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CHAPTER 6

Human Rights

A. GENERAL

1. Country Reports on Human Rights Practices

On April 20, 2018, the Department of State released the 2017 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 <https://www.state.gov/country-reports-on-human-rights-practices-for-2017/>. Michael G. Kozak, Acting Principal Deputy Assistant Secretary for Democracy, Human Rights, and Labor, presented the 2017 Country Reports in a briefing on April 20, 2018, which is transcribed at <https://www.state.gov/briefing-on-the-release-of-the-2017-country-reports-on-human-rights-practices/>. John J. Sullivan, Acting Secretary of State, also delivered remarks on the release of the 2017 Reports on April 20, 2018. Acting Secretary Sullivan's remarks are available at <https://www.state.gov/remarks-on-the-release-of-the-2017-country-reports-on-human-rights-practices/>.

2. Human Rights Council

a. Overview

The United States participated in one regular session of the Human Rights Council in 2018 before announcing in June that it would withdraw from the HRC.

The key outcomes from the U.S. perspective for the 37th session of the HRC are described in a March 23, 2018 fact sheet, available at <https://www.state.gov/key-outcomes-of-u-s-priorities-at-the-un-human-rights-councils-37th-session/>, and include:

combatting bias against Israel; opposing a resolution China advanced demanding governments not be subject to criticism for their human rights records; resolutions renewing the mandates of special rapporteurs on Iran and North Korea; a resolution condemning violations of the ceasefire in Syria and a resolution renewing the mandate of the Commission of Inquiry on Syria; a resolution renewing the mandate of the Commission on Human Rights in South Sudan; a resolution to renew the mandate of the Special Rapporteur and support the Fact Finding Mission on the human rights situation in Burma; and drawing attention to other human rights issues around the world. Thematic issues of import to the United States at the 37th session include: resolutions on freedom of religion or belief, good governance, the prevention of genocide, the rights of minorities and of persons with disabilities, and the impact of corruption on torture, among others.

On June 19, 2018, Secretary of State Michael R. Pompeo and U.S. Permanent Representative to the UN Nikki R. Haley delivered remarks on the U.S. decision to withdraw from the HRC. Their statements are excerpted below and available at <https://www.state.gov/remarks-on-the-un-human-rights-council/>.

* * * *

SECRETARY POMPEO: Good afternoon. The Trump administration is committed to protecting and promoting the God-given dignity and freedom of every human being. Every individual has rights that are inherent and inviolable. They are given by God, and not by government. Because of that, no government must take them away.

For decades, the United States has led global efforts to promote human rights, often through multilateral institutions. While we have seen improvements in certain human rights situations, for far too long we have waited while that progress comes too slowly or in some cases never comes. Too many commitments have gone unfulfilled.

President Trump wants to move the ball forward. From day one, he has called out institutions or countries who say one thing and do another. And that's precisely the problem at the Human Rights Council. As President Trump said at the UN General Assembly: "It is a massive source of embarrassment to the United Nations that some governments with egregious human rights records sit on the Human Rights Council."

We have no doubt that there was once a noble vision for this council. But today, we need to be honest—the Human Rights Council is a poor defender of human rights.

Worse than that, the Human Rights Council has become an exercise in shameless hypocrisy—with many of the world's worst human rights abuses going ignored, and some of the world's most serious offenders sitting on the council itself.

The only thing worse than a council that does almost nothing to protect human rights is a council that covers for human rights abuses and is therefore an obstacle to progress and an impediment to change. The Human Rights Council enables abuses by absolving wrongdoers through silence and falsely condemning those who have committed no offense. A mere look around the world today demonstrates that the council has failed in its stated objectives.

Its membership includes authoritarian governments with unambiguous and abhorrent human rights records, such as China, Cuba, and Venezuela.

There is no fair or competitive election process, and countries have colluded with one another to undermine the current method of selecting members.

And the council's continued and well-documented bias against Israel is unconscionable. Since its creation, the council has adopted more resolutions condemning Israel than against the rest of the world combined.

The United States has no opposition in principle to multilateral bodies working to protect human rights. We desire to work with our allies and partners on this critical objective that reflects America's commitment to freedom.

But when organizations undermine our national interests and our allies, we will not be complicit. When they seek to infringe on our national sovereignty, we will not be silent.

The United States—which leads the world in humanitarian assistance, and whose service members have sacrificed life and limb to free millions from oppression and tyranny—will not take lectures from hypocritical bodies and institutions as Americans selflessly give their blood and treasure to help the defenseless.

Ambassador Haley has spent more than a year trying to reform the Human Rights Council.

She is the right leader to drive our efforts in this regard at the United Nations. Her efforts in this regard have been tireless.

She has asserted American leadership on everything from the Assad regime's chemical weapons use, to the pressure campaign against North Korea, and the Iran-backed provocations in the Middle East.

Ambassador Haley has been fearless and a consistent voice on behalf of our ally Israel. And she has a sincere passion to protect the security, dignity, and the freedom of human beings around the world—all while putting American interests first. She has been a fierce defender of human rights around the world.

I will now turn it over to Ambassador Haley for her announcement on how the United States will move forward with respect to the UN Human Rights Council.

AMBASSADOR HALEY: Thank you. Good afternoon. I want to thank Secretary Pompeo for his friendship and his partnership and his leadership as we move forward on these issues.

One year ago, I traveled to the United Nations Human Rights Council in Geneva. On that occasion, I outlined the U.S. priorities for advancing human rights and I declared our intent to remain a part of the Human Rights Council if essential reforms were achieved. These reforms were needed in order to make the council a serious advocate for human rights. For too long, the Human Rights Council has been a protector of human rights abusers and a cesspool of political bias.

Regrettably, it is now clear that our call for reform was not heeded. Human rights abusers continue to serve on and be elected to the council. The world's most inhumane regimes continue to escape scrutiny, and the council continues politicizing and scapegoating of countries with positive human rights records in an attempt to distract from the abusers in their ranks.

Therefore, as we said we would do a year ago if we did not see any progress, the United States is officially withdrawing from the UN Human Rights Council. In doing so, I want to make it crystal clear that this step is not a retreat from human rights commitments; on the contrary, we take this step because our commitment does not allow us to remain a part of a hypocritical and self-serving organization that makes a mockery of human rights.

We did not make this decision lightly. When this administration began 17 months ago, we were well aware of the enormous flaws in the Human Rights Council. We could have withdrawn immediately. We did not do that.

Instead, we made a good-faith effort to resolve the problems. We met with ambassadors of over a dozen countries in Geneva. Last September, in President Trump's speech before the UN General Assembly, he called for member-states to support Human Rights Council reform. During High-Level Week last year, we led a session on Human Rights Council reform cohosted by the British and Dutch foreign ministers and more than 40 other countries.

Our efforts continued all through this year in New York, where my team met with more than 125 member-states and circulated draft texts. Almost every country we met with agrees with us in principle and behind closed doors that the Human Rights Council needs major, dramatic, systemic changes, yet no other country has had the courage to join our fight.

Meanwhile, the situation on the council has gotten worse, not better. One of our central goals was to prevent the world's worst human rights abusers from gaining Human Rights Council membership. What happened? In the past year, the Democratic Republic of Congo was elected as a member. The DRC is widely known to have one of the worst human rights records in the world. Even as it was being elected to membership in the Human Rights Council, mass graves continued to be discovered in the Congo.

Another of our goals was to stop the council from protecting the world's worst human rights abusers. What happened? The council would not even have a meeting on the human rights conditions in Venezuela. Why? Because Venezuela is a member of the Human Rights Council, as is Cuba, as is China.

Similarly, the council failed to respond in December and January when the Iranian regime killed and arrested hundreds of citizens simply for expressing their views.

When a so-called Human Rights Council cannot bring itself to address the massive abuses in Venezuela and Iran, and it welcomes the Democratic Republic of Congo as a new member, the council ceases to be worthy of its name. Such a council, in fact, damages the cause of human rights.

And then, of course, there is the matter of the chronic bias against Israel. Last year, the United States made it clear that we would not accept the continued existence of agenda item seven, which singles out Israel in a way that no other country is singled out. Earlier this year, as it has in previous years, the Human Rights Council passed five resolutions against Israel—more than the number passed against North Korea, Iran, and Syria combined. This disproportionate focus and unending hostility towards Israel is clear proof that the council is motivated by political bias, not by human rights.

For all these reasons, the United States spent the past year engaged in a sincere effort to reform the Human Rights Council. It is worth examining why our efforts didn't succeed. At its core, there are two reasons. First, there are many unfree countries that simply do not want the council to be effective. A credible human rights council poses a real threat to them, so they opposed the steps that would create it.

Look at the council membership and you see an appalling disrespect for the most basic human rights. These countries strongly resist any effort to expose their abusive practices. In fact, that's why many of them run for a seat on the Human Rights Council in the first place: to protect themselves from scrutiny. When we made it clear we would strongly pursue council reform, these countries came out of the woodwork to oppose it. Russia, China, Cuba, and Egypt all attempted to undermine our reform efforts this past year.

The second reason our reforms didn't succeed is in some ways even more frustrating. There are several countries on the Human Rights Council who do share our values. Many of them strongly urged us to remain engaged in the council. They are embarrassed by the obsessive mistreatment of Israel. They share our alarm with the hypocrisy of countries like Cuba, Venezuela, Democratic Republic of Congo, and others serving on the council.

Ultimately, however, many of these likeminded countries were unwilling to seriously challenge the status quo. We gave them opportunity after opportunity and many months of consultations, and yet they would not take a stand unless it was behind closed doors. Some even admittedly were fine with the blatant flaws of the council as long as they could pursue their own narrow agenda within the current structure.

We didn't agree with such a moral compromise when the previous UN Human Rights Commission was disbanded in 2006, and we don't agree with it now. Many of these countries argued that the United States should stay on the Human Rights Council because American participation is the last shred of credibility that the council has. But that is precisely why we must leave. If the Human Rights Council is going to attack countries that uphold human rights and shield countries that abuse human rights, then America should not provide it with any credibility. Instead, we will continue to lead on human rights outside the misnamed Human Rights Council.

