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UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9900488
RECEIVED: 25 JAN 99 15

TO: SMITH, CHRISTOPHER H

FROM: PRESIDENT

DOC DATE: 12 MAR 99
SOURCE REF:

KEYWORDS: HUMAN RIGHTS
CONGRESSIONAL

EO
CO

PERSONS:

SUBJECT: CONGRESSIONAL CORRESPONDENCE ON HUMAN RIGHTS EXECUTIVE ORDER

ACTION: FOR DISPATCH

DUE DATE: 05 FEB 99 STATUS: C

STAFF OFFICER: BUSBY

LOGREF:

FILES: PA

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION
WH STRIPPING DESK

FOR CONCURRENCE

FOR INFO
BUSBY
LACKEY
NSC CHRON

COMMENTS: _____

DISPATCHED BY JP DATE 3/15 BY HAND W/ATTCH

OPENED BY: NSDMK

CLOSED BY: NSGP

DOC 4 OF 4

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ACTION DATA SUMMARY REPORT

RECORD ID: 9900488

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 BUSBY	Z 99012515 PREPARE MEMO FOR BERGER
002 BERGER	Z 99030419 FWD TO PRESIDENT FOR SIGNATURE
002	Z 99030509 ACTION TRANSFERRED
002 BUSBY	Z 99030509 FOR REDO
002 BERGER	Z 99030615 FWD TO PRESIDENT FOR SIGNATURE
002 STEIN, L	Z 99030615 FOR SIGNATURE
003 PRESIDENT	Z 99031114 FOR SIGNATURE
004	X 99031509 PRESIDENT SGD LTR
004 WH STRIPPING DESK	X 99031509 FOR DISPATCH

DISPATCH DATA SUMMARY REPORT

DOC DATE DISPATCH FOR ACTION

DISPATCH FOR INFO

003	990311		VICE PRESIDENT
003	990311		WH CHIEF OF STAFF
004	990312	SMITH, CHRISTOPHER H	
004	990312	WH STRIPPING DESK	

UNCLASSIFIED

National Security Council
The White House

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Cosgriff			
Rice	<u>1</u>		
Davies			
Kerrick			
Steinberg			
Berger			
Situation Room			
West Wing Desk	<u>2</u>	<u>3/12</u>	<u>D</u>
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A = Action	I = Information	D = Dispatch	R = Retain	N = No Further Action
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cc:

COMMENTS: DATE 3/12/99 ?

1999 MAR 12 PM 3:00

Exec Sec Office has diskette 1

National Security Council
The White House

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CC:

COMMENTS: Cong. Correspondence
on Human Rights

Exec Sec Office has diskette yes

~~National Security Council~~
The White House

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cc:

COMMENTS: _____

Exec Sec Office has diskette _____

**National Security Council
The White House**

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TMA

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CC:

POTUS

COMMENTS: Congressional correspondence
re Human Rights EO

1994 MAR 4 PM 7:16

Exec Sec Office has diskette yes _____

0488

NATIONAL SECURITY COUNCIL

To: Scott Busby

Scott -

Need ~~affirmation~~ explanation as to why late in memo to SRB.

Also should not be a double red dotter. Why does SRB need to look at this within 3 hours?

Ed Rui

3/5/99

Ed - Double dot was the result of administrative confusion here. Sorry.

~~Ed~~

**National Security Council
The White House**

PROOFED BY: _____ LOG # 0480

URGENT NOT PROOFED: _____ SYSTEM PRS NSC INT ARS

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TMA

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Berger			
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West Wing Desk	<u>2</u>	<u>CR</u> <u>3/12</u>	<u>D</u>
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cc:

COMMENTS:

DATE 3/12/99 ?

1999 MAR 12 PM 3:43

Exec Sec Office has diskette _____

National Security Council
The White House

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Kerrick	_____	_____	_____
Steinberg	<u>2</u>	<u>[Signature]</u>	_____
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CC:

COMMENTS:

Cong. Correspondence
on Human Rights

Exec Sec Office has diskette yes

**National Security Council
The White House**

PROOFED BY: _____ LOG # 0488
 URGENT NOT PROOFED: _____ SYSTEM PRS NSC INT ARS
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CC:

COMMENTS:

Exec Sec Office has diskette _____

THE WHITE HOUSE

WASHINGTON

March 12, 1999

Dear Representative Smith:

Thank you for your letter regarding Executive Order 13107 concerning implementation of human rights treaties. I issued this Order on the 50th anniversary of the adoption of the Universal Declaration of Human Rights to reaffirm our commitment to the fundamental values enshrined in that document. The intent of this Order is to enhance the work of the Executive Branch in ensuring compliance with those obligations the United States has undertaken by ratifying certain human rights treaties.

I appreciate your strong support for the overall objective of this Executive Order and offer the following information in response to your specific requests for clarification.

First, the Order relates to the implementation of those human rights treaty obligations that the United States has assumed, subject to any reservations, declarations or understandings, as a result of having ratified the respective treaties in accordance with our constitutional procedures. The Order is not intended to implement any treaty that the United States has not ratified. As you suggest, the reference in the introductory clause to obligations under treaties to which the United States "may become" a party is intended to refer only to those obligations the United States may undertake in the future through the ordinary ratification process.

Second, consistent with your understanding, it was our intent that the term "human rights obligations" have the same meaning as the term "treaty obligations" throughout the text. Thus, the definition of "treaty obligations" in section 6(c) of the Order applies to the term "human rights obligations." As that definition provides, a treaty obligation of the United States is one that the United States assumes as a result of having ratified a treaty in accordance with our constitutional procedures.

Third, I can confirm your understanding that, at present, the Executive Order authorizes Executive Branch actions only under the following human rights treaties:

The Agreement for the Suppression of the White Slave Traffic of May 18, 1904, as amended by a Protocol of May 4, 1949;

The Convention to Suppress the Slave Trade and Slavery of September 25, 1926, as amended by a Protocol of December 7, 1953;

The Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948;

The Inter-American Convention on the Granting of Political Rights to Women of March 17, 1949;

The Convention on the Political Rights of Women of March 31, 1953;

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of September 7, 1956;

The Convention Concerning the Abolition of Forced Labor of June 25, 1957 (ILO Convention 105);

The International Convention on the Elimination of All Forms of Racial Discrimination of December 21, 1965;

The International Covenant on Civil and Political Rights of December 16, 1966;

The Protocol Relating to the Status of Refugees of January 31, 1967; and

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984.

I can also confirm your understanding that any Executive Branch actions under the Executive Order will be subject to any reservations, understandings, and declarations of the Senate in giving its advice and consent to ratification. Of course, should the United States decide to ratify any additional human rights treaties, those, too, would be covered by the Order.

Fourth, consistent with your understanding, section 4(c)(5) of the Order relating to the improvement of monitoring of State compliance with the relevant treaties is not intended to supersede federal statutes or to create any new federal authority to overturn, invalidate or interfere with the enforcement of State laws.

Fifth, the Interagency Working Group established by the Executive Order is charged, among other things, with coordinating an annual review to determine if consideration should be given to modification of U.S. reservations, declarations or understandings to the relevant human rights treaties. This review could lead to recommendations to me or any future President regarding proposed changes. Any such changes to these human rights treaties would require Senate approval.

Finally, I would like to stress that it is our intent and understanding that this Executive Order does not create any new legal obligation or right. Rather, the intent of the Order is to improve the work of the Executive Branch in ensuring compliance with those human rights treaties we have ratified.

Again, I appreciate your endorsement of this important Executive Order and thank you for sharing your thoughts with me.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Clinton". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

The Honorable Christopher H. Smith
House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE
WASHINGTON

SUMMARY

March 11, 1999

Signed 3-12-99

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM:

SAMUEL BERGER 
LARRY STEIN 

SUBJECT:

Congressional Correspondence on Human Rights
Executive OrderPurpose

To respond to a letter from Representative Christopher Smith.

Background

On December 10, Human Rights Day, you signed an Executive Order relating to the implementation of human rights treaties to which the U.S. is a party. Among other things, the Order directed agencies to ensure compliance with our international obligations under these treaties and created an interagency working group to enhance our implementation of these norms. Response from the human rights community has been enthusiastically positive. We have been told repeatedly that the EO represents a critical reaffirmation of U.S. commitments in this area. At the same time, some have reacted negatively to the Order on the belief that it purports to implement human rights treaties that we have not ratified.

Representative Christopher Smith wrote to express his general support for the Executive Order but also to request your clarification of a number of points relating to the Order. In fact, Smith designed his letter to provide us with a good opportunity to rebut false claims about the EO.

Your response describes in general terms what we have sought to accomplish with the Order and addresses specifically each of the Smith's questions in a way that should help allay any misconceptions or concerns.

cc: Vice President
Chief of Staff

296672

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RECOMMENDATION

That you sign the letter at Tab A.

Attachments

Tab A Response to Representative Smith

Tab B Incoming Correspondence

BENJAMIN A. GILMAN, NEW YORK
CHAIRMAN

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JAMES A. LEACH, IOWA
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RICHARD BURR, NORTH CAROLINA
PAUL GILLMOR, OHIO
GEORGE RADANOVICH, CALIFORNIA
JOHN COOKSEY, LOUISIANA
TOM TANCREDO, COLORADO

RICHARD J. GARON
CHIEF OF STAFF

ONE HUNDRED SIXTH CONGRESS
CONGRESS OF THE UNITED STATES
COMMITTEE ON INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

TELEPHONE: (202) 225-5021

SAM GEJDENSON, CONNECTICUT
RANKING DEMOCRATIC MEMBER

TOM LANTOS, CALIFORNIA
HOWARD L. BERMAN, CALIFORNIA
GARY L. ACKERMAN, NEW YORK
ENI F.H. FALEOMAVAEGA, AMERICAN SAMOA
MATTHEW G. MARTINEZ, CALIFORNIA
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GREGORY W. MEEKS, NEW YORK
BARBARA LEE, CALIFORNIA
JOSEPH M. CROWLEY, NEW YORK
JOSEPH M. HOFFEL, PENNSYLVANIA

KATHLEEN BERTELSEN MOAZED
DEMOCRATIC CHIEF OF STAFF

January 22, 1999

Honorable William Jefferson Clinton
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

Executive Order 13107, concerning implementation of human rights treaties, has generated many inquiries to Congressional offices by people who believe it represents an erosion of United States sovereignty. In particular, many of these inquiries suggest that the Executive Order will result in the enforcement by executive agencies of United Nations conventions (such as the Convention on the Rights of the Child and the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW)) to which the Senate has not given its advice and consent and to which the United States is therefore not a party. Critics of the Executive Order have also suggested that it may be an attempt by the Executive Branch to avoid the necessity of implementing legislation in order to make non-self-executing treaties binding as a matter of United States domestic law.

I have been assured by representatives of your Administration that the Executive Order would have no such effects. Rather, they describe it as a mere instruction to Executive Branch agencies to conform their operations --- within the discretion already allowed these agencies by existing United States law --- to the international obligations imposed on the United States by treaties that have been ratified with the advice and consent of the Senate. I agree that this is the most straightforward reading of the Executive Order. The order makes clear that it does not supersede federal statutes and that it creates no justiciable rights or benefits.

Subject to these limitations, I fully support the objective of the Executive Order. Conducting discretionary executive branch functions consistently with our treaty obligations, as approved by the Senate in the exercise of its advice and consent power, is fully consistent with United States sovereignty --- and with the commitment of the United States to keeping its promises. I

also appreciate the issuance of the Executive Order on the fiftieth anniversary of the Universal Declaration of Human Rights, as a practical illustration that Americans still believe we are all endowed by our Creator with certain inalienable rights.

Nevertheless, I believe several phrases in the Executive Order must be clarified, lest the laudable objective of the order be overshadowed by the controversy over whether it could result in implementation of unratified treaties. I therefore request that you confirm my understanding on each of the following points:

- (1) First, the introductory clause of the Executive Order contains the phrase "bearing in mind the obligations of the United States pursuant to . . . treaties . . . to which the United States is now **or may become** a party **in the future . . .**" (Emphasis added.) I understand --- particularly in light of section 1(a) of the Executive Order, which declares the policy of the United States to respect its obligations under the international human rights treaties "to which it is a party" --- that the reference to obligations under treaties to which the United States "may become" a party refers only to possible future obligations. That is, we would incur such obligations if and only if the Senate should give its advice and consent to ratification of these treaties. Without ratification, there can be no obligations and no implementation under the Executive Order.
- (2) Section 6(c) of the Executive Order defines "treaty obligations" as "obligations approved by the Senate" pursuant to its constitutional power to advise and consent. The operative language of the Executive Order, however, includes only one reference to "treaty obligations." In several other places, the order directs executive agencies to implement "human rights obligations" --- a term that is **not** defined in the Executive Order. I have been assured by representatives of the Administration that in drafting the Executive Order, they used the terms "human rights obligations" and "treaty obligations" interchangeably. I request that you confirm my understanding that "human rights obligations" as used in Executive Order 13107 refers only to "treaty obligations" as defined in section 6(c) of the order.
- (3) In order to be absolutely clear on the two previous points, I request that you confirm my understanding (consistent with assurances I have received from representatives of your Administration) that the Executive Order would authorize executive branch actions only under the following human rights treaties:

The Agreement for the Suppression of the White Slave Traffic of May 18, 1904, as amended by a Protocol of May 4, 1949.

The Convention to Suppress the Slave Trade and Slavery of September 25, 1926, as amended by a Protocol of December 7, 1953.

The Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948.

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The International Covenant on Civil and Political Rights of December 16, 1966.

The Protocol Relating to the Status of Refugees of January 31, 1967.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984.

As you know, all of these treaties have been ratified by the United States with the advice and consent of the Senate. I also request that you confirm my understanding that executive branch actions under the Executive Order will be subject to any reservations, understandings, and declarations on which the Senate insisted in giving advice and consent to ratification.

- (4) Section 4(c)(5) of the Executive Order directs an interagency working group to develop "proposals and mechanisms for improving the monitoring of the actions by the various States . . . for their conformity with relevant treaties, the provision of relevant information for reports and other monitoring purposes, and the promotion of effective remedial mechanisms." I understand that this

provision refers only to the exercise of authority already conferred by existing provisions of law, and that the Executive Order does not purport to create any new federal authority to overturn, invalidate, or interfere with the enforcement of state laws.

- (5) Finally, section (4)(c)(vii) of the Executive Order charges an interagency working group to conduct "an annual review of United States reservations, declarations, and understandings to human rights treaties . . . in order to determine whether there should be consideration of any modification of relevant reservations, declarations, and understandings" It is my understanding that a reservation, declaration, or understanding to a treaty could never be modified without the advice and consent of the Senate to such modification, and that the reference in the Executive Order to "consideration" of modifications means consideration of proposals which would be submitted to the Senate for its advice and consent.

Assuming you can confirm that my understanding on each of these points is correct, I strongly endorse Executive Order 13107. I would deeply appreciate your prompt attention to this request.

Sincerely,



Christopher H. Smith, Chairman
Subcommittee on International Operations
and Human Rights

THE WHITE HOUSE
WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM:

SAMUEL BERGER
LARRY STEIN



SUBJECT:

Congressional Correspondence on Human Rights
Executive Order

Purpose

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cc: Vice President
Chief of Staff

RECOMMENDATION

That you sign the letter at Tab A.

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Tab B Incoming Correspondence

THE WHITE HOUSE

WASHINGTON

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I appreciate your strong support for the overall objective of this Executive Order and offer the following information in response to your specific requests for clarification.

First, the Order relates to the implementation of those human rights treaty obligations that the United States has assumed, subject to any reservations, declarations or understandings, as a result of having ratified the respective treaties in accordance with our constitutional procedures. The Order is not intended to implement any treaty that the United States has not ratified. As you suggest, the reference in the introductory clause to obligations under treaties to which the United States "may become" a party is intended to refer only to those obligations the United States may undertake in the future through the ordinary ratification process.

Second, consistent with your understanding, it was our intent that the term "human rights obligations" have the same meaning as the term "treaty obligations" throughout the text. Thus, the definition of "treaty obligations" in section 6(c) of the Order applies to the term "human rights obligations." As that definition provides, a treaty obligation of the United States is one that the United States assumes as a result of having ratified a treaty in accordance with our constitutional procedures.

Third, I can confirm your understanding that, at present, the Executive Order authorizes Executive Branch actions only under the following human rights treaties:

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The Convention Against Torture and Other Cruel and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984.

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Fourth, consistent with your understanding, section 4(c)(5) of the Order relating to the improvement of monitoring of State compliance with the relevant treaties is not intended to supersede federal statutes or to create any new federal authority to overturn, invalidate or interfere with the enforcement of State laws.

Fifth, the Interagency Working Group established by the Executive Order is charged, among other things, with coordinating an annual review to determine if consideration should be given to modification of U.S. reservations, declarations or understandings to the relevant human rights treaties. This review could lead to recommendations to me or any future President regarding proposed changes. Any such changes to these human rights treaties would require Senate approval.

Finally, I would like to stress that it is our intent and understanding that this Executive Order does not create any new legal obligation or right. Rather, the intent of the Order is to improve the work of the Executive Branch in ensuring compliance with those human rights treaties we have ratified.

Again, I appreciate your endorsement of this important Executive Order and thank you for sharing your thoughts with me.

Sincerely,

The Honorable Christopher H. Smith
House of Representatives
Washington, D.C. 20515

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MATT SALMON, ARIZONA
AMO HOUGHTON, NEW YORK
TOM CAMPBELL, CALIFORNIA
JOHN M. McHUGH, NEW YORK
KEVIN BRADY, TEXAS
RICHARD BURR, NORTH CAROLINA
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GEORGE RADANOVICH, CALIFORNIA
JOHN COOKSEY, LOUISIANA
TOM TANCREDI, COLORADO

RICHARD J. GARDIN
Chief of Staff

ONE HUNDRED SIXTH CONGRESS
CONGRESS OF THE UNITED STATES
COMMITTEE ON INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

TELEPHONE: (202) 225-5021

SAM GEJDENSON, CONNECTICUT
Ranking Democratic Member

TOM LANTOS, CALIFORNIA
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BARBARA LEE, CALIFORNIA
JOSEPH CROWLEY, NEW YORK
JOSEPH M. HOEFFEL, PENNSYLVANIA

KATHLEEN BERTELSEN MOAZZ
Democratic Chief of Staff

January 22, 1999

Honorable William Jefferson Clinton
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

Executive Order 13107, concerning implementation of human rights treaties, has generated many inquiries to Congressional offices by people who believe it represents an erosion of United States sovereignty. In particular, many of these inquiries suggest that the Executive Order will result in the enforcement by executive agencies of United Nations conventions (such as the Convention on the Rights of the Child and the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW)) to which the Senate has not given its advice and consent and to which the United States is therefore not a party. Critics of the Executive Order have also suggested that it may be an attempt by the Executive Branch to avoid the necessity of implementing legislation in order to make non-self-executing treaties binding as a matter of United States domestic law.

I have been assured by representatives of your Administration that the Executive Order would have no such effects. Rather, they describe it as a mere instruction to Executive Branch agencies to conform their operations --- within the discretion already allowed these agencies by existing United States law --- to the international obligations imposed on the United States by treaties that have been ratified with the advice and consent of the Senate. I agree that this is the most straightforward reading of the Executive Order. The order makes clear that it does not supersede federal statutes and that it creates no justiciable rights or benefits.

Subject to these limitations, I fully support the objective of the Executive Order. Conducting discretionary executive branch functions consistently with our treaty obligations, as approved by the Senate in the exercise of its advice and consent power, is fully consistent with United States sovereignty --- and with the commitment of the United States to keeping its promises. I

also appreciate the issuance of the Executive Order on the fiftieth anniversary of the Universal Declaration of Human Rights, as a practical illustration that Americans still believe we are all endowed by our Creator with certain inalienable rights.

Nevertheless, I believe several phrases in the Executive Order must be clarified, lest the laudable objective of the order be overshadowed by the controversy over whether it could result in implementation of unratified treaties. I therefore request that you confirm my understanding on each of the following points:

- (1) First, the introductory clause of the Executive Order contains the phrase "bearing in mind the obligations of the United States pursuant to . . . treaties . . . to which the United States is now or **may become a party in the future . . .**" (Emphasis added.) I understand — particularly in light of section 1(a) of the Executive Order, which declares the policy of the United States to respect its obligations under the international human rights treaties "to which it is a party" --- that the reference to obligations under treaties to which the United States "may become" a party refers only to possible future obligations. That is, we would incur such obligations if and only if the Senate should give its advice and consent to ratification of these treaties. Without ratification, there can be no obligations and no implementation under the Executive Order.
- (2) Section 6(c) of the Executive Order defines "treaty obligations" as "obligations approved by the Senate" pursuant to its constitutional power to advise and consent. The operative language of the Executive Order, however, includes only one reference to "treaty obligations." In several other places, the order directs executive agencies to implement "human rights obligations" --- a term that is not defined in the Executive Order. I have been assured by representatives of the Administration that in drafting the Executive Order, they used the terms "human rights obligations" and "treaty obligations" interchangeably. I request that you confirm my understanding that "human rights obligations" as used in Executive Order 13107 refers only to "treaty obligations" as defined in section 6(c) of the order.
- (3) In order to be absolutely clear on the two previous points, I request that you confirm my understanding (consistent with assurances I have received from representatives of your Administration) that the Executive Order would authorize executive branch actions only under the following human rights treaties:

The Agreement for the Suppression of the White Slave Traffic of May 18, 1904, as amended by a Protocol of May 4, 1949.

01/22/99 14:23 FAX 2022257483 004
The Convention to Suppress the Slave Trade and Slavery of September 25, 1926, as amended by a Protocol of December 7, 1953.

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The International Convention on the Elimination of All Forms of Racial Discrimination of December 21, 1965.

The International Covenant on Civil and Political Rights of December 16, 1966.

The Protocol Relating to the Status of Refugees of January 31, 1967.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984.

As you know, all of these treaties have been ratified by the United States with the advice and consent of the Senate. I also request that you confirm my understanding that executive branch actions under the Executive Order will be subject to any reservations, understandings, and declarations on which the Senate insisted in giving advice and consent to ratification.

- (4) Section 4(c)(5) of the Executive Order directs an interagency working group to develop "proposals and mechanisms for improving the monitoring of the actions by the various States . . . for their conformity with relevant treaties, the provision of relevant information for reports and other monitoring purposes, and the promotion of effective remedial mechanisms." I understand that this

1011107408 005

provision refers only to the exercise of authority already conferred by existing provisions of law, and that the Executive Order does not purport to create any new federal authority to overturn, invalidate, or interfere with the enforcement of state laws.

- (5) Finally, section (4)(c)(vii) of the Executive Order charges an interagency working group to conduct "an annual review of United States reservations, declarations, and understandings to human rights treaties . . . in order to determine whether there should be consideration of any modification of relevant reservations, declarations, and understandings" It is my understanding that a reservation, declaration, or understanding to a treaty could never be modified without the advice and consent of the Senate to such modification, and that the reference in the Executive Order to "consideration" of modifications means consideration of proposals which would be submitted to the Senate for its advice and consent.

Assuming you can confirm that my understanding on each of these points is correct, I strongly endorse Executive Order 13107. I would deeply appreciate your prompt attention to this request.

Sincerely,



Christopher H. Smith, Chairman
Subcommittee on International Operations
and Human Rights

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

March 5, 1999

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ERIC SCHWARTZ *SB fw*
FROM: SCOTT BUSBY *SB*
SUBJECT: Congressional Correspondence on Human Rights
Executive Order

Attached is a memorandum to the President and a proposed response to Congressional correspondence on the above subject.

This package was delayed due to the complex nature of the response. We chose not to send an interim response as we have been in regular contact with Chris Smith's staff about the status of the response.

Concurrence by: Caroline Krass; Mark Tavlarides *> via E-mail*

RECOMMENDATION

That you sign the attached memorandum.

Attachments

Tab I Memorandum to the President
Tab A Proposed Response
Tab B Incoming Correspondence

NATIONAL SECURITY COUNCIL

ID 9900488

REFERRAL

DATE: 15 MAR 99

MEMORANDUM FOR: WH STRIPPING DESK

DOCUMENT DESCRIPTION: TO: SMITH, CHRISTOPHER H

SOURCE: PRESIDENT

DATE: 12 MAR 99

SUBJ: CONGRESSIONAL CORRESPONDENCE ON HUMAN RIGHTS EXECUTIVE ORDER

REQUIRED ACTION: FOR DISPATCH

DUE DATE: 16 MAR 99

COMMENT:


FOR


JOHN W. FICKLIN

NSC RECORDS MANAGEMENT OFFICE

PRESIDENTIAL/NSA CORRESPONDENCE

IMMEDIATE ACTION REQUIRED

ACTION OFFICER: Brsby

LOG NUMBER: 0488

DUE DATE: 5 Feb

DATE STAFFED: 25 Jan

CORRESPONDENCE ADDRESSED TO:

☒

PRESIDENT

☐

NATIONAL SECURITY ADVISOR

FROM: Rep Smith

PREPARE A RESPONSE FOR THE PRESIDENT'S OR NATIONAL SECURITY ADVISOR'S SIGNATURE WITHIN 10 DAYS. IF A LETTER DOES NOT REQUIRE A RESPONSE, PLEASE RETURN IT TO RECORDS MANAGEMENT (RM 379) WITH THIS FORM, ANNOTATED ACCORDINGLY.

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

0488

March 4, 1999

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ERIC SCHWARTZ *SB fw*
FROM: SCOTT BUSBY *SB*
SUBJECT: Congressional Correspondence on Human Rights
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THE WHITE HOUSE
WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
LARRY STEIN

SUBJECT: Congressional Correspondence on Human Rights
Executive Order

Purpose

To respond to a letter from Representative Christopher Smith.

Background

On December 10, Human Rights Day, you signed an Executive Order relating to the implementation of human rights treaties to which the U.S. is a party. Among other things, the Order directed agencies to ensure compliance with our international obligations under these treaties and created an interagency working group to enhance our implementation of these norms. Response from the human rights community has been enthusiastically positive. We have been told repeatedly that the EO represents a critical reaffirmation of U.S. commitments in this area. At the same time, some have reacted negatively to the Order on the belief that it purports to implement human rights treaties that we have not ratified.

Representative

2 ~~Congressman~~ Christopher Smith wrote to express his general support for the Executive Order but also to request your clarification of a number of points relating to the Order. In fact, Smith designed his letter to provide us with a good opportunity to rebut false claims about the EO.

Your response describes in general terms what we have sought to accomplish with the Order and addresses specifically each of the Smith's questions in a way that should help allay any misconceptions or concerns.

cc: Vice President
Chief of Staff

RECOMMENDATION

letter at Tab A.

That you sign the ~~attached response.~~

Attachments

Tab A ~~Proposed~~ Response to Representative Smith

Tab B Incoming Correspondence

THE WHITE HOUSE

WASHINGTON

Dear Representative Smith:

Thank you for your letter regarding Executive Order 13107 concerning implementation of human rights treaties. I issued this Order on the 50th anniversary of the adoption of the Universal Declaration of Human Rights to reaffirm our commitment to the fundamental values enshrined in that document. The intent of this Order is to enhance the work of the Executive Branch in ensuring compliance with those obligations the United States has undertaken by ratifying certain human rights treaties.

I appreciate your strong support for the overall objective of this Executive Order and offer the following information in response to your specific requests for clarification.

First, the Order relates to the implementation of those human rights treaty obligations that the United States has assumed, subject to any reservations, declarations or understandings, as a result of having ratified the respective treaties in accordance with our constitutional procedures. The Order is not intended to implement any treaty that the United States has not ratified. As you suggest, the reference in the introductory clause to obligations under treaties to which the United States "may become" a party is intended to refer only to those obligations the United States may undertake in the future through the ordinary ratification process.

Second, consistent with your understanding, it was our intent that the term "human rights obligations" have the same meaning as the term "treaty obligations" throughout the text. Thus, the definition of "treaty obligations" in section 6(c) of the Order applies to the term "human rights obligations." As that definition provides, a treaty obligation of the United States is one that the United States assumes as a result of having ratified a treaty in accordance with our constitutional procedures.

Third, I can confirm your understanding that, at present, the Executive Order authorizes Executive Branch actions only under the following human rights treaties:

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The Convention on the Political Rights of Women of March 31, 1953; *next line*

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The International Covenant on Civil and Political Rights of December 16, 1966;

The Protocol Relating to the Status of Refugees of January 31, 1967; *next line*

The Convention Against Torture and Other Cruel and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984.

I can also confirm your understanding that any Executive Branch actions under the Executive Order will be subject to any reservations, understandings, and declarations of the Senate in giving its advice and consent to ratification. Of course, should the United States decide to ratify any additional human rights treaties, those, too, would be covered by the Order.

Fourth, consistent with your understanding, section 4(c)(5) of the Order relating to the improvement of monitoring of State compliance with the relevant treaties is not intended to supersede federal statutes or to create any new federal authority to overturn, invalidate or interfere with the enforcement of State laws.

Fifth, the Interagency Working Group established by the Executive Order is charged, among other things, with coordinating an annual review to determine if consideration should be given to modification of U.S. reservations, declarations or understandings to the relevant human rights treaties. This review could lead to recommendations to me or any future President regarding proposed changes. Any such changes to these human rights treaties would require Senate approval.

Finally, I would like to stress that it is our intent and understanding that this Executive Order does not create any new legal obligation or right. Rather, the intent of the Order is to improve the work of the Executive Branch in ensuring compliance with those human rights treaties we have ratified.

Again, I appreciate your endorsement of this important Executive Order and thank you for sharing your thoughts with me.

Sincerely,

The Honorable Christopher H. Smith
House of Representatives
Washington, D.C. 20515

NATIONAL SECURITY COUNCIL

TO: Scott Busby

Scott -

Need ~~affirmation~~ explanation as to why late in memo to SRB.

Also should not be a double red dotter. Why does SRB need to look at this within 3 hours?

EDP

**National Security Council
The White House**

PROOFED BY: _____

LOG # 0488

URGENT NOT PROOFED: _____

SYSTEM RBS NSC INT ARS

BYPASSED WW DESK: _____

DOCLOG OMK AVO _____

TMA

	SEQUENCE TO	INITIAL/DATE	DISPOSITION
Cosgriff	_____	_____	_____
Rice	<u>1</u>	<u>has seen</u>	_____
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Kerrick	_____	_____	_____
Steinberg	_____	_____	_____
Berger	_____	_____	_____
Situation Room	_____	_____	_____
West Wing Desk	<u>2</u>	<u>TTC 3/5</u>	<u>Busby</u>
Records Mgt.	_____	_____	_____
<u>Busby</u>	<u>3</u>	_____	<u>A = Rice note and edits</u>

A = Action	I = Information	D = Dispatch	R = Retain	N = No Further Action
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CC:

POTUS

COMMENTS: Congressional correspondence
re Human Rights EO

EGGAR 404 7:18

Exec Sec Office has diskette yes

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

0488

March 4, 1999

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: ERIC SCHWARTZ *SB fw*
FROM: SCOTT BUSBY *SB*
SUBJECT: Congressional Correspondence on Human Rights
Executive Order

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Concurrence by: Caroline Krass *> via E-mail*

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WASHINGTON

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LARRY STEIN

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cc: Vice President
Chief of Staff

RECOMMENDATION

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Attachments

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THE WHITE HOUSE

WASHINGTON

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Second, consistent with your understanding, it was our intent that the term "human rights obligations" have the same meaning as the term "treaty obligations" throughout the text. Thus, the definition of "treaty obligations" in section 6(c) of the Order applies to the term "human rights obligations." As that definition provides, a treaty obligation of the United States is one that the United States assumes as a result of having ratified a treaty in accordance with our constitutional procedures.

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Again, I appreciate your endorsement of this important Executive Order and thank you for sharing your thoughts with me.

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House of Representatives
Washington, D.C. 20515

BENJAMIN A. GILMAN, NEW YORK
Chairman

0488

SAM GEIDENSON, CONNECTICUT
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WILLIAM F. GOODLING, PENNSYLVANIA
JAMES A. LEACH, IOWA
HENRY J. HYDE, ILLINOIS
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CHRISTOPHER H. SMITH, NEW JERSEY
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RICHARD J. GARRON
Chief of Staff

ONE HUNDRED SIXTH CONGRESS
CONGRESS OF THE UNITED STATES
COMMITTEE ON INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

TELEPHONE: (202) 225-5021

TOM LANTOS, CALIFORNIA
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JOSEPH M. MOEFFEL, PENNSYLVANIA

KATHLEEN BERTELSEN MOAZED
Democratic Chief of Staff

January 22, 1999

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The Protocol Relating to the Status of Refugees of January 31, 1967.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984.

As you know, all of these treaties have been ratified by the United States with the advice and consent of the Senate. I also request that you confirm my understanding that executive branch actions under the Executive Order will be subject to any reservations, understandings, and declarations on which the Senate insisted in giving advice and consent to ratification.

- (4) Section 4(c)(5) of the Executive Order directs an interagency working group to develop "proposals and mechanisms for improving the monitoring of the actions by the various States . . . for their conformity with relevant treaties, the provision of relevant information for reports and other monitoring purposes, and the promotion of effective remedial mechanisms." I understand that this

provision refers only to the exercise of authority already conferred by existing provisions of law, and that the Executive Order does not purport to create any new federal authority to overturn, invalidate, or interfere with the enforcement of state laws.

- (5) Finally, section (4)(c)(vii) of the Executive Order charges an interagency working group to conduct "an annual review of United States reservations, declarations, and understandings to human rights treaties . . . in order to determine whether there should be consideration of any modification of relevant reservations, declarations, and understandings" It is my understanding that a reservation, declaration, or understanding to a treaty could never be modified without the advice and consent of the Senate to such modification, and that the reference in the Executive Order to "consideration" of modifications means consideration of proposals which would be submitted to the Senate for its advice and consent.

Assuming you can confirm that my understanding on each of these points is correct, I strongly endorse Executive Order 13107. I would deeply appreciate your prompt attention to this request.

Sincerely,



Christopher H. Smith, Chairman
Subcommittee on International Operations
and Human Rights

TO: PRESIDENT

FROM: SMITH, CHRISTOPHER H

DOC DATE: 22 JAN 99
SOURCE REF:

KEYWORDS: HUMAN RIGHTS
CONGRESSIONAL

EO
CO

PERSONS:

SUBJECT: ENDORSES EO 13107 SUBJECT TO INTERPRETATION & REQUESTS QUICK
RESPONSE

ACTION: PREPARE MