illustrative of U.S. concerns rather than a comprehensive catalogue of all points on which the United States may disagree. The United States hopes its views will be useful to the Committee as it finalizes its new General Comment on Articles 3 and 22.

I. General Observations

3. The United States reiterates its view that where the text of the CAT provides that obligations apply to a State Party in “any territory under its jurisdiction,” such obligations extend to “all places that the State Party controls as a governmental authority.” We have concluded that the United States currently exercises such control at the U.S. Naval Station at Guantanamo Bay,

Cuba, and over all proceedings conducted there, and with respect to U.S.-registered ships and aircraft.

4. In 2008, the United States stated its view that Article 3 of the CAT, which does not use the phrase “territory under its jurisdiction,” does not apply outside U.S. sovereign territory.

5. As a matter of policy, the United States upholds the principle of non-refoulement as reflected in CAT Article 3 with respect to all transfers, regardless of location. This policy is set forth in Section 2242(a) of the Foreign Affairs Reform and Restructuring Act of 1998, which provides that “[i]t shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.” However, the United States does not accept the Committee’s view, expressed throughout the draft General Comment, including in **paragraphs 9³ and 10⁴**, that Article 3 applies to transfers occurring outside U.S. sovereign territory.

6. In the interest of clarity, the United States recommends that the Committee use the precise language of Article 3 when describing the treatment of individuals to whom the obligation applies. By its terms, Article 3 applies when “there are substantial grounds for believing that [an individual] would be in danger of being subjected to torture [...]”⁵ The United States suggests that the Committee use this terminology throughout its General Comment, including in **paragraph 8**, rather than risk confusion by paraphrasing or substituting other terms not contemplated by the States Parties.

7. The United States understands the Committee’s desire to encompass various concepts within the term “deportation,” as indicated in **draft footnote 6**. However, many States consider “deportation” to be a term of art referring to certain types of immigration removal, and using the term to capture other forms of transfers obscures the significant differences between immigration removals and extraditions. Thus, the United States suggests that the Committee use throughout the draft General Comment either the precise, full language from CAT Article 3, or a broader term defined by the Committee to constitute shorthand for this language that will be more easily

³ The United States notes that the use of “**or** on board a ship or aircraft” in this paragraph creates the impression that ships and aircraft are not considered “territory under [the State’s] jurisdiction” but rather constitute a new, non-territorial category. The United States has taken the view that U.S.-flagged ships and aircraft qualify as “territory under [U.S.] jurisdiction” for purposes of the CAT, and are therefore covered by the CAT provisions that use this territorial language. Article 3 of the CAT, however, does not use this territorial language.

⁴ Draft **paragraph 10** indicates that Article 3 applies to territories under foreign military occupation. The United States agrees that a time of war does not suspend the operation of the CAT, which continues to apply even when a State is engaged in armed conflict. The law of armed conflict and the CAT contain many provisions that complement one another and are in many respects mutually reinforcing. In accordance with the doctrine of *lex specialis*, where these bodies of law conflict, the law of armed conflict would take precedence as the controlling body of law with regard to the conduct of hostilities and the protection of war victims. However, a situation of armed conflict does not automatically suspend nor does the law of armed conflict automatically displace the application of the CAT. The United States also agrees that occupied territory would likely be considered “territory under [a State’s] jurisdiction” for the purposes of the CAT if the occupying power exercises the requisite control as a governmental authority in the occupied territory. However, including because Article 3 does not use the phrase “territory under its jurisdiction” to define its territorial scope, we have taken the position that Article 3 applies only to expulsion, return, or extradition from the sovereign territory of the United States.

⁵ The United States reiterates its understanding upon ratification of the CAT that “the phrase, ‘where there are substantial grounds for believing that he would be in danger of being subjected to torture,’ as used in Article 3 of the Convention, [means] ‘if it is more likely than not that he would be tortured.’”

understood by States to include non-immigration operations such as extradition to avoid possible confusion (for example, “transfer” could be used).

8. Similarly, the United States recommends that the Committee clarify its distinction between the “State of origin” and “State of deportation.” Article 3 applies regardless of whether the receiving State is the individual’s “State of origin.” Various paragraphs of the draft General Comment suggest that past treatment or potential future treatment in an individual’s “State of origin” is relevant to a determination with respect to a different State to which the individual might be transferred. Moreover, some may misread the term “State of deportation” to mean the sending State. Thus, the United States recommends that the Committee consider using a single term, such as “receiving State,” throughout the General Comment (including in **paragraph 30**).

9. Finally, the United States observes that this draft General Comment repeatedly asserts what States Parties “should” do or not do, without clarifying whether the Committee believes the given principle reflects a legal obligation under the CAT or a suggestion or best practice. In several of our specific observations below, the United States presents its view as if the Committee’s intention is to assert a legal obligation. Nonetheless, the United States would not ordinarily read the use of the term “should” in the final General Comment to reflect the Committee’s assertion of a legal obligation, rather than a suggestion or a best practice.

II. Specific Observations

a. Paragraph 12

10. The United States does not agree that a determination that a person cannot be returned to a particular country consistent with Article 3 automatically entitles that person to remain in the country in which he or she is located. For example, Article 3 would not preclude removing the person to a third country where there are no substantial grounds for believing that the individual would be in danger of being subjected to torture. Article 3 also does not prohibit transferring an individual to a receiving State where there previously were substantial grounds for believing he or she would be in danger of being subjected to torture, if country conditions or other material circumstances have changed to reduce or eliminate that risk. As a result, the United States recommends that the Committee consider revising **paragraph 12** to avoid the implication that allowing the individual to remain in the territory is the only option consistent with Article 3.

11. Evidence providing substantial grounds for believing that an individual would be in danger of torture upon further transfer from the receiving State to a third State would be considered, as appropriate, along with other factors, as part of a determination of whether there are “substantial grounds for believing that he would be in danger of being subjected to torture” if transferred. Article 3 would not be implicated simply due to a general or non-specific risk of potential transfer to a third State after the initial transfer.

b. Paragraph 13

12. Although collective transfer could pose a risk of an Article 3 violation, the United States disagrees that collective transfer constitutes a per se violation of Article 3. For example, a collective transfer to a State where there are no substantial grounds for believing that any of the individuals being transferred would be in danger of being subjected to torture would not constitute a violation of Article 3. As a result, the United States recommends that the Committee phrase **paragraph 13** in terms of a heightened risk of violation, rather than a per se violation. In the United States, all individuals subject to immigration removal or extradition are provided an opportunity to raise a claim that their transfer to a particular country would be inconsistent with

CAT Article 3, and all such claims are considered on an individual basis in accordance with applicable regulations and procedures.

c. Paragraph 14

13. The United States does not interpret Article 3 as imposing such a broad range of legal obligation on States Parties to refrain from taking measures that might unintentionally cause individuals to leave its territory. There might well be extreme circumstances in which a State intentionally enacts measures for the purpose of inducing individuals with a need for protection under Article 3 to leave the country without being afforded a meaningful opportunity to have their Article 3 claims considered by a competent authority, in which case Article 3 might be implicated. Those situations, however, must be distinguished from those where States adopt immigration, security, or budgetary policies that may cumulatively cause certain non-citizens in need of protection to depart from the country voluntarily. In addition, even with this change, examples such as “cutting funds for assistance programs to asylum seekers” are overbroad in light of States’ discretion to determine budgetary levels for assistance programs. Moreover, suggesting that any cuts to assistance risk putting a State in violation of Article 3 could have the perverse effect of dissuading States from providing additional and discretionary forms of assistance in the first place. We recommend that the Committee consider modifying this sentence to “withholding basic forms of humanitarian assistance from asylum-seekers.”

d. Paragraphs 18 and 30

14. The United States suggests that the Committee consider the practice of a range of States Parties in further developing the list of best practices contained in both **paragraphs 18 and 30**, in order to make this General Comment as useful a reference tool for States Parties as possible. In particular, we note that many of the best practices in these paragraphs as currently drafted appear to relate to deportations and other immigration-related transfers, but do not take into account the significant differences between immigration removals and extraditions.

15. Specifically, the United States notes that the qualifier “when necessary” in **paragraphs 18(b) and 43** is ambiguous and difficult to apply. In the United States, certain indigent criminal defendants have a right to appointed legal counsel, but individuals in immigration proceedings do not have such a right (although they may obtain legal services, including *pro bono* representation, on their own, and the United States has several programs aimed at facilitating access to such legal services).

* * * *

19. The United States is concerned that **paragraph 21** as drafted may be read to imply that if a State does not make “adequate” mental health care services available to victims of torture, that State would itself be committing torture. Although the United States agrees that there might be particular instances where the availability of adequate medical services should factor into the transfer decision, our view is that the CAT does not suggest that a State is responsible for torture if it generally does not provide certain forms of health care services for individuals not in its custody. As a result, the United States suggests that the Committee clarify the distinction between intentional denial of medically necessary and otherwise available services in order to intentionally inflict severe pain or suffering, which may amount to torture under certain circumstances, and the more common situation, where a State does not guarantee certain health care services to all.

e. Paragraph 22

20. The United States notes that this paragraph, as drafted, extends far beyond a State Party's obligations under Article 3, which applies during the process of determining whether to expel, return, or extradite an individual to another State. Once an individual has been transferred to a State in a manner consistent with Article 3, the transferring State does not maintain an ongoing, indefinite obligation to monitor all transferred individuals, who may number in the thousands, or to permit them to reenter the transferring State's territory. In addition, this draft paragraph appears to encourage States to intervene in the domestic legal proceedings of other States, and to conduct routine monitoring in the territory of other States regardless of any risk of torture at the time of transfer. The United States recommends that the Committee delete **paragraph 22**, or else revise it to suggest that States Parties may consider requests for assistance from transferred individuals who subsequently face torture in the receiving State.

f. Paragraph 25

21. The United States notes that the terminology used in this paragraph is not clear, including the use of the term "notification of adherence to the extradition treaty." If the Committee means to suggest that States formulate reservations when becoming party to extradition treaties that might conflict with the Convention, we note that reservations are uncommon in the context of bilateral treaties and would have to be accepted by the other party for the treaty with the reservation to enter into force between the parties.

22. If, instead, the Committee intends to assert that bilateral extradition treaties should contain a savings clause aimed at the CAT, the United States recommends that the Committee consider the utility of such a clause and examine the practice of States Parties to the CAT in this regard. For example, the United States does not include such a clause in its bilateral extradition treaties. However, as a matter of practice, we have not interpreted our bilateral extradition treaties to require extradition when a particular extradition would be inconsistent with Article 3 of the CAT. We suggest that the Committee should consider how States Parties understand and apply their extradition treaties. **Paragraph 25** would be unnecessary, if, like the United States, other States Parties do not understand their bilateral extradition treaties to require extradition when Article 3 of the CAT is implicated.

g. Paragraph 29

23. The United States disagrees with the legal and logical premise of this paragraph. Evidence of prior exposure of an individual or similarly situated family members to [cruel, inhuman or degrading treatment or punishment, or] CIDTP, although relevant evidence in an Article 3 determination, does not always constitute an indication that the individual is at risk of torture for purposes of an assessment under Article 3. That is especially so where there has been an intervening, material change in country conditions in the receiving state. As a result, the United States recommends that **paragraph 29** clarify that prior exposure to CIDTP "may constitute" an indication of risk of torture, depending on the individual's particular circumstances.

h. Paragraph 30

24. As a general matter, the United States notes that not all the factors enumerated in this paragraph will be relevant in every Article 3 assessment, given the particularized and personal nature of these assessments. Thus, the United States suggests changing "State parties should consider, in particular" in **paragraph 30** to "State parties should consider, as appropriate, within the context of all relevant circumstances."

25. With regard to **paragraph 30(a)**, the United States disagrees with the implication that many of the specific examples cited should be treated as evidence of a risk of torture regardless of the context. For example, the fact that an individual was previously detained in the receiving State and alleges that he/she was not given notice of the reason for that arrest in a language that he/she understood does not typically provide evidence that the individual would be subjected to torture upon transfer to that State.

26. With regard to **paragraphs 30(a)(iv-v)**, the United States notes that these paragraphs go beyond what is required by the International Covenant on Civil and Political Rights (ICCPR), and as a result should not be cited by the Committee as evidence of denial of a “fundamental guarantee.” As a result, the United States recommends their deletion.

27. With regard to **paragraphs 30(c) and 30(m)**, the United States notes that these subparagraphs include actions by private individuals over which the State does not exercise control, which the State has not instigated, and/or to which the State has not consented or acquiesced (including certain kinds of gender-based violence or sexual violence). The definition of torture in Article 1 of the CAT only includes actions “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” As a result, mistreatment that would not constitute torture under the definition provided in Article 1 of the CAT because it is inflicted by a private individual without instigation, consent, or acquiescence of the State does not provide evidence that an individual is in danger of being subjected to torture post-transfer within the meaning of Article 3. Although in **paragraph 30(c)** the Committee inserts “amounting to torture” later in the paragraph, there is some potential for misinterpretation here. The United States therefore recommends that **paragraph 30(c)** be revised to reference “whether [...] the person has been or would be a victim of violence, including gender based/sexual violence, that constitutes torture under the definition provided in Article 1 of the Convention.” We also recommend that **paragraph 30(m)** be revised to reference “reprisals amounting to torture or extrajudicial killing have been or would be committed against him/her, members of the family, or witnesses of his/her arrest or detention,” deleting the rest of the paragraph.

28. The United States recommends that **paragraph 30(f)** distinguish more clearly between treatment or punishment constituting torture under customary international law, and treatment or punishment constituting torture according to the recommendations of the Committee or under the jurisprudence of other mechanisms, whose definitions may not be legally binding on any or all States Parties.

29. With regard to **paragraphs 30(g-j)**, the United States notes that these paragraphs refer to general allegations or evidence of certain violations by the receiving State that might not always be relevant in a particularized, personal determination of risk of torture for an individual. For example, the articles of the Geneva Conventions referred to in **paragraphs 30(i) and 30(j)** contain numerous provisions that apply to certain transferees and that do not relate to risk of torture. As a result, the United States would recommend narrowing these paragraphs where any such violations “would be relevant to an assessment of the risk of torture.”

30. With regard to **paragraphs 30(k-l)**, the United States does not agree that a sending State could refuse to transfer an individual on the grounds that the receiving State has a law permitting application of the death penalty in a manner consistent with international law, particularly in instances where the death penalty would not be pursued against that individual. The United States does not agree that the existence of a law permitting use of the death penalty in a State makes that State more likely to torture a particular individual, especially if that

individual would not be subject to the death penalty upon transfer. Finally, the United States does not agree that a “prolonged period ... of death row detention” necessarily creates a risk of torture, particularly if that delay is largely driven by an individual’s access to a robust appellate process. The United States therefore recommends that **paragraph 30(k)** be amended to refer only to deportation to a State “where there is substantial grounds for believing that the death penalty will be applied to the transferee and in a manner that is considered as a form of” The United States further recommends deletion of **paragraph 30(l)** as unnecessary.

31. With regard to **paragraph 30(o)**, the United States disagrees with using the term “fundamental child rights,” as there is no hierarchy among the rights of the child. We also recommend deleting the phrase “or indirectly,” since recruitment of a person under age 18 as a combatant not participating directly in hostilities is not necessarily a violation of the child’s human rights. In addition, the language on “providing sexual services” should be modified to correspond to abuses and violations defined in the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography.

i. Paragraphs 31-32

32. The United States reiterates the views expressed with regard to **paragraphs 30(c)** and **30(m)** above, and notes that actions by a private, non-State actor that are not at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity do not constitute torture for purposes of the CAT. Accordingly, the United States recommends that **paragraph 31** be deleted or revised to reflect the need for official instigation, consent, or acquiescence in order for an anticipated future action in the receiving State to constitute torture for purposes of Article 3, and to limit the scope of this paragraph to torture rather than all CIDTP.

33. Further, Article 3 imposes obligations only on States Parties to the CAT and not on non-State actors, such as international organizations, except in circumstances in which their actions can be attributed to a State Party under principles of State responsibility. As a result, the United States recommends that **paragraph 32** be revised to clarify that it reflects a best practice or recommendation of the Committee rather than a statement of legal responsibility.

j. Paragraph 37

34. There is no requirement under Article 3 on States Parties to enact specific domestic processes to ensure compliance, including in particular that any decision related to Article 3 must be subjected to independent review. Article 3 does not require judicial review of all refoulement decisions. As the Committee itself has recognized, States can choose the measures through which they fulfill Article 3, so long as they are effective and consistent with the object and purpose of the Convention. The United States recommends that the Committee carefully consider the practice of States Parties in this regard. The United States is also concerned that the “without obstacles of any nature” language in **paragraph 37** is overly broad.

k. Paragraphs 40-42

35. The United States respects the Committee’s authority to determine its own procedures for hearing individual communications under Article 22 of the CAT, but believes that the reversal of the burden of proof outlined in **paragraph 40** is not well-grounded in principle and could detract from the fairness of proceedings under Article 22 vis-à-vis States Parties. The same is true of the draft articulation of “benefit of the doubt” in **paragraph 55**, which is not clearly defined and which could also negatively affect the fairness of such proceedings without further clarity on its application. The United States does not read “administrative and/or judicial procedures” in **paragraph 41** to refer to terms of art under domestic law.

l. Paragraph 45

36. The United States notes that the phrase “situations conducive to genocide” used in **paragraph 45** is not well-defined, making it unclear what action or practice is being recommended. In addition, the United States disagrees with the Committee’s inclusion of a state of armed conflict as part of the list of per se “gross, flagrant, or mass violation of human rights,” and disagrees with the implication that a state of armed conflict necessarily affects an individual’s risk of being subject to torture if returned to the State concerned. The mere fact that a receiving State is engaged in an armed conflict—potentially on the territory of another State altogether, or thousands of miles away from the territory where the individual is to be transferred—does not, in the view of the United States, provide relevant evidence on its own for a sending State’s Article 3 assessment.

m. Paragraphs 46 and 48

37. The United States is concerned that the use of the phrase “any of the indications” in **paragraph 46** may imply that the presence of a single factor from the list in **paragraph 30** would lead the Committee to find a violation of Article 3. This appears to be inconsistent with the Committee’s assertion that determinations under Article 3 must be individualized, and should take into account all relevant factors for a particular individual. Moreover, **paragraph 30** itself presents the factors as “non-exhaustive pertinent examples of human rights situations which *may* constitute an indication of a risk of torture” (emphasis added), rather than factors that would each automatically indicate a risk of torture. As noted in our comments above on **paragraph 30**, we urge the Committee to make **paragraph 30** even clearer that the presence of any such factors should be considered as part of a holistic determination. The United States recommends that the Committee revise this paragraph for consistency to ensure the Committee’s view that determinations under Article 3 be personal rather than automatic, and to reflect that a determination under Article 3 should be made on a case-by-case basis, taking all relevant circumstances into account.

38. The United States reiterates this comment with regard to **paragraph 48**. The United States recommends that the Committee revise the first sentence of this paragraph for clarity; it is difficult to discern the exact purpose of the sentence, and it appears to be circular in nature. In particular, it is not clear what the phrase “by itself” is intended to communicate, especially to the extent that the “risk” in question is the overall risk of torture, and not one specific factor indicating a risk of torture.

n. Paragraph 49

39. The United States recommends that the Committee revise **paragraph 49** for clarity or delete it as unnecessary. Although the United States agrees that there could be circumstances in which the assertion expressed in the paragraph would be true, this idea is encompassed in the principle—one that is already articulated throughout the draft General Comment—that an Article 3 determination must be personal and particularized, taking into account all relevant factors at the time the determination is made. The United States therefore recommends that the Committee reconsider its inclusion of this paragraph.

o. Paragraphs 50-51

40. The United States is of the view that **paragraphs 50 and 51** are too categorical and do not sufficiently account for all circumstances relevant to a specific, individualized determination of a risk of torture. For example, a sending State may take into account whether an individual being transferred will be held in detention in a particular facility that has less

effective torture prevention mechanisms than other facilities, or will reside in a local or regional jurisdiction that may have less effective torture prevention mechanisms than other jurisdictions, thereby creating a greater risk of torture than if the individual were to be held in a different facility or region. The United States believes that such factors are legitimate considerations as part of a determination of whether there are substantial grounds for believing that the individual would be in danger of being subjected to torture, and recommends that the Committee revise these paragraphs to account for a more holistic approach to the personal, particularized determination under Article 3 for each individual.

p. Paragraph 53

41. The United States recommends, consistent with the comments provided above concerning **paragraph 20**, that the Committee consider including questions in **paragraph 53** related to the existence, content, and reliability of any diplomatic assurances provided by the receiving State as factors relevant to the determination of whether there are substantial grounds for believing that a particular individual would be in danger of being subjected to torture. As a matter of practice, many States Parties to the CAT, including the United States, take this factor into account as part of their assessments under Article 3.

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On October 13, 2017, U.S. Special Advisor Lloyd Claycomb addressed the Third Committee following a briefing by the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (“CIDTP”). Mr. Claycomb’s remarks to the Third Committee are excerpted below and available at <https://usun.state.gov/remarks/8015>.

* * * *

We reaffirm and continue to uphold the bedrock principle that torture and cruel, inhuman, or degrading treatment or punishment are categorically and legally prohibited always and everywhere, they violate U.S. and international law, and offend human dignity.

The United States ratified the Convention Against Torture subject to several understandings. One of those understandings is that the definition of torture in Article 1 is intended to apply only to acts directed against persons in the offender’s custody or physical control. We therefore disagree with the premise that the Convention’s prohibition on torture applies in extra-custodial situations as well as the conclusions stemming from that premise.

In the United States, the matter of police use of force is one largely controlled by the U.S. Constitution, other U.S. laws and obligations, interpretations by the U.S. Supreme Court and other judicial bodies of those laws, as well as police agency policies and procedures. However, we must express serious concern with language in the Special Rapporteur’s report, referencing “soft law” documents in the criminal justice field that were never intended to serve as legal instruments or binding obligations on member states—but rather as voluntary standards and norms.

We would like to reiterate, however, that we strongly support the work of the Special Rapporteur and firmly believe that the absolute prohibition of torture is a peremptory norm that is binding on all States, and from which no derogation is permitted.

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The U.S. statement when joining consensus on the resolution on Third Committee Agenda Item 73(a), on torture and other CIDTP, follows:

The United States is pleased to cosponsor this resolution on torture and other cruel, inhuman, or degrading treatment or punishment. The absolute prohibition of torture is a fundamental precept for the United States. Torture and other cruel, inhuman, or degrading treatment or punishment is a violation of law and an affront to human dignity, and it is contrary to our values. The United States places great importance on complying with U.S. legal obligations related to torture and cruel, inhuman, or degrading treatment or punishment, and has done significant work to continue to ensure that U.S. detention and interrogation practices comply with such obligations, including such obligations under international humanitarian law. We are deeply committed to preventing violations of the prohibition against torture and cruel, inhuman, or degrading treatment or punishment; to pursuing justice on behalf of victims; and to denying perpetrators safe haven in our country. We encourage other States to consider current U.S. policies and practices as best practices for the implementation of their obligations. We also note that our co-sponsorship of this resolution does not reflect an endorsement of all of the findings and conclusions in the reports of the Special Rapporteur.

J. FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION

In June 2017, UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association Maina Kiai released his report on his official visit to the United States in July 2016. Jason Mack delivered the U.S. statement on June 6, 2016, in response to Special Rapporteur Kiai's Country Report on the United States. That statement is excerpted below and also available at

<https://geneva.usmission.gov/2017/06/07/statement-in-response-to-special-rapporteur-kiais-country-report-on-the-united-states/>.

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Thank you Mr. Vice President. The United States thanks Maina Kiai for his service and his work on diverse topics. We were pleased to host Mr. Kiai and appreciate the opportunity to respond to different aspects of his report on the United States. The report raises some concerns regarding international law. It asserts U.S. law permitting certain time, place, and manner restrictions falls short of international law standards and that international law favors a notification rather than permission system. These assertions are not based on ICCPR obligations. The few sources cited

for them are flawed; for example, one cites best practices rather than obligations. Complete prohibition of assembly at certain places also does not constitute a violation of international law because some areas pose safety or national security concerns that are not possible to mitigate, as recognized in Article 21 of the ICCPR. Nor does international law require that disruption of ordinary life must be tolerated, a position that the Special Rapporteur bases on European human rights sources that are not globally relevant. The report also has problematic assertions that States must remedy non-State Party actions that affect human rights.

We provided over 17 pages of comments addressing many inaccuracies regarding U.S. laws, particularly laws on labor and counterterrorism. The U.S. Government's Strategic Implementation Plan to counter violent extremism underscores that U.S. policy is not to stigmatize specific groups, but rather to invest in objective, independent research and to promote transparency in its countering violent extremism work. U.S. terrorism sanctions are not based on war powers, but on Congressional authority to respond to emergencies. U.S. sanctions designations are fair and transparent. The government must have a reasonable basis, have substantial evidence, and its designations may be challenged immediately either administratively or in federal courts and the government must demonstrate that sanctions criteria are met. We also believe that the report's criticisms regarding sanctions against charity groups are incorrect and unwarranted. The U.S. government has engaged in sustained, direct outreach with those groups, recognizes the positive role that humanitarian and charitable organizations play, and provides multiple mechanisms for those organizations to seek clarification and guidance from the government.

Migrant workers are entitled to significant protections under U.S. law, including whistleblower protections for H-1B visa holders and regulations that prohibit recruitment fees. Migrant workers' labor rights are respected, regardless of their immigration status. The Special Rapporteur's concern that visas for trafficking victims are difficult to obtain and cover a small proportion of workers overlooked the availability of U-visas for victims of various criminal activities, including trafficking, involuntary servitude, fraud in foreign labor contracting, false imprisonment, and obstruction of justice, and that are helpful to the investigation or prosecution of the crime. A number of U.S. agencies can serve as certifying agencies for this visa, and the United States has reached the 10,000 annual cap on U-visas for several years, indicating the program is used frequently.

We would also like to respond to the Special rapporteur's statement that he was disappointed to learn that the Attorney General had ordered a review of all consent decrees, which Mr. Kiai mischaracterized as prioritizing respect for law enforcement over accountability for abuses. Nothing in the Department of Justice's review states that respect for law enforcement is prioritized over accountability. One of our key principles is that "local law enforcement must protect and respect the civil rights of all members of the public."

We appreciate that Special Rapporteurs provide context for a country report; we encourage such scene setting to be kept within the parameters of the mandate.

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K. FREEDOM OF EXPRESSION

On March 24, 2017, at the 34th session of the HRC, Mr. Mozdierz delivered an introductory statement on behalf of the United States regarding the resolution on freedom of opinion and expression. The U.S. statement is excerpted below and available at <https://geneva.usmission.gov/2017/03/24/u-s-explanation-of-vote-on-freedom-of-opinion-and-expression/>.

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The United States is pleased to introduce for adoption Resolution L.27 on “Freedom of Opinion and Expression: Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.”

This resolution would extend the mandate of the Special Rapporteur for three years. It has over 60 co-sponsors.

Nearly 70 years ago, the Universal Declaration of Human Rights enshrined the right to freedom of opinion and expression for everyone. That right is as vitally important today as it was in 1948, and renewal of the mandate of the Special Rapporteur underscores its continuing importance. It is crucial to a healthy and well-functioning democratic society; it promotes justice and the rule of law by allowing everyone to share information that affects them; it provides opportunities for the exchange of ideas that promote economic growth and innovation; and it contributes to peace by facilitating mutual understanding.

Moreover, the right to freedom of opinion and expression is inextricably linked to enjoyment of other universal human rights and fundamental freedoms.

The United States is proud to stand with the cosponsors in urging the Council to adopt this resolution by consensus.

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At the 72nd session of the UN General Assembly, the United States co-sponsored the resolution entitled “The Safety of Journalists and the Issue of Impunity.” U.N. Doc. A/RES/72/175. The resolution was adopted on December 19, 2017. The U.S. general statement on the resolution during the Third Committee’s discussion in November is excerpted below.

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The United States is pleased to co-sponsor this resolution on the safety of journalists and the issue of impunity. We commend journalists around the world for the important role they play, and for their commitment to the free exchange of ideas.

The United States values freedom of expression, including for the press, as a key component of democratic governance. Democratic societies are not infallible, but they are

accountable, and the exchange of ideas is the foundation for accountable governance. In the United States and in many places around the world, the press fosters active debate, provides investigative reporting, and serves as a forum to express different points of view, particularly on behalf of those who are marginalized in society. We are pleased to see this resolution recognize the crucial role of journalists and media workers in the contexts of elections.

We also commend those in the press who courageously do their work at great risk. The press is often a target of retaliation by those who feel threatened by freedom of expression and transparency in democratic processes. Journalists are often the first to uncover corruption, to report from the front lines of conflict zones, and to highlight missteps by governments. This work places many journalists in danger, and it is important for governments and citizens worldwide to speak out for their protection and for their vital role in open societies.

We understand the resolution's references to privacy, including its appropriate safeguards, in light of Article 17 of the ICCPR.

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L. FREEDOM OF RELIGION

1. Designations under the International Religious Freedom Act

On December 22, 2017, the Secretary of State re-designated Burma, China, Eritrea, Iran, North Korea, Sudan, Saudi Arabia, 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 “Countries of Particular Concern” were so designated “for having engaged in or tolerated particularly severe violations of religious freedom.” 83 Fed. Reg. 1451 (Jan. 11, 2018). The Secretary also placed Pakistan on a Special Watch List for severe violations of religious freedom. The “Presidential Actions” or waivers designated for each of those countries by the Secretary are listed in the Federal Register notice. The State Department issued a press statement on January 4, 2018, available at <https://www.state.gov/r/pa/prs/ps/2018/01/276843.htm>, announcing the designations, and stating further:

The protection of religious freedom is vital to peace, stability, and prosperity. These designations are aimed at improving the respect for religious freedom in these countries. We recognize that several designated countries are working to improve their respect for religious freedom; we welcome these initiatives and look forward to continued dialogue. The United States remains committed to working with governments, civil society organizations, and religious leaders to advance religious freedom around the world.

2. U.S. Annual Report

On August 15, 2017, the U.S. Department of State submitted the 2016 International Religious Freedom Report to the United States Congress. See August 15, 2017 State

Department special briefing, available at <https://www.state.gov/r/pa/prs/ps/2017/08/273457.htm>. The report is available at [state.gov/religiousfreedomreport/](https://www.state.gov/religiousfreedomreport/). Secretary Tillerson's remarks on the release of the 2016 International Religious Freedom Annual Report on August 15, 2017 are excerpted below and available at <https://www.state.gov/secretary/20172018tillerson/remarks/2017/08/273449.htm>. In his remarks, Secretary Tillerson conveys the conclusion that ISIS is clearly responsible for genocide.

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This report is a requirement pursuant to the International Religious Freedom Act of 1998—legislation that upholds religious freedom as a core American value under the Constitution's First Amendment, as well as a universal human right. This law calls for the government to, quote, "[Stand] for liberty and [stand] with the persecuted, to use and implement appropriate tools in the United States foreign policy apparatus, including diplomatic, political, commercial, charitable, educational, and cultural channels, to promote respect for religious freedom by all governments and peoples."

Almost 20 years after the law's passage, conditions in many parts of the world are far from ideal. Religious persecution and intolerance remains far too prevalent. Almost 80 percent of the global population live with restrictions on or hostilities to limit their freedom of religion. Where religious freedom is not protected, we know that instability, human rights abuses, and violent extremism have a greater opportunity to take root.

We cannot ignore these conditions. The Trump administration has committed to addressing these conditions in part by advancing international religious freedom around the world. The State Department will continue to advocate on behalf of those seeking to live their lives according to their faith.

The release of the [2016 International Religious Freedom Report](#) details the status of religious freedom in 199 countries and territories, and provides insights as to significant and growing challenges. Today I want to call out a few of the more egregious and troubling examples.

As we make progress in defeating ISIS and denying them their caliphate, their terrorist members have and continue to target multiple religions and ethnic groups for rape, kidnapping, enslavement, and even death.

To remove any ambiguity from previous statements or reports by the State Department, the crime of genocide requires three elements: specific acts with specific intent to destroy in whole or in part specific people, members of national, ethnic, racial, or religious groups. Specific act, specific intent, specific people.

Application of the law to the facts at hand leads to the conclusion ISIS is clearly responsible for genocide against Yezidis, Christians, and Shia Muslims in areas it controls or has controlled.

ISIS is also responsible for crimes against humanity and ethnic cleansing directed at these same groups, and in some cases against Sunni Muslims, Kurds, and other minorities.

More recently, ISIS has claimed responsibility for attacks on Christian pilgrims and churches in Egypt.

The protection of these groups—and others subject to violent extremism—is a human rights priority for the Trump administration.

We will continue working with our regional partners to protect religious minority communities from terrorist attacks and to preserve their cultural heritage.

As the 2016 report indicates, many governments around the world use discriminatory laws to deny their citizens freedom of religion or belief.

In Iran, Baha'is, Christians, and other minorities are persecuted for their faith. Iran continues to sentence individuals to death under vague apostasy laws—20 individuals were executed in 2016 on charges that included, quote, “waging war against God.” Members of the Baha'i community are in prison today simply for abiding by their beliefs.

We remain concerned about the state of religious freedom in Saudi Arabia. The government does not recognize the right of non-Muslims to practice their religion in public and applied criminal penalties, including prison sentences, lashings, and fines, for apostasy, atheism, blasphemy, and insulting the state's interpretation of Islam. Of particular concern are attacks targeting Shia Muslims, and the continued pattern of social prejudice and discrimination against them. We urge Saudi Arabia to embrace greater degrees of religious freedom for all of its citizens.

In Turkey, authorities continued to limit the human rights of members of some religious minority groups, and some communities continue to experience protracted property disputes. Non-Sunni Muslims, such as Alevi Muslims, do not receive the same governmental protections as those enjoyed by recognized non-Muslim minorities and have faced discrimination and violence. Additionally, the United States continues to advocate for the release of Pastor Andrew Brunson, who has been wrongfully imprisoned in Turkey.

And in Bahrain, the government continued to question, detain, and arrest Shia clerics, community members, and opposition politicians. Members of the Shia community there continue to report ongoing discrimination in government employment, education, and the justice system. Bahrain must stop discriminating against the Shia communities.

In China, the government tortures, detains, and imprisons thousands for practicing their religious beliefs. Dozens of Falun Gong members have died in detention. ...[P]olicies that restrict Uighur Muslims' and Tibetan Buddhists' religious expression and practice have increased.

Religious freedom is under attack in Pakistan, where more than two dozen are on death row or serving a life imprisonment for blasphemy. The government marginalizes Ahmadiyya Muslims, and refuses to recognize them as Muslim. It is my hope that the new prime minister and his government will promote interfaith harmony and protect the rights of religious minorities.

Finally, in Sudan the government arrests, detains, and intimidates clergy and church members. It denies permits for the construction of new churches and is closing or demolishing existing ones.

We encourage the Government of Sudan to engage concretely on the religious freedom action plan provided by the department last year.

Unfortunately, the list goes on.

No one should have to live in fear, worship in secret, or face discrimination because of his or her beliefs. As President Trump has said, we look forward to a day when, quote, “people of all faiths, Christians and Muslims and Jewish and Hindu, can follow their hearts and worship according to their conscience,” end quote.

The State Department will continue its efforts to make that a reality. Recently nominated Ambassador-at-Large for International Religious Freedom, Governor Sam Brownback, will be the highest-ranking official ever to take up this important post. We look forward to his swift confirmation.

I thank my many colleagues at the department and overseas who contributed to this report, and specifically the Office of International Religious Freedom, including Senior Advisor on Global Justice Issues Pam Pryor, Special Advisor for Religious Minorities Knox Thames, and the previous ambassador-at-large, David Saperstein.

We look forward to working with Congress, and the administration, to continue America’s indispensable role as a champion of religious freedom the world over. Thank you very much.

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Excerpts follow from the special briefing by Michael Kozak of the Bureau of Democracy, Human Rights, and Labor on the 2016 International Religious Freedom Annual Report.

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...[T]he International Religious Freedom Act of 1998 requires the Secretary of State to prepare and transmit to Congress an annual report on international religious freedom describing the status of religious freedom in foreign countries and U.S. actions and policies in support of religious freedom worldwide.

Department of State officers in our embassies and consulates around the world, working with the State Department’s Office of International Religious Freedom, obtain input from governments, media, NGOs, and others to come up with the content that goes into the report. The purpose of the report is to give Congress and the Executive Branch data to inform judgments about foreign assistance, allocation of diplomatic resources, and other issues, including adjudication of asylum and refugee requests. It is not designed to pass judgment or to rank other countries, but rather to create a fact-based review for use in U.S. Government decision-making.

The instructions for preparing the report are the same for all countries. We do not single out countries or religious groups for special treatment. The record should be based on a country’s actions, not on anybody’s preconceived notions. The report does not automatically affect policy, but it does provide the factual input to policy decisions that get made during the year.

I would also note that ... this is the first religious freedom report to be issued under this administration—as the Secretary pointed out in his remarks, the administration is making a strong commitment to advancing religious freedom for all. The President, the Vice President, and the Secretary have all emphasized religious freedom as a priority of the administration. As the Secretary mentioned, Governor Brownback is the highest-ranking person to be nominated for the ambassador-at-large position since its creation in 1998. The U.S. has multiple ways to advance

these rights across the world, and congressional actions add to them and last year strengthened those mechanisms. We will continue to lead the international community and partner with allies on ways to advance this issue.

Just a few highlights, and a bit in the good news program. First, that ISIS is being defeated. And since the defeat of ISIS in great chunks of Iraq, it means that religious minorities can return to their liberated towns and villages, and the next challenge is to see that they have security and that their homes are rebuilt. There is also good news in terms of positive U.S. engagement. For example, due to steady engagement, and despite the severe religious freedom problems that the Secretary mentioned, Sudan this year released some people who were imprisoned for their religious beliefs.

Vietnam also, as a consequence of heavy U.S. engagement, improved its religion law. At the same time, in both countries the situations remain of great concern, and so we will stay engaged. But this is the kind of activity that we're looking for, incremental progress in improving religious freedom.

We've also had some positive overtures from the Uzbek Government, such as the president[']s offer [of] amnesty to some religious prisoners. And if implemented, this would address a key religious freedom concern in Uzbekistan. We've also, as the Secretary mentioned, asked the Sudanese Government to engage on religious freedom concerns and to work on an action plan for improving religious freedom in that country.

One note is that there is a growing consensus on the need to act. The genocidal acts of ISIS awakened the international community to the threats facing religious minorities. And in response, the U.S., with our Canadian partners, created a network of more than 20 countries focused on advancing religious freedom. It's called the International Contact Group for Freedom of Religion or Belief.

There is also increasing religious tolerance in some parts of the world. In Marrakech, Islamic scholars got together and issued a declaration promoting equal citizenship for religious minorities. In Tunisia, there was a remarkable display of government support for the annual pilgrimage to the Djerba island synagogue. And in the Persian Gulf, the United Arab Emirates and Oman allowed the construction of churches to host large expatriate communities, as well as Hindu temples and Sikh gurdwaras.

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M. OTHER ISSUES

1. Privacy in the Digital Age

On March 23, 2017, at the 34th session of the HRC, the United States provided an explanation of position on the resolution on the right to privacy in the digital age. The statement is excerpted below and available at

<https://geneva.usmission.gov/2017/03/23/u-s-explanation-of-position-on-hrc-resolution-on-the-right-to-privacy-in-the-digital-age/>.

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

We are pleased the resolution recognizes that the same rights that people have offline must also be protected online, including the right to privacy. While the resolution expresses concern that the automatic processing of personal data in the commercial context for profiling may lead to discrimination or other negative effects on human rights, it is also worth noting that data flows and data analytics can create great benefits for economies and societies when combined with appropriate safeguards of data protection and safeguards against discriminatory use. Further, while the resolution expresses concern about obtaining free, explicit, and informed consent to the commercial re-use of personal data, we also note that in many commercial contexts, other mechanisms for choice may be appropriate, such as opt-out agreements. In other situations, a reasonable inference of meaningful consent may be drawn from the actual behavior of consumers. For instance, many legitimate businesses use models conditioning the provision of free or low-cost goods or services to consumers in exchange for use of their personal information. We understand the reference to consent in this paragraph as emphasizing those contexts where such explicit consent is important, not to contexts where such a requirement serves little purpose.

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. The United States further reaffirms its longstanding position that a State's obligations under the Covenant are applicable only within that State's territory, and interpret the resolution, including PP18, consistent with that view. Further, we reiterate that the appropriate standard under Article 17 of the ICCPR as to whether an interference with privacy is impermissible is whether it is unlawful or arbitrary and welcome the resolution's reference to this standard. While the resolution references a view held by some regarding consistency with what they refer to as the principles of legality, necessity, and proportionality, Article 17 does not impose such a standard.

Further, the United States understands that this resolution does not imply that states must join human rights instruments to which they are not parties, or that they must implement those instruments or any obligations under them. The United States understands that any reaffirmation of prior documents in these resolutions applies only to those states that affirmed them initially.

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

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2. Protecting Human Rights While Countering Terrorism

The United States co-sponsored resolution 72/180 in the UN General Assembly, "Protection of human rights and fundamental freedoms while countering terrorism."

The U.S. statement in the Third Committee on the resolution follows. The resolution was adopted on December 19, 2017.

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The United States is pleased to again co-sponsor this resolution.

We strongly support the reaffirmation that States must comply with their international legal obligations in their efforts to combat terrorism, including, as applicable, their obligations under international human rights law, international refugee law, and international humanitarian law. In particular, the United States supports the call for States to take all steps necessary to ensure that persons deprived of their liberty benefit from the guarantees to which they are entitled under international law. We note that the guarantees that will apply in a particular situation will depend on the applicable law, and that this will include judicial guarantees in some but not all cases. We understand that any recommendations to States to conduct investigations or inquiries to be predicated upon credible allegations or indications. We understand the resolution's references to privacy, including its appropriate safeguards, in light of Article 17 of the ICCPR.

We welcome the recognition of the important role of education, employment, inclusion and respect for cultural diversity, in helping to prevent terrorism and violent extremism. We also welcome the recognition of the need for a whole of UN and whole of society approach and will be looking to the UN Office of Counter Terrorism to enhance coordination and coherence in supporting the efforts of member states in implementing the UN Global CT Strategy.

Additionally, the United States firmly believes that all States should respect human rights while countering terrorism without distinction of any kind, as articulated in Article 2 of the Universal Declaration of Human Rights. Civil society is a critical part of our work in countering terrorism, and we want to highlight that any regulation or restriction on members of civil society should be consistent with the International Covenant on Civil and Political Rights.

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The United States also voted in favor of resolution 72/246, "Effects of terrorism on the enjoyment of human rights." The resolution was adopted by the General Assembly on December 24, 2017. The U.S. statement in the Third Committee follows.

We do not recognize any obligation under international human rights law to prevent terrorism or protect individuals from terrorist attacks, but urge all states to comply with their applicable international legal obligations while countering terrorism. In this regard, we note that different bodies of international law may be applicable to states' efforts to counter terrorism depending on the circumstances. We also believe the new report called for in this resolution is not an effective or appropriate use of limited resources, given the many reports that already exist on this topic.

3. Purported “Right to Development”

On November 16, 2017, Ms. Simpson delivered the U.S. explanation of vote on draft resolution A/C.3/72/L.26/Rev.1 on the purported “Right to Development.” The U.S. explanation is available at <https://usun.state.gov/remarks/8148>, and excerpted below.

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The United States has an ongoing, demonstrated commitment to alleviating poverty and promoting development globally. This commitment originated before the United States joined with other members of the United Nations to form the International Bank for Reconstruction and Development in 1944. Our commitment continues today. The U.S. government collaborates with developing countries, other donor countries, non-governmental organizations, and the private sector to support other countries in achieving sustainable economic growth, poverty reduction, and the whole range of development. We are also strongly supportive of the Secretary-General’s development system reform efforts, which endeavor to make the UN development system as efficient and effective as possible, and maximize the assistance that reaches those in need.

We see a strong link between human rights and development. However, for several reasons the United States has long-standing concerns about the concept of a “right to development:”

First, there is not yet a commonly understood definition of such a right. Any definition would need to be 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.

Second, we are concerned that the “right to development” has been framed by some in ways that would seek to protect states rather than individuals. States are responsible for implementing the human rights obligations they have assumed, regardless of external factors, including the availability of development and other assistance.

Because of these concerns, along with our reservations about specific provisions of this resolution, we will vote “no” on this resolution on the “right to development.”

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Cross References

Statelessness, **Ch. 1.A.1.**

Asylum, Refugees, and Migrant Protection Issues, **Ch. 1.C.**

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

Alien Tort Statute and Torture Victims Protection Act, **Ch. 5.B.**

IACHR hearing on freedom of association, assembly, and expression, **Ch. 7.E.2.**

Corporate responsibility regimes, **Ch. 11.E.6.**

Human rights sanctions, **Ch. 16.A.**

Conflict avoidance and atrocity prevention, **Ch. 17.C.**