Last year, during the United States presidency of the Security Council, we initiated the first ever Security Council session dedicated to the connection between human rights and peace and security. Despite protests and prohibitions, we did organize an event on Venezuela outside the Human Rights Council chambers in Geneva. And this past January, we did have a Security Council session on Iranian human rights in New York.

I have traveled ...to UN refugee and internally displaced persons camps in Ethiopia, Congo, Turkey, and Jordan, and met with the victims of atrocities in those troubled regions. We have used America's voice and vote to defend human rights at the UN every day, and we will continue to do so. Even as we end our membership in the Human Rights Council, we will keep trying to strengthen the entire framework of the UN engagement on human rights issues, and we will continue to strongly advocate for reform of the Human Rights Council. Should it become reformed, we would be happy to rejoin it.

America has a proud legacy as a champion of human rights, a proud legacy as the world's largest provider of humanitarian aid, and a proud legacy of liberating oppressed people and defeating tyranny throughout the world. While we do not seek to impose the American system on anyone else, we do support the rights of all people to have freedoms bestowed on them by their creator. That is why we are withdrawing from the UN Human Rights Council, an organization that is not worthy of its name.

* * * *

b. General Statement at HRC 37

On March 23, 2018, at HRC 37, the United States delivered a general statement, which is excerpted below and available at <https://geneva.usmission.gov/2018/03/23/general-statement-on-item-3/>.

* * * *

The United States wishes to clarify its position on a few issues present in several of the Item 3 resolutions, including but not limited to the Right to Work and Good Governance. As we have noted in the past, the United States understands that the Human Rights Council's resolutions do not change the current state of conventional or customary international law or impose legal obligations on States. To adhere to time limits, a full general statement on Item 3 issues will be uploaded to the extranet and on the US Mission's website.

The Universal Declaration of Human Rights does not 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 a party. Welcoming or noting a report with appreciation should not be understood as acceptance of or support for all assertions, conclusions, or recommendations contained therein, nor should welcoming the work of a Special Rapporteur be understood as support for all of the Rapporteur's projects or publications.

We reiterate our views regarding references to the International Criminal Court enumerated in our Item 4 General Statement.

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). The United States is not Party to this Covenant and the rights contained therein are not justiciable as such in U.S. Courts. 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, or related rights, including those derived from other instruments.

The concerns of the United States about the existence of a "right to development" and economic, social, and cultural rights 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 non-binding global framework for sustainable development that can help countries work toward global peace and prosperity. However, each country has its own development priorities and must work towards implementation in accordance with its own national policies.

In terms of the relationship between human rights and development, we recall that, as the Vienna Declaration and Programme of Action states, "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.

With respect to references to climate change and the Paris Agreement, we note that the United States announced that it intends to withdraw as soon as it is eligible to do so, consistent with the terms of the Agreement, unless we can identify suitable terms for re-engagement. Therefore, language on the Paris Agreement and climate change in these resolutions is adopted without prejudice to U.S. positions.

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 would like to emphasize its continuing concerns 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. It is essential that we implement fiscal discipline.

This general statement applies in particular to the following resolutions: Adequate Housing as a Component of the Right to an Adequate Standard of Living and the Right to Non-discrimination in this Context; Contribution to the Implementation of the Joint Commitment to Effectively Addressing and Countering the World Drug Problem with Regard to Human Rights; Equality and non-discrimination of persons with disabilities and the right of persons with disabilities to access to justice; Human Rights and the Environment; Mandate of the Independent Expert on the Enjoyment of Human Rights of Persons with Albinism; Mandate of the Special Rapporteur in the Field of Cultural Rights; The Need for an Integrated Approach to the Implementation of the 2030 Agenda for Sustainable Development for the Full Realization of Human Rights, Focusing on all the Means of Implementation; Prevention of Genocide; Promoting Human Rights and SDGs through Transparent, Accountable and Efficient Public Services Delivery; The Promotion and Protection of Human Rights and the Implementation of the 2030 Agenda for Sustainable Development; Question of the Realization of Economic, Social and Cultural Rights; The Right to Privacy in the Digital Age; The Right to Work; Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; Rights of the Child; and Role of Good Governance.

* * * *

c. *Special session on Gaza*

On May 18, 2018, at the HRC 28th Special Session on Gaza, Theodore Allegra, Chargé d’Affaires for the U.S. Mission to the United Nations in Geneva, delivered a statement for the United States, which is excerpted below and available at <https://geneva.usmission.gov/2018/05/18/u-s-statement-at-the-hrc-special-session-on-gaza-2/>.

* * * *

The United States remains concerned over the recent outbreak of violence along the Gaza fence. But today's session is blatantly taking sides and ignoring the real culprit for the recent outbreak of violence, the terrorist organization Hamas. Hamas has even admitted its involvement in the violence when a Hamas official proudly announced that 50 of the 62 killed were members of Hamas.

The United States affirms Israel's right to defend itself. We also condemn in the strongest terms actions by Hamas and other militant groups.

The recent outbreak of violence is part of a broader pattern of incitement to violence perpetrated by Hamas and its partners. In recent days, multiple news organizations have documented the Hamas incitement in Gaza. They have reported that Hamas maps and social media show the fastest routes to reach Israeli communities in case demonstrators make it through the security fence. They have reported on Hamas messages over loudspeakers that urge demonstrators to burst through the fence, falsely claiming Israeli soldiers were fleeing, when in fact, they were not. The same loudspeakers are used by Hamas to urge the crowds to "Get closer! Get closer!" to the security fence.

Hamas allegedly encouraged demonstrators to attack the Kerem Shalom crossing, the biggest entry point in Gaza for fuel, food, and medical supplies. They have sent burning kites adorned with swastikas across the fence, and taken other actions that place civilians' lives in jeopardy. This is the real story of what is happening in Gaza, and it is clear that Hamas is to blame for the outbreak of violence.

The resolution being considered today establishes a Commission of Inquiry into violations of human rights and humanitarian law. While the United States rejects the assertions that human rights violations took place, it notes that the scale of violence is quite small compared to the worst human rights situations occurring across the globe. It is hypocritical for this body to spend time and money on this Commission if there are no Commissions looking into human rights and atrocities in the DPRK, Iran, Cuba, Venezuela, and the Russian occupation of Crimea.

The United States is committed to advancing a lasting and comprehensive peace between Israel and the Palestinians. We want nothing more than peace. A peace that offers a brighter future to both Israel and the Palestinians. The continued anti-Israel bias of this Council does nothing to promote that future, and the one-sided action proposed by this Council today only further shows that the Human Rights Council is a broken body.

* * * *

d. U.S. statement on Agenda Item 7 (Israel)

Jason Mack delivered the U.S. explanation of vote at HRC 37 on the resolutions tabled for action under Agenda Item 7 on Israel on March 23, 2018. That statement is available at https://geneva.usmission.gov/2018/03/23/eov-on-item-7-hrc37-resolutions-l-18-46-47-48-49/?_ga=2.132478478.1896043368.1555947132-1581725379.1553176442, and excerpted below.

* * * *

The United States strongly and unequivocally opposes the existence of the Human Rights Council's biased Agenda Item Seven. The continued existence of this agenda item calls into question the credibility of this body. We are very disappointed that all resolutions regarding Israel have been tabled, yet again, for action at the Council under Item 7, rather than moving these resolutions to a general agenda item, such as Item 4, to ensure that Israel is treated like every other UN member state at the Council.

We are dismayed by the many repetitive and one-sided resolutions that run year after year. None of the world's worst human rights violators, some of whom are the subject of resolutions at this session, have their own stand-alone agenda item at this Council. Only Israel receives such treatment. All parties to the Israeli-Palestinian conflict have direct responsibilities for ending it, and we are disappointed that this Council continually singles out Israel for criticism without fully acknowledging the violent attacks directed against its people, nor the obligations and difficult steps required of both sides.

An example of this Council's complacency is the repeated introduction of a resolution focusing on the Golan Heights. To consider such a resolution aimed at Israel while the Syrian regime continues to slaughter its own citizens by the tens of thousands exemplifies the absurdity of this agenda item.

For these reasons, we call for a vote on each of the resolutions under agenda Item 7, and we strongly urge our fellow Members to join us in voting "NO" on each of them.

* * * *

3. OSCE Report on Serious Threats to the Fulfillment of Human Dimension Commitments in the Republic of Chechnya in the Russian Federation

On December 20, 2018, the State Department issued a press statement welcoming the expert fact-finding report on human rights violations and abuses in the Republic of Chechnya in the Russian Federation that was presented at the Organization for Security and Cooperation in Europe ("OSCE") through the Moscow Mechanism. The press statement is excerpted below and available at <https://www.state.gov/expert-report-from-the-moscow-mechanism-for-human-rights-abuses-in-chechnya/>.

* * * *

Today the United States welcomes the expert, fact-finding report on human rights violations and abuses in the Russian Federation's Republic of Chechnya and impunity for them, which we believe to be a particularly serious threat to Russia's fulfillment of its Organization for Security and Cooperation in Europe (OSCE) human dimension commitments.

This expert report concluded that Chechen authorities committed torture and other appalling human rights violations and abuses, including extrajudicial killings of LGBTI persons and others, and describes a worsening "climate of intimidation" against journalists and civil society activists. The report observes that the Russian government "appears to support the perpetrators rather than the victims" and has "not lived up to its responsibilities" to address the "grave situation" in Chechnya.

The report, presented today at the OSCE, is the result of the invocation by the United States and 15 other countries of a rarely used diplomatic tool known as the Moscow Mechanism.

We call on the Russian Federation to protect the human rights of all within its borders, consistent with international law, OSCE commitments, and its own constitution. We support the report's recommendations that Russia conduct a new and truly independent inquiry into the violations and abuses, that human rights defenders and the media be allowed to operate in Chechnya without reprisal, and that imprisoned human rights defender Oyub Titiyev be immediately released.

The United States will continue to speak out in support of human rights for individuals everywhere, including in Chechnya, and to support international efforts to promote accountability for those responsible for human rights violations and abuses.

* * * *

B. DISCRIMINATION

1. Race

On December 22, 2018, the UN General Assembly adopted Resolution 73/262, "A global call 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." U.N. Doc. No. A/RES/73/262. The United States voted against the resolution and provided the following explanation of vote.

* * * *

The United States is firmly committed to combatting racism and racial discrimination. For the United States, this commitment is rooted in the saddest chapters of our history and reflected in the most cherished values of our nation. Despite our progress, fighting racism remains an ongoing challenge. We will continue to work with civil society, international mechanisms, and all nations of goodwill to combat racism and racial discrimination.

We will also continue to implement the International Convention on the Elimination of All Forms of Racial Discrimination, which we believe provides comprehensive protections in this area and constitutes the most relevant international framework to address all forms of racial discrimination. We also will continue to raise the profile of and participate in activities in support of the International Decade for People of African Descent.

In addition, we remain 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 regret that we cannot support this resolution on such an important topic, because this text is not genuinely focused on combatting racism, racial discrimination, xenophobia and related intolerance.

Among our concerns about the resolution are its endorsements of the Durban Declaration and Program of Action (DDPA), as well as the outcome of the Durban review conference, and its endorsement of overbroad restrictions on freedom of speech and expression. We reject any efforts to advance the “full implementation” of the DDPA. 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.

In addition, the United States 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 note that this resolution has no effect as a matter of international law. We also categorically reject the resolution’s call for “former colonial Powers” to provide reparations “consistent with” the DDPA.

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 these reasons, we must vote against this resolution, and we urge other delegations to do the same.

* * * *

2. Gender

a. 2018 UN Commission on the Status of Women

On March 23, 2018, U.S. Deputy Representative to ECOSOC Stefanie Amadeo delivered the U.S. statement on the Agreed Conclusions of the Commission on the Status of Women. Her remarks are excerpted below and available at <https://usun.usmission.gov/u-s-statement-on-the-agreed-conclusions-of-the-commission-on-the-status-of-women/>.

* * * *

The United States thanks our colleagues for arriving at a strong set of Agreed Conclusions on empowering rural women. Through hard work and flexibility, we have arrived at a document that contains recommendations that can lead to tangible benefits. We offer our thoughts on various aspects of the text.

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 Addis outcome document has been overtaken by events since July 2015 and is immaterial, and our reaffirmation of the outcome document has no standing for ongoing work and negotiations involving trade. Indeed, some of the intervening events happened just months after the release of the outcome document.

We note that within the federal structure of the United States, education is primarily a state and local responsibility. It is our understanding that these Agreed Conclusions do not expand any rights not previously agreed to. The United States will address the goals of this document on education as appropriate and consistent with U.S. law and the federal government's authority.

We also underscore our disagreement with other inaccurate language in this text. These Agreed Conclusions refer to a "world financial and economic crisis" even though we are not currently in a world financial and economic crisis. Using this term detracts attention from important and relevant challenges facing economic stability. Unfortunately, the document mentions none of these significant factors.

The United States notes that the recent increase in food insecure people globally is driven largely by an increase in conflict. Whereas poverty may cause local and regional food insecurity, it is not reflective of a global food insecurity crisis.

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.

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 concerning the fundamental rights 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.

This resolution inappropriately discusses trade-related issues, which fall outside the subject matter and expertise of this Commission. The United States would like to make clear its understanding that the language in this text related to facilitating, fostering, and improving access to markets does not imply a commitment or intention to provide new market access. As we have said on many occasions, market access is a matter for negotiation in trade forums such as the World Trade Organization. The UN does not have competence in such matters. We wish to note that traders in many developing countries face crippling barriers in neighboring developing countries and from their own customs regimes. We are hopeful that WTO members'

implementation of the Trade Facilitation Agreement will help make progress in facilitating such access to markets.

We reiterate that in all efforts to promote the empowerment of women, states should respect their human rights obligations and commitments, including with regard to freedom of expression, as well as the independence of the media.

In our view, all sources of finance should be used effectively to accelerate the achievement of gender equality and the empowerment of rural women and girls, so we take exception to singling out official development assistance.

With respect to references to the Paris Agreement, we note that the United States announced that it intends to withdraw as soon as it is eligible to do so, consistent with the terms of the Agreement, unless the President can identify suitable terms for re-engagement. Therefore, the Paris Agreement and climate change language in these resolutions is without prejudice to U.S. positions.

We note that references to “policy space” do not affect potential constraints under international law or agreements that apply to any such “policy space.”

The United States understands that these Agreed Conclusions do not change the current state of conventional or customary international law, and we do not read the document to imply that states must join or implement obligations under international instruments to which they are not 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). Moreover, we consider the resolution’s phrase “the right to food” to be synonymous with the right to food as a component of the right to an adequate standard of living, as enshrined in Article 25 of the Universal Declaration of Human Rights.

Our views about the “right to development” are long-standing and well known. The term lacks an internationally accepted definition. 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.

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 towards 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.

The United States fully supports the principle of informed voluntary choice regarding maternal and child health and family planning. We have stated clearly and on many occasions, consistent with the ICPD Program of Action, that we do not recognize abortion as a method of family planning, nor do we support abortion in our reproductive health assistance. The term

“sexual and reproductive health” is open to many interpretations. The United States does not understand the term sexual and reproductive health to include the promotion of abortion and educational strategies that may increase sexual risk for youth. We strongly support health care services, which empower adolescents to avoid sexual risks, prevent early pregnancy and sexually transmitted disease, thereby improving their opportunity to thrive into adulthood.

The United States views sexual harassment as a form of employment or academic 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 recognizes 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 cannot support language in the resolution that seeks to promote technology transfer that is not clearly indicated to be on mutually agreed terms and voluntary. For the United States, any such language will have no standing in future negotiations. The United States continues to oppose language that we believe undermines intellectual property rights.

Regarding paragraphs 46(u) and 46(aaa), the United States cannot support the language in the referenced paragraphs using the term “protecting” in connection with traditional knowledge because of uncertainty over the scope of such terms and the extent that such terms may imply the existence of legal rights not recognized, or not recognized to the same extent, in U.S. law. For the United States, such language can have no standing in future negotiations.

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 reiterate that protection and reintegration assistance for victims of trafficking in persons is an essential component of any comprehensive anti-trafficking strategy and, therefore, regret the only paragraph on trafficking in persons omits such language. Adopting a trauma-informed and victim-centered approach not only restores the dignity and human rights of trafficking victims, it also improves governments’ ability to identify victims and effectively prosecute trafficking cases.

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.

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.”

The United States believes that each Member State has the sovereign right to determine how it conducts trade with other countries, and that this includes restricting trade in certain circumstances. Economic sanctions, whether unilateral or multilateral, can be a successful means of achieving foreign policy, national security, and other objectives. In cases where the United States has applied sanctions, they have been used with specific objectives in mind, including as a means to promote a return to rule of law or democratic systems, to respect human rights and fundamental freedoms, or to prevent threats to international security. We are within our rights to utilize our trade and commercial policy as tools to achieve noble objectives, and U.S. sanctions

are consistent with the UN Charter and international law. We disagree that U.S. sanctions adversely affect civilians or lead to humanitarian crises. We again register our concern that language in this document in effect purports to limit the international community's ability to respond effectively and by non-violent means against threats to democracy, human rights, or world security. In sum, we believe that targeted economic sanctions can be an appropriate, effective, and legitimate alternative to the use of force.

We would like to reiterate our understanding of the references to "universal health coverage." We emphasize that States do not have obligations under international law to achieve universal access to healthcare. We encourage governments and public institutions to strive to improve access to quality universal healthcare and to do so in accordance with their national contexts and policies. The United States will continue to work to improve access to quality healthcare while also recognizing the necessary role of partnerships with the private sector and other non-governmental stakeholders.

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b. Violence Against Women

See discussion *infra* of the U.S. statement at an IACHR hearing on violence against indigenous women.

3. Age

On November 15, 2018, U.S. ECOSOC Advisor Sofija Korac delivered the explanation of position on a Third Committee resolution on the Second World Assembly on Ageing. The statement is excerpted below and available at <https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-the-second-world-assembly-on-ageing/>.

* * * *

The United States thanks the G-77 for its annual resolution on the Second World Assembly on Ageing. We are pleased to join consensus on this resolution which focuses on the well-being of older persons.

The resolution calls upon member states to act to protect and assist older persons in emergency situations, in accordance with the Madrid Plan of Action and the Sendai Framework. We note that these two documents are voluntary, and that there are other documents which also figure in protecting and assisting persons, including older persons, in humanitarian crisis situations. The Guidelines to Protect Migrants Experiencing Conflict or Natural Disaster and the Guiding Principles on Internal Displacement are two prominent examples.

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C. CHILDREN

1. Rights of the Child

On March 23, 2018, the United States provided an explanation of its position on the resolution on the rights of the child at HRC 37. U.N. Doc. A/HRC/37/L.33. The U.S. explanation of position is excerpted below and available at <https://geneva.usmission.gov/2018/03/23/eop-on-rights-of-the-child-hrc37-resolution-l-33/>.

* * * *

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

In joining consensus today, we must dissociate from two paragraphs, and wish to clarify our views on several provisions. Our general concerns, including language on international legal obligations, climate, and federalism will be addressed in the Item 3 General Explanation of Position. We will focus here on certain key issues.

With respect to preambular paragraph 11, the United States reiterates the understandings expressed in the United States' explanation of position on the New York Declaration, which is available as UN Document Number A/71/415. In certain instances, U.S. law requires, for safety and/or national security reasons, that migrants who enter unlawfully remain in U.S. government custody pending adjudication of their migratory status. The United States maintains its right to enforce its immigration laws, which are consistent with its sovereign right to control entry into its territory by foreign nationals, subject to international obligations. With this understanding, the United States must disassociate from preambular paragraph 11 relating to the New York Declaration. The United States remains committed to the Global Compact on Refugees.

Similarly, the United States fully supports the principle of voluntary choice regarding maternal and child health and family planning. We have stated clearly and on many occasions, consistent with the ICPD Program of Action, that we do not recognize abortion as a method of family planning, nor do we support abortion in our reproductive health assistance. The term "sexual and reproductive health" is open to many interpretations. The United States does not understand the term sexual and reproductive health to include the promotion of abortion and educational strategies that may increase sexual risk for youth. We strongly support health care services that empower adolescents to avoid sexual risks and prevent early pregnancy and sexually transmitted disease, thereby improving their opportunity to thrive into adulthood.

The United States disassociates from the language regarding the policies, systems, and procedures applicable to migrant children in operative paragraph 7. The U.S. government draws from a wide range of available resources to safely process migrant children, in accordance with applicable laws and is committed to ensuring that migrant children, including those in the custody of the U.S. government, are treated in a safe, dignified, and secure manner and with special concern for their particular vulnerabilities. The United States believes that its current practices with respect to children are consistent with our international commitments.

Moreover, as we will underscore in our Item 3 General Statement, we do not read the resolutions adopted by the Human Rights Council, including 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 references to the principle of the best interests of the child, which is derived from the Convention on the Rights of the Child.

With respect to operative paragraph 10's call for rehabilitation and reintegration efforts for children associated with armed forces, we read this language as applying to children associated with armed forces in violation of applicable international law. We understand operative paragraph 11's reference to "illegal adoptions" to mean adoptions referred to in Article 3(1)(a)(ii) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography.

With respect to operative paragraph 21's call to "respect, protect and fulfill the right" to education and the other references to the right to education in this resolution, we recall that Article 28 of the Convention on the Rights of the Child obliges parties to that Convention to achieve this right progressively, as accurately reflected in operational paragraph 22 of this resolution.

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2. Children in Armed Conflict

Consistent with the Child Soldiers Prevention Act of 2008 ("CSPA"), Title IV of Public Law 110-457, as amended, the State Department's 2018 Trafficking in Persons ("TIP") 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 2018 report are the governments of Burma, the Democratic Republic of the Congo, Iran, Iraq, Mali, Niger, Nigeria, Somalia, South Sudan, Sudan, Syria, and Yemen.

The full text of the TIP report is available at <https://www.state.gov/trafficking-in-persons-report-2018/>. 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 28, 2018, 83 Fed. Reg. 53,363 (Oct. 23, 2018), 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 Iraq, Mali, Niger, and Nigeria; 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, Peacekeeping Operations (PKO) assistance,

and support provided pursuant to 10 U.S.C. 333, 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 South Sudan to allow for PKO assistance, 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 Yemen 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.

D. SELF-DETERMINATION

See Chapter 7 for discussion of the U.S. submissions in the case before the International Court of Justice, *Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965* (Request for Advisory Opinion), which address self-determination. See also Chapter 7 for discussion of the 2018 U.S. submission to the IACHR in *Igartua and Rosselló*, cases regarding the rights of residents of Puerto Rico.

On November 19, 2018, Deputy U.S. Representative to ECOSOC Courtney Nemroff delivered the U.S. explanation of position on a Third Committee resolution on the rights of peoples to self-determination. The statement follows and available at <https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-the-rights-of-peoples-to-self-determination/>.

The United States recognizes the importance of the right of self-determination of peoples and therefore joins consensus on this resolution. We note, however, as frequently stated by the United States 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 22, 2018, at the 37th session of the HRC, Jason Mack delivered the U.S. explanation of position on the resolution on economic, social and cultural rights. U.N. Doc. A/HRC/37/L.24. That statement is excerpted below and available at <https://geneva.usmission.gov/2018/03/22/eop-on-economic-social-cultural-rights-l-24/>.

* * * *

The United States is pleased to join consensus on this resolution concerning the realization of economic, social, and cultural rights, and welcome its emphasis on the links between sustainability and resilience and the enjoyment of human rights. We thank the main sponsor for the 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.

As the International Covenant on Economic, Social, and Cultural Rights provides, each State Party undertakes 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 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.

With respect to preambulatory paragraph 5, we are pleased to reaffirm the human rights of all, including refugees and migrants, regardless of status. However, we must dissociate from the language in this paragraph reaffirming the New York Declaration and reiterate the understandings expressed in the United States’ explanation of position on that declaration, which is available as UN Document Number A/71/415.

With respect to operative paragraph 10, we understand the reference to international obligations and commitments in that paragraph to mean that if a state carries out the stated actions related to hazards and disasters, it should do so in a manner consistent with its applicable international obligations or commitments; it should not be understood to suggest the existence of particular obligations to implement the actions described.

Other concerns regarding this resolution, such as those regarding the Sustainable Development Goals and the right to development, will be addressed in the United States’ general statement delivered at the end of Item 3.

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2. Food

The explanation of vote by the United States on the right to food resolution delivered on March 23, 2018 at HRC 37 is excerpted below and available at <https://geneva.usmission.gov/2018/03/23/eov-on-the-right-to-food-l-21/>.

* * * *

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. 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 Council, 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.

As such and for the following additional reasons, we call a vote and will vote "no" on this resolution.

First, despite efforts by the sponsor to streamline this text, which are duly appreciated, this resolution continues to inappropriately discuss trade-related issues, which fall outside the subject-matter and the expertise of this Council. 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 (WTO), to reinterpret WTO agreements and decisions, to seek to shape WTO negotiations and its agenda. The WTO is an independent organization with a different membership and mandate. The language in operative paragraph 24 in no way supersedes or otherwise undermines the WTO Nairobi Ministerial Declaration, which all WTO Members adopted by consensus. 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. Paragraph 24 also inaccurately links trade negotiations at the WTO to the right to food. Similarly, the United States rejects operative paragraph 25, which inaccurately suggests there is a tension between international trade agreements and a "right to food."

Second, the United States does not support the resolution's references to technology transfer that are not clearly indicated to be on mutually agreed terms and voluntary.

Finally, while we do not treat the "right to food" as an enforceable obligation, 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. However this resolution mischaracterizes certain human rights and aspects of international human rights law, including by referring to rights that are not recognized and suggesting that there is a hierarchy of rights. Furthermore, we reiterate that States are responsible for implementing their human rights obligations regardless of external factors, including, for example, the availability of technical and other assistance. We also reject the suggestion in this resolution that States have particular extraterritorial obligations arising from any concept of a "right to food."

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The U.S. explanation of vote on a draft UN General Assembly Third Committee resolution on the right to food was delivered by Mordica Simpson, U.S. Advisor to ECOSOC, on November 15, 2018. That statement follows and is available at <https://usun.usmission.gov/explanation-of-vote-on-a-third-committee-resolution-on-a-right-to-food/>.

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This Committee is meeting at a time when the international community is confronting one of the most serious food-security emergencies in modern history. Hunger is on the rise for the third year in a row, after a decade of progress. Over 35 million people in South Sudan, Somalia, the Lake Chad Basin, and Yemen are facing severe food insecurity, and in the case of Yemen, potential famine. The United States remains fully engaged and committed on addressing these conflict related crises.

This resolution rightfully acknowledges the hardships millions of people are facing, 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.

Accordingly, we will call a vote and vote "no" on this resolution for the following reasons.

First, this resolution inappropriately discusses trade-related issues, which fall outside the subject matter and the expertise of this Committee. As stated on many occasions, the United States believes it is unacceptable for the UN to speak to the 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 this resolution 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, DDA. As a result, WTO Members are no longer negotiating under the DDA framework. The resolution also inaccurately links trade negotiations at the WTO to the concept of a "right to food."

The United States rejects the resolution's suggestion that there is a tension between international trade agreements and the right to an adequate standard of living, including food. 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.

The United States is concerned that concept of "food sovereignty" could be used to justify protectionism or other restrictive import or export policies with negative consequences for food security, sustainability, and income growth. Improved access to local, regional, and global markets helps ensure food is available to the people who need it most and smooths price volatility. Food security depends on appropriate domestic action that is consistent with international commitments.

The climate change language in this resolution is without prejudice to U.S. positions. We affirm our support for promoting economic growth and improving energy security while protecting the environment.

The United States also does not support the resolution's numerous calls for technology transfer that is not voluntary and on mutually agreed terms. 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.

Furthermore, we reiterate that individual states hold the primary responsibility for implementing their human rights obligations. Regardless of external conditions, such as availability of technical assistance, all states must uphold this primary responsibility. 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.”

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 aim to provide adequate food access for all persons, 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.”

We interpret this resolution’s reaffirmation of previous documents, resolutions, and related human rights mechanisms as applicable to the extent countries affirmed them in the first place.

As for other references to previous documents, resolutions, and related human rights mechanisms, we reiterate any views we expressed upon their adoption.

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F. HUMAN RIGHTS AND THE ENVIRONMENT

On March 22, 2018, at HRC 37, Jason Mack delivered the U.S. explanation of position on the resolution on human rights and the environment. U.N. Doc. No. A/HRC/37/L.19.

That statement is excerpted below and available at

<https://geneva.usmission.gov/2018/03/22/eop-on-human-rights-and-the-environment-l-19/>.

* * * *

The United States concurs with other members of the Council that protection of the environment is vitally important and contributes to sustainable development, human well-being, and the enjoyment of human rights. We also recognize that respect for human rights, including the rights of freedom of expression, freedom of association, and peaceful assembly, contributes to good environmental policymaking, and in this regard, welcome this resolution’s recognition of the important role played by human rights defenders. In this spirit, we join consensus on this resolution and thank its sponsors for their constructive engagement on the text.

At the same time, we remain concerned about the general approach of placing environmental concerns in a human rights context and about addressing them in fora that do not have the necessary expertise. For related reasons, while we recognize the efforts of the Special Rapporteur and UN bodies in this area, we do not support all of their projects or publications, including several aspects of the Special Rapporteur’s Framework Principles on human rights and the environment, and we take this opportunity to affirm that the Framework Principles themselves do not reflect or enshrine any new human rights obligations or commitments.

We note the longstanding and well known concerns of the United States regarding the “right to development,” and the progressive realization of economic, social, and cultural rights, as well as our concerns about the 2030 Agenda for Sustainable Development, which we will raise in more detail in our Explanation of Position at the end of Agenda Item 3.

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The March 23, 2018 U.S. general statement on item 3, mentioned *supra*, is available at <https://geneva.usmission.gov/2018/03/23/general-statement-on-item-3/> and follows.

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The United States wishes to clarify its position on a few issues present in several of the Item 3 resolutions, including but not limited to the Right to Work and Good Governance. As we have noted in the past, the United States understands that the Human Rights Council’s resolutions do not change the current state of conventional or customary international law or impose legal obligations on States. To adhere to time limits, a full general statement on Item 3 issues will be uploaded to the extranet and on the US Mission’s website.

The Universal Declaration of Human Rights does not 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 or noting a report with appreciation should not be understood as acceptance of or support for all assertions, conclusions, or recommendations contained therein, nor should welcoming the work of a Special Rapporteur be understood as support for all of the Rapporteur’s projects or publications.

We reiterate our views regarding references to the International Criminal Court enumerated in our Item 4 General Statement.

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). The United States is not Party to this Covenant and the rights contained therein are not justiciable as such in U.S. Courts. 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, or related rights, including those derived from other instruments.

The concerns of the United States about the existence of a “right to development” and economic, social, and cultural rights 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 non-binding global framework for sustainable development that can help countries work toward global peace and prosperity. However, each country has its own development priorities and must work towards implementation in accordance with its own national policies.

In terms of the relationship between human rights and development, we recall that, as the Vienna Declaration and Programme of Action states, “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.

With respect to references to climate change and the Paris Agreement, we note that the United States announced that it intends to withdraw as soon as it is eligible to do so, consistent with the terms of the Agreement, unless we can identify suitable terms for re-engagement. Therefore, language on the Paris Agreement and climate change in these resolutions is adopted without prejudice to U.S. positions.

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 would like to emphasize its continuing concerns 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. It is essential that we implement fiscal discipline.

This general statement applies in particular to the following resolutions: Adequate Housing as a Component of the Right to an Adequate Standard of Living and the Right to Non-discrimination in this Context; Contribution to the Implementation of the Joint Commitment to Effectively Addressing and Countering the World Drug Problem with Regard to Human Rights; Equality and non-discrimination of persons with disabilities and the right of persons with disabilities to access to justice; Human Rights and the Environment; Mandate of the Independent Expert on the Enjoyment of Human Rights of Persons with Albinism; Mandate of the Special Rapporteur in the Field of Cultural Rights; The Need for an Integrated Approach to the Implementation of the 2030 Agenda for Sustainable Development for the Full Realization of Human Rights, Focusing on all the Means of Implementation; Prevention of Genocide; Promoting Human Rights and SDGs through Transparent, Accountable and Efficient Public Services Delivery; The Promotion and Protection of Human Rights and the Implementation of the 2030 Agenda for Sustainable Development; Question of the Realization of Economic, Social

and Cultural Rights; The Right to Privacy in the Digital Age; The Right to Work; Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; Rights of the Child; and Role of Good Governance.

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On March 23, 2018, at HRC 37, the United States delivered a statement on the resolution on “the need for an integrated approach to the implementation of the 2030 Agenda for Sustainable Development for the Full Realization of Human Rights.” U.N. Doc. No. A/HRC/37/L.42. That statement follows and is available at <https://geneva.usmission.gov/2018/03/23/the-need-for-an-integrated-approach-to-the-implementation-of-the-2030-agenda-for-sustainable-development-for-the-full-realization-of-human-rights-focusing-holistically-on-means-of-implementation-hr/>.

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We would like to thank South Africa and the core-group for their cooperative spirit, which enabled us to join consensus on this resolution to underscore the priority we place on the realization of human rights and fundamental freedoms in the context of sustainable development.

However, we regret that this resolution does not address this vital issue in a more productive way. Our concerns about the right to development, cited in PP4, are well known, and will be addressed in the Item 3 General Statement.

The United States recognizes that the 2030 Agenda can help countries work toward global peace and prosperity, and that each country has its own development priorities and must work towards implementation in accordance with its own national policies and priorities. However, this single element should not be elevated above others, particularly in a Human Rights Council resolution. Similarly, it is incongruous that the resolution stresses that the Sustainable Development Goals are “universal, indivisible, and interlinked,” but implies that SDG 17, which addresses means of implementation and about which this body has no expertise, is foremost among them. Because of these misstatements of fact, we must dissociate from PP9 and OP4. We do not support such attempts to circumvent the careful balance of elements in the 2030 Agenda.

With regard to PP9, the United States further notes that several of the trade-related targets in Goal 17 have been overtaken by events since September 2015 and are irrelevant. Our reaffirmation of the 2030 Agenda has no standing for ongoing work and negotiations involving trade. Indeed, some of the intervening events happened just months after the release of the outcome document. Therefore, the text of PP9 does not serve as a basis for future negotiations in the UN, and the United States will not be able to join consensus on it in the future.

The Human Rights Council should play a vital role in focusing the world’s attention on human rights and fundamental freedoms. We are concerned that inviting the President of ECOSOC to annually brief the Council will be duplicative of the High-Level Political Forum (HLPF), and that its focus will stray from our work here. The work of the Human Rights Council should feed into the HLPF, which has the mandate to consider the implementation of all elements of sustainable development. Introducing economic and development issues into our

deliberations will not enhance our work; it will distract the Council from the key role it should play in safeguarding human rights and fundamental freedoms. For these reasons, we dissociate from OP4.

Finally, the United States recalls UN Members' mutual commitment in Paragraph 18 of the 2030 Agenda, that in implementing the 2030 Agenda, "we reaffirm our commitment to international law and emphasize that the Agenda is to be implemented in a manner that is consistent with the rights and obligations of States under international law." The United States also highlights UN Members' mutual commitment, in Paragraph 58 of the 2030 Agenda, that implementation of the 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, the United States continues to view the World Trade Organization (WTO) as the appropriate forum for the negotiation of trade issues, and the 2030 Agenda did not represent a commitment to continue to pursue the WTO Doha Development Agenda, nor did it represent a commitment to provide new market access for goods or services. The Agenda also did not interpret or alter any WTO agreement or decision, including the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS Agreement).

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G. BUSINESS AND HUMAN RIGHTS

On June 29, 2018, the State Department Bureau of Democracy, Human Rights, and Labor released a fact sheet on business and human rights. The fact sheet is excerpted below and available at <https://www.state.gov/business-and-human-rights-2/>.

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WHO WE ARE

The State Department's Internet Freedom and Business & Human Rights (IFBHR) Section within the Bureau of Democracy, Human Rights, and Labor leads U.S. government policy engagement on business and human rights.

The activities of businesses impact the lives of millions of people worldwide. Even small enterprises have supply chains that span continents. Consistent with the UN Guiding Principles on Business and Human Rights (Guiding Principles) and the OECD Guidelines on Multinational Enterprises, we encourage U.S. companies to uphold high standards and respect human rights in the communities where they operate.

WHAT WE DO

We partner with companies, civil society, and like-minded governments to promote respect for human rights in business. We lead policy efforts to disseminate and implement the Guiding Principles, engage in multi-stakeholder initiatives, and work to find solutions to urgent human rights policy issues involving business.

EXAMPLES OF OUR ENGAGEMENT

Bilateral and Multilateral: We collaborate with like-minded governments to advance human rights commitments at the UN, G-7, G-20 and the OECD. This includes co-sponsorship of the UN Human Rights Council’s landmark resolution endorsing the Guiding Principles—a framework that sets out state duties and business responsibilities around business and human rights.

Multi-stakeholder: We lead engagement in the Voluntary Principles on Security and Human Rights (VPs). The VPs guide extractive companies on providing security for their operations in a manner that respects human rights. Member companies carry out a human rights risk assessment of their engagements with public and private security providers.

We participate in The International Code of Conduct for Private Security Service Providers Association (ICoCA), an oversight and governance mechanism for private security companies promoting respect for human rights and humanitarian law in complex environments. ICoCA includes a certification, monitoring, and complaint mechanism.

We sit on the Advisory Committee of the Mega Sporting Events Platform to address human rights challenges in the life-cycle of mega sporting events, such as the World Cup and Olympic Games.

Programming: Our global programs support capacity building to enable civil society actors to engage more effectively with businesses and other stakeholders to address business and human rights issues in the field.

Building awareness in the U.S. Government: We build tools and conduct training to help our State Department and interagency colleagues in Washington and overseas become more effective envoys on business and human rights issues.

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The Department issues an additional fact sheet on business and human rights on November 19, 2018, which is available at <https://www.state.gov/remarks-and-releases-bureau-of-democracy-human-rights-and-labor/u-s-government-efforts-to-advance-business-and-human-rights-in-2018/>. The fact sheet provides examples of U.S. government efforts to support voluntary efforts of businesses to advance human rights in 2018.

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LAWS AND POLICIES

- [U.S. government issues Advisory on sanctions risks for businesses with supply chain links to North Korea.](#) The Advisory highlights risks and tactics that could expose business to sanctions under U.S. and United Nations authorities, including the Countering America’s Adversaries Through Sanctions Act (CAATSA). It urges businesses to collaborate with stakeholders to implement human rights due diligence policies and procedures to identify/prevent the use of North Korean forced labor throughout their supply chains.

- [Department of Homeland Security issues a frequently asked questions \(FAQ\) guide to address questions under the import provisions of CAATSA Section 321\(b\).](#) CAATSA reiterates the need for comprehensive due diligence by and on behalf of U.S. companies involved in importing goods produced by North Korean nationals or citizens. The FAQ is meant to be a living document and will be updated to ensure its continued relevance and utility.
- **Department of State holds co-convenings to advance business and human rights.** These focused on: collaborating to address human rights challenges online; and the role of business in the protection of fundamental freedoms, civic space, and human rights defenders worldwide. A key takeaway was the significance of relationship building among business and human rights groups to address potential adverse impacts on human rights before issues arise.
- [Department of State contributes to U.S.-Canada-Mexico 2026 World Cup human rights strategy.](#) The strategy is: a comprehensive approach to addressing human rights risks that can raise the bar for human rights standards for future World Cups; and a commitment to transparency by publication of the strategy alongside an independent assessment. This was the first World Cup bidding cycle subject to FIFA's requirement that bidding nations disclose human rights risks and mitigation strategies.
- [US-Mexico-Canada Agreement \(USMCA\) promotes labor rights.](#) Unlike NAFTA, under the USMCA Mexico commits to legislative actions to provide for the effective recognition of the right to collective bargaining. In the Rules of Origin Chapter, parties agreed 40-45 percent of auto content be made by workers earning at least USD \$16/hour.
- [Environmental Protection Agency announces that the Federal Acquisition Regulations will require electronic procurement standards.](#) The standard includes new criteria related to labor, OHS, conflict minerals disclosure, participation in in-region programs for responsible sourcing, and smelter and refiners participation in OECD third party mechanisms.
- [U.S. government joins launch of Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains \(Principles\).](#) Launched jointly by the U.S. government, Australia, Canada, New Zealand and the United Kingdom on the margins of the UN General Assembly, the Principles provide a framework for countries to prevent human trafficking in public and private sector supply chains.
- [U.S. government joins 2018 G20 declaration on labor exploitation in global supply chains.](#) Commitments included: promoting: due diligence and transparency in global supply chains; development and implementation of responsible recruitment policies and practices; and use of public procurement to improve compliance with labor standards.
- [Department of Homeland Security's enforcement divisions increase outreach and collaboration with stakeholders on combatting forced labor.](#) Efforts include webinars, panel discussions, meetings, and briefings with an emphasis on collaboration and information sharing.
- **Department of State-leads informal interagency working group to monitor violence against environmental defenders, holding more than 15 meetings in 2018.** The group engaged stakeholders and reviewed UN, NGO, and U.S. government reporting about violence against environmental defenders to best inform U.S. policy.

TOOLS

- [USAID launches first-ever Investor Survey and Report on Land Rights](#). The survey analyzes perceptions and practices of investors regarding land and resource tenure rights. Key findings include: land risks are the most important factor leading to the rejection of projects worth over 1.5 billion USD; all investors assess land risks, and most find community engagement works better than exclusionary tactics in risk mitigation.
- **Department of State contributes an additional \$21 million to the Global Fund to End Modern Slavery.** Funds contribute to mitigating risks of modern slavery in the construction sector (developing techniques to track migration routes, professionalizing recruitment practices, and building professional skills in India and the Philippines); and combatting forced labor in Vietnam's apparel industry.
- **Department of State funds programs that advance business and human rights in the ICT sector.** Programs advance multi-stakeholder engagement with tech companies, NGOs, and governments; benchmarking company policies around free expression and privacy; and encouraging best practice for small-and-medium-sized enterprises.
- [Department of Labor makes the "Comply Chain" mobile app available in French and Spanish](#). The app helps companies and industry groups around the world develop robust social compliance systems to root out child labor and forced labor from global supply chains.
- [Department of State provides financial and technical support for development of OSCE Model Guidelines for Governments to Prevent Trafficking for Labour Exploitation in Supply Chains](#). Published in February 2018, the Model Guidelines provide a practical tool to assist OSCE participating States and Partners for Co-operation in implementing concrete measures to prevent trafficking in persons in public procurement and global supply chains.
- **Department of State pilots program on the use of block chain technology to address worker rights challenges.** The focus of the pilot is to deploy a block chain solution to address contract switching and related issues.
- **Department of Labor commits \$17.5 million in 2018 to fund projects to address child labor and forced labor in supply chains.** These will focus on reducing forced labor and human trafficking in the recruitment of workers; empowering girls and women; combatting child labor in cobalt mining in the Democratic Republic of Congo; and addressing child labor and forced labor in palm oil supply chains in Colombia and Ecuador.
- **Department of Labor launches projects in 2017 totaling \$13 million to address child and forced labor in five supply chains in six countries.** In December 2017, the Department of Labor awarded projects to prevent, detect, and address child labor and forced labor in the production of cocoa, coffee, dried fish, gold, and seafood in Bangladesh, Colombia, Ghana, Honduras, Indonesia, and the Philippines.
- [USAID launches guidance to address community engagement for power project developers in Kenya in the Power Africa initiative](#). The guidance helps power generation and transmission project developers plan and implement community engagement strategies.
- [USAID completes Three Responsible Land-Based Investment Pilots](#). The three pilots with Illovo Sugar Africa in Mozambique, Moringa Partnership in Kenya, and Hershey's/ECOM Agro-industrial in Ghana demonstrate that respecting and bolstering local land rights can be good for business by reducing operational, financial, and reputational risks for companies.
- [USAID launches third Land Tenure and Property Rights public online course](#). The course includes new modules on responsible land-based investment and land tenure.

- [U.S. government Public-Private Alliance for Responsible Minerals Trade to fund projects addressing conflict minerals in the Great Lakes Region.](#) The focus will be on research on the barriers for financial institutions in promoting responsible minerals trade from conflict-affected and high-risk areas; and financing a package to support legitimate artisanal and small-scale mining of gold, tin, tungsten and tantalum and complimentary livelihoods.

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H. INDIGENOUS ISSUES

1. UN General Assembly Third Committee Resolution

In November 2018, at the UN General Assembly, the U.S. delegation provided an explanation of position on a Third Committee resolution entitled “Rights of Indigenous Peoples.” The United States disassociated from one paragraph and joined consensus on the resolution as a whole. The U.S. explanation of position is excerpted below.

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The United States reaffirms its support for the UN Declaration on the Rights of Indigenous Peoples. As explained in our 2010 Statement of Support, the Declaration is an aspirational document of moral and political force and is not legally binding or a statement of current international law. The Declaration expresses aspirations that the United States seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies.

The United States disassociates from PP 7 of the resolution on the Global Compact for Safe, Orderly and Regular Migration, and joins consensus on the resolution as a whole.

The United States does not support a compact on Safe, Orderly, and Regular Migration and objects to references in the resolution to this compact. As the United States has not participated in the UN process to negotiate the migration compact and we will not endorse this instrument, it should be clear to all nations that we are not bound by any commitments or outcomes stemming from the migration compact process or contained in the compact itself.

The United States recognizes and reaffirms its belief that decisions about whom to legally admit for residency or citizenship are among the most important sovereign decisions a country can make, and are not subject to negotiation in international instruments or fora. The United States maintains the sovereign right to facilitate or restrict access to our territory, in accordance with our national laws and policy, while providing relevant protections consistent with our international obligations.

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2. Thematic Hearing of the Inter-American Commission on Human Rights

On October 5, 2018, the United States participated in a thematic hearing convened by the Inter-American Commission on Human Rights (“IACHR”) on violence against indigenous women in the United States. The United States provided a statement at a previous IACHR thematic hearing on violence against indigenous women in 2011. See *Digest 2011* at 214-15. Excerpts follow from the statement of U.S. Ambassador to the Organization of American States Carlos Trujillo at the October 2018 thematic hearing.

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I ... want to thank you for the opportunity to come here today to discuss one of the most urgent problems facing American Indian and Alaska Native communities in the United States: domestic violence and sexual assault. These crimes affect every community in the United States, but, tragically, Native women face higher rates of domestic violence and sexual assault than almost any group.

A 2016 National Institute of Justice study, noted in the Joint Request for a Thematic Hearing, found that more than half of all Native women have experienced sexual violence and physical violence by an intimate partner. All too often, these instances of violence against women are part of an escalating cycle, which has resulted in alarming homicide rates among American Indian and Alaska Native women.

The United States is committed to addressing this crisis through the efforts of our Department of Justice. Our federal prosecutors are working to bring violent offenders in Indian country to justice—and to reduce and prevent future crime. Indian country is defined by statute to mean (1) all land within the limits of any Indian reservation under the jurisdiction of the U.S. Government; (2) all dependent Indian communities within the borders of the United States; and (3) all Indian allotments. Through federal grant programs for tribal communities, we are working with those communities so they become safer and can provide victims with a full range of services and support. Through federal research, we are deepening our understanding of violence and victimization in Indian country and searching for solutions. And through federally funded training and technical assistance, we are enhancing the ability of tribes to restore public safety and promote healing in their own communities.

Effective, widespread, and timely prosecutions are critical to stopping the cycle of domestic violence. Early intervention that interrupts or deters a pattern of escalating violence is the key to avoiding future, and sometimes deadly, violence.

The Department of Justice has prosecuted an increasing number of habitual offenders in Indian country under a federal statute enacted in 2005, which focuses on domestic assaults by offenders with at least two prior convictions for any domestic assault in a federal, state, or tribal court. Case management data show the number of defendants indicted under this provision grew from 12 in fiscal year 2010 to 33 in fiscal year 2016 and 41 in fiscal year 2017; 42 have been indicated thus far in fiscal year 2018 as of August 31.

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I. FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION

On November 20, 2018, U.S. Representative for Economic and Social Affairs Ambassador Kelley Currie delivered the U.S. explanation of position in the Third Committee on a resolution on freedom of peaceful assembly and association. Ambassador Currie's statement is excerpted below and available at https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-freedom-of-peaceful-assembly-and-association/?_ga=2.78428436.1812141081.1563396372-737751616.1554228179. The resolution was adopted by the UN General Assembly on December 17, 2018, on the report of the Third Committee. U.N. Doc. A/RES/73/173.

* * * *

The United States is pleased to present this resolution on the promotion and protection of human rights and fundamental freedoms, including the rights to peaceful assembly and freedom of association. We decided to put forward this resolution to call attention to the threats and attacks many individuals are facing around the world for peacefully assembling, covering protests as a journalist or media worker, or serving as mediators between the government and those protesting.

This new resolution for the first time ever in Third Committee draws the international community's attention to the alarming increase in governments violating fundamental freedoms, particularly peaceful assembly and association. Peaceful protests are often met with violence from government security forces, resulting in the deaths of those who are using their voice to speak out against corruption and misrule. State and non-state actors are also violating these freedoms online increasingly through internet shutdowns and censorship of internet content, particularly during online gatherings related to upcoming elections.

This resolution urges governments and non-state actors to immediately end these attacks. The text also highlights different types of individuals who are facing these threats including civil society, human rights defenders, student protestors, journalists and media workers, among others. The resolution also reaffirms the importance of respecting and promoting fundamental freedoms including the freedoms of peaceful assembly and association in a way that the Third Committee has not done before—through a separate text versus addressing these issues in a few paragraphs in various other resolutions.

The United States and our 76 co-sponsors stand firm in our commitment to the promotion and protection of fundamental freedoms, including freedoms of expression, and peaceful assembly, association, and religion or belief, and we hope that this resolution will be adopted by consensus. We also want to thank all delegations for their constructive engagement during our informal consultations.

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J. FREEDOM OF EXPRESSION

On December 7, 2018, the OSCE Ministerial Council adopted a decision on the safety of journalists. OSCE MC.DEC/3/18 (available at <https://www.osce.org/chairmanship/406538>). The United States provided an interpretive statement, which follows.

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We strongly support the safety of journalists and freedom of expression. We reiterate that any restrictions on the exercise of freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds, for members of the media and members of the public, must be consistent with States' obligations under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which obligates States Parties to respect and ensure to all individuals within their territory and subject to their jurisdiction the right to freedom of expression. We understand any reference to 'international standards' in this regard to refer to such obligations. We understand the reaffirmation of language from the Document of the 1991 Moscow Meeting of the Conference of the Human Dimension of the CSCE to be in the context of the concerns addressed at that Meeting.

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K. FREEDOM OF RELIGION**1. Designations under the International Religious Freedom Act**

On November 28, 2018, the Secretary of State designated Burma, China, Eritrea, Iran, North Korea, Pakistan, Sudan, Saudi Arabia, Tajikistan, and Turkmenistan as "Countries of Particular Concern" under § 402(b) of the International Religious Freedom Act of 1998 (Pub. L. No. 105–292), as amended. The "Countries of Particular Concern" were so designated for having engaged in or tolerated "systematic, ongoing, [and] egregious violations of religious freedom." 83 Fed. Reg. 65,782 (Dec. 21, 2018). The Secretary of State also placed Comoros, Russia, and Uzbekistan on a Special Watch List for having engaged in or tolerated "severe violations of religious freedom." And the Secretary designated al-Nusra Front, al-Qa'ida in the Arabian Peninsula, al-Qa'ida, al-Shabab, Boko Haram, the Houthis, ISIS, ISIS-Khorasan, and the Taliban as "Entities of Particular Concern." The "Presidential Actions" or waivers designated for each of the countries designated by the Secretary are listed in the Federal Register notice. The State Department issued a press statement on December 11, 2018, available at <https://www.state.gov/religious-freedom-designations/>, announcing the designations, and stating further:

Safeguarding religious freedom is vital to ensuring peace, stability, and prosperity. These designations are aimed at improving the lives of individuals and the broader success of their societies. I recognize that several designated countries are working to improve their respect for religious freedom; I welcome such initiatives and look forward to continuing the dialogue.

On October 26, 2018, Secretary Pompeo issued a press statement commemorating the 20th anniversary of the signing of the 1998 International Religious Freedom Act. The International Religious Freedom Day statement is available at <https://www.state.gov/international-religious-freedom-day/>, and includes the following:

In the twenty years since the IRF Act was signed, we have made significant progress. I am proud of the team we have at the State Department, led by Ambassador Brownback, who work tirelessly to advance religious freedom every day. But on this day, we are also mindful of those places around the world where so many are not free to worship or live out their faith as they choose. Today, we reaffirm the inherent worth and dignity found in every person, who are endowed by our Creator with inalienable rights to life, liberty, and the pursuit of happiness. Though the challenges to religious freedom are daunting, they are not insurmountable, and we will continue to work tirelessly to ensure that all may enjoy this universal freedom.

On March 9, 2018, the Secretary of State identified the following as “entities of particular concern” due to their severe violations of religious freedom: al-Nusra Front, al-Qa’ida in the Arabian Peninsula, al-Qa’ida, al-Shabab, Boko Haram, ISIS, ISIS-Khorasan, and the Taliban. 83 Fed. Reg. 10,545 (Mar. 9, 2018). The designations were made pursuant to Section 408(a) of the International Religious Freedom Act of 1998 (Pub. L. 105–292) (“IRFA”) and section 301 of the Frank R. Wolf International Religious Freedom Act of 2016 (Pub. L. 114–281).

2. U.S. Annual Report

On May 29, 2018, the U.S. Department of State submitted the 2017 International Religious Freedom Report to the United States Congress. The report is available at [state.gov/religiousfreedomreport/](https://www.state.gov/religiousfreedomreport/). Secretary of State Mike Pompeo delivered remarks on the release of the 2017 Report, available at <https://www.state.gov/release-of-the-2017-annual-report-on-international-religious-freedom/>, and excerpted below.

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...It is my great privilege to join you this morning and to release the 2017 International Religious Freedom Report. This report is a testament to the United States' historic role in preserving and advocating for religious freedom around the world.

Religious freedom is in the American bloodstream. It's what brought the pilgrims here from England. Our founders understood it as our first freedom. That is why they articulated it so clearly in the First Amendment. As James Madison wrote years before he was president or secretary of state, "conscience is the most sacred of all property."

Religious freedom was vital to America's beginning. Defending it is critical to our future. Religious freedom is not only ours. It is a right belonging to every individual on the globe. President Trump stands with those who yearn for religious liberty. Our Vice President stands with them, and so do I.

Advancing liberty and religious freedom advances America's interests. Where fundamental freedoms of religion, expression, press, and peaceful assembly are under attack, we find conflict, instability, and terrorism. On the other hand, governments and societies that champion these freedoms are more secure, stable, and peaceful.

So for all of these reasons, protecting and promoting global respect for religious freedom is a priority of the Trump administration. As our National Security Strategy so clearly states: "Our Founders understood religious freedom not as the state's creation, but as the gift of God to every person and a fundamental right for a flourishing society." We're committed to promoting religious freedom around the world, both now and in the future.

And Ambassador Brownback and I will talk about that today. We have underscored that commitment with his appointment. It's great to have a friend and a fellow Kansan up here with me today. International religious freedom deserves to be a front-burner issue, and Ambassador Brownback and I, with him leading the way, will ensure that it continues to be so.

The ambassador and our team in our Office of International Religious Freedom have been working tirelessly throughout the federal government and with our colleagues here at the department and in embassies overseas with NGOs, foreign partners to defend religious freedom in the farthest corners of the globe.

This report demonstrates the hard work of American diplomats to protect American and universal values. I'm proud of my team in completing this report. The release of the 2017 International Religious Freedom Report is critical to our mission to defend religious liberty. It brings to light the state of religious freedom all over the world. It documents, across 200 countries and territories, reports of violations and abuses committed by governments, terrorist groups, and individuals so that we may work together to solve them.

I have a number of examples here. For the sake of time, I'm going to pass through them. But know that we are working in countries around the world to ensure that religious freedom remains the case, and where it is not, that it becomes so.

... Ambassador Brownback will provide to you more details. But we are very excited to announce that later this year we will celebrate the 20th anniversary of the International Religious Freedom Act, a law that reinforces America's commitment to religious freedom and to helping the persecuted. It is also the 70th anniversary of the Universal Declaration of Human Rights by the UN, which proclaimed the importance of human rights, including the right for religious freedom.

The world has made important strides, but we still have a lot of work to do. In that regard, I am pleased to announce that the United States will host the first ever Ministerial to Advance Religious Freedom at the Department of State on July 25th and 26th of this year.

I look forward to hosting my counterparts from likeminded governments, as well as representatives of international organizations, religious communities, and civil society to reaffirm our commitment to religious freedom as a universal human right. This ministerial, we expect, will break new ground. It will not just be a discussion group. It will be about action. We look forward to identifying concrete ways to push back against persecution and ensure greater respect for religious freedom for all.

The ministerial will also be my first to host as a Secretary of State, and that's very intentional. Religious freedom is indeed a universal human right that I will fight for, one that our team at the department will continue to fight for, and one that I know President Trump will continue to fight for. The United States will not stand by as spectators. We will get in the ring and stand in solidarity with every individual who seeks to enjoy their most fundamental of human rights.

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Sam Brownback, Ambassador-at-Large for International Religious Freedom, provided further remarks on the release of the 2017 Report, which are available at <https://www.state.gov/briefing-on-the-release-of-the-2017-annual-report-on-international-religious-freedom/>, and excerpted below.

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...The International Religious Freedom Report is the annual assessment of the state of religious freedom in our world today. We all have a stake in this fight. One person's bondage is another person's burden to break. We're all people with beautiful and undeniable human dignity. Our lives are sacred. Our right to choose the road our conscience takes is inalienable.

We report on what has occurred and been said around the world. We don't make judgment calls in this report of what's worthy to report or not. We just report it all. There are people killed in the world today for their faith. There are people denied access to work or medicine for their beliefs. There are more subtle forms, as well, of persecution. We report it all, without comment or analysis.

Our goal is to protect the freedom of conscience for all people. That means protecting a Muslim, Buddhist, Falun Gong practitioner, or Christian in China and their ability to pray and live out their life. That means protecting a blogger in the Middle East, who doesn't believe that his government might—what his government might believe. Our desire is to protect both—to protect everyone's right to freely practice what they believe.

We've been doing that by working with other federal agencies, the NGO community, the Hill, and with other governments so that we can effectively advocate for those who need it most. My office hosts a weekly roundtable to meet with stakeholders to discuss concerns from all over the world, and I'd invite you to participate in that.

As the Secretary mentioned, we're now 20 years after the International Religious Freedom Act was originally passed. I was pleased to be an original sponsor of that in the Senate. We've seen progress, but there is much, much work to be done.

Secretary Pompeo noted some of the more troubling cases around the world, including the plight of the Rohingya and now the Kachin in Burma. I visited several of the refugee camps in Bangladesh about a month ago. The situation is dire. We must do more to help them, as they continue to be targeted for their faith.

Also was at the Andrew Brunson trial in Turkey. I'm grateful for the President and the Vice President and the Secretary's leadership on this. We will all continue to raise this case every chance we get until he is released. There are way too many Andrew Brunsons held unfairly in prisons around the world.

And unfortunately, there are plenty of other countries we could mention that are covered in the report.

For instance, Eritrea. The government reportedly killed, arrested, and tortured religious adherents and coerced individuals into renouncing their faith. And Tajikistan continues to prohibit minors from even participating in any religious activities.

Saudi Arabia does not recognize the right of non-Muslims to practice their religion in public and imprisons, lashes, and fines individuals for apostasy, blasphemy, and insulting the state's interpretation of Islam. In Turkmenistan, individuals who gather for worship without registering with the government face arrest, detention, and harassment.

All four are Countries of Particular Concern, or CPC countries, designations that are also vital tools meant to spur action.

We also remain very concerned about religious freedom or the lack thereof in Pakistan, where some 50 individuals are serving life sentences for blasphemy, according to civil society reports. Seventeen are awaiting execution. And in Russia, authorities target peaceful religious groups, including Jehovah's Witnesses, equating them with terrorists.

I'd welcome engagement with these and any governments on urgently needed reforms.

So today, 20 years after Congress passed the original International Religious Freedom Act, we've made important progress, but for far too many, the state of religious freedom is dire. We have to work together to accomplish change.

This report is a critical, important report, but strong action must follow. We must move religious freedom forward. We must defend it in every corner of the globe. And that's why the Secretary is hosting the first ever Ministerial on Advancing Religious Freedom.

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Also on May 29, 2018, the State Department issued a fact sheet entitled, "Five Things To Know About This Year's International Religious Freedom Report Release." The fact sheet is available at <https://www.state.gov/five-things-to-know-about-this-years-international-religious-freedom-report-release/>.

3. HRC Event on Freedom of Religion and Belief

At a Human Rights Council side event on freedom of religion and belief on March 6, 2018, Knox Thames, U.S. Special Advisor for Religious Minorities in the Near East and South/Central Asia delivered a statement, excerpted below, and available at <https://geneva.usmission.gov/2018/03/06/u-s-statement-at-human-rights-council-side-event-on-freedom-of-religion-and-belief/>.

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I want to thank Canada and Article 19 for initiating this side-event on protecting freedom of expression and religion for all. The United States was pleased to be a cosponsor. I want to thank the panelists for their insights. I am always impressed by the courage and expertise of advocates like you working on the ground. Thank you.

Persecution, repression, and discrimination are a daily reality for members of religious minority communities in too many countries around the world. Believers and non-believers alike are targeted for violence; their human rights are limited or sometimes entirely restricted. In response, the United States is advocating for the rights of members of religious minority communities, so that they may fully enjoy religious freedom, expression and other related human rights.

The U.S. National Security Strategy, released in December 2017, emphasized the importance of promoting religious freedom and protecting religious minorities. The U.S. government is working bilaterally, and in concert with our friends and allies, to push back against persecution targeting religious minorities, to fight against discrimination, and to promote religious freedom and expression for all. Our partnership with Canada in the International Contact Group for Freedom of Religion or Belief and our work with OIC members on the Istanbul Process are but two examples. In addition, the State Department has undertaken numerous efforts to prevent persecution and to foster space for diversity of thought and belief.

And yet challenges continue to emerge against religious diversity. Groups like ISIS and al-Qa'ida continue to commit targeted acts of violence around the world. ISIS has launched genocidal attacks on Yazidis, Christians, and Shia Muslims in both Syria and Iraq. ISIS also strikes out at Sunnis brave enough to denounce its violent and intolerant ideology. In addition, terrorists have repeatedly attacked members of two seemingly unrelated minority groups—converts and atheists—for their personal decision to choose a different belief system. And with these new challenges we cannot forget how governments and authoritarian regimes continue their daily practices of egregious repression. Restrictive laws limit the freedoms of religion and expression.

In response, we must stay committed to emphasizing the universal importance of these fundamental freedoms. Based on my almost 20 years of experience, we can achieve lasting results by building and protecting environments where everyone can enjoy freedom of religion or belief and share those views peacefully. That is the surest way to secure a peaceful future where people of all faith and none can live in safety and security. Working together in joint advocacy or in joint efforts like the Istanbul Process, we can and will make progress.

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4. Ministerial to Advance Religious Freedom

On July 26, 2018, the State Department released the Potomac Declaration, an outcome of the Ministerial to Advance Religious Freedom held July 24-26, 2018. The first-ever Ministerial to Advance Religious Freedom assembled government officials, representatives of international organizations, religious leaders, rights advocates, and

members of civil society from around the world to promote greater respect for religious freedom. The Potomac Declaration follows and is available at https://www.state.gov/potomac-declaration_trashed/ministerial-to-advance-religious-freedom-potomac-declaration/. The Department also released at the same time the Potomac Plan of Action, available at https://www.state.gov/potomac-declaration_trashed/ministerial-to-advance-religious-freedom-potomac-plan-of-action/, and not excerpted herein.

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Preamble:

The Universal Declaration of Human Rights proclaims in Article 18 that “everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” The freedom to live out one’s faith is a God-given human right that belongs to everyone. The freedom to seek the divine and act accordingly—including the right of an individual to act consistently with his or her conscience—is at the heart of the human experience. Governments cannot justly take it away. Rather, every nation shares the solemn responsibility to defend and protect religious freedom.

Today, we are far from the ideal declared in the Universal Declaration of Human Rights 70 years ago—that “everyone has the right to freedom of thought, conscience, and religion.” This right is under attack all around the world. Almost 80 percent of the global population reportedly experience severe limitations on this right. Persecution, repression, and discrimination on the basis of religion, belief, or non-belief are a daily reality for too many. It is time to address these challenges directly.

Defending the freedom of religion or belief is the collective responsibility of the global community. Religious freedom is essential for achieving peace and stability within nations and among nations. Where religious freedom is protected, other freedoms—like freedom of expression, association, and peaceful assembly—also flourish. Protections for the free exercise of religion contribute directly to political freedom, economic development, and the rule of law. Where it is absent, we find conflict, instability, and terrorism.

Our world is a better place, too, when religious freedom thrives. Individual and communal religious belief and expression have been essential to the flourishing of societies throughout human history. People of faith play an invaluable role in our communities. Faith and conscience motivates people to promote peace, tolerance, and justice; to help the poor; to care for the sick; to minister to the lonely; to engage in public debates; and to serve their countries.

Religious freedom is a far-reaching, universal, and profound human right that all peoples and nations of good will must defend around the globe.

With this in mind, the Chairman of the Ministerial to Advance Religious Freedom declares:

- Every person everywhere has the right to freedom of thought, conscience, and religion. Every person has the right to hold any faith or belief, or none at all, and enjoys the freedom to change faith.

- Religious freedom is universal and inalienable, and states must respect and protect this human right.
- A person's conscience is inviolable. The right to freedom of conscience, as set out in international human rights instruments, lies at the heart of religious freedom.
- Persons are equal based on their shared humanity. There should be no discrimination on account of a person's religion or belief. Everyone is entitled to equal protection under the law regardless of religious affiliation or lack thereof. Citizenship or the exercise of human rights and fundamental freedoms should not depend on religious identification or heritage.
- Coercion aimed at forcing a person to adopt a certain religion is inconsistent with and a violation of the right to religious freedom. The threat of physical force or penal sanctions to compel believers or non-believers to adopt different beliefs, to recant their faith, or to reveal their faith is entirely at odds with freedom of religion.
- Religious freedom applies to all individuals as right-holders. Believers can exercise this right alone or in community with others, and in public or private. While religions do not have human rights themselves, religious communities and their institutions benefit through the human rights enjoyed by their individual members.
- Persons who belong to faith communities and non-believers alike have the right to participate freely in the public discourse of their respective societies. A state's establishment of an official religion or traditional faith should not impair religious freedom or foster discrimination towards adherents of other religions or non-believers.
- The active enjoyment of freedom of religion or belief encompasses many manifestations and a broad range of practices. These can include worship, observance, prayer, practice, teaching, and other activities.
- Parents and legal guardians have the liberty to ensure the religious and moral education of their children in conformity with their own convictions.
- Religion plays an important role in humanity's common history and in societies today. The cultural heritage sites and objects important for past, present, and future religious practices should be preserved and treated with respect.

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L. PRIVACY

On November 20, 2018, Thomas Weatherall, advisor for the U.S. Mission to the UN, delivered the U.S. explanation of position on a Third Committee resolution on the right to privacy. The statement is excerpted below and available at <https://usun.usmission.gov/explanation-of-position-on-a-third-committee-resolution-on-the-right-to-privacy/>.

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The United States appreciates the efforts of Germany and Brazil on this resolution, and we join consensus today 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 privacy rights. 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 the enjoyment of 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 data protection and privacy safeguards, including safeguards against discriminatory effects.

We believe that the portion of the resolution addressing business enterprises is too prescriptive. 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 some situations, a reasonable inference of meaningful consent may be drawn from the actual behavior of consumers. For instance, many 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 our position on 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 to individuals within that state's territory and subject to its jurisdiction, and interpret the resolution, including PP20, PP22, and PP28, 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 what they refer to as the principles of legality, necessity, and proportionality, Article 17 does not impose such a standard and states are not obligated to take such principles into account in implementing their obligations under Article 17 of the ICCPR. For this reason, we dissociate from OP4.

We also are pleased the resolution supports the consideration of legal frameworks designed to enhance data protection and privacy safeguards, and note that legal frameworks implementing appropriate and effective controls, oversight, accountability, and remedies can effectively protect privacy rights consistent with international human rights law, whether they are in the form of legislation, regulations, or policies, and whether they are context or sector-specific or comprehensive, and whether they include a national independent authority.

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, including the work of the Special Rapporteur, can touch on other areas relating to privacy rights beyond the digital environment, including examination of how abuses of privacy may be implicated in broader repression of the exercise of human rights and fundamental freedoms within states.

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Cross References

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.**

ICJ case regarding the British Indian Ocean Territory, **Ch. 7.B.4**

Inter-American Commission on Human Rights, **Ch. 7.D.2**

Corporate Responsibility Regimes, **Ch. 11.F.5**

Global Magnitsky Act sanctions, **Ch. 16.A.10**

Atrocities prevention, **Ch. 17.C**

International humanitarian law, **Ch. 18.A.4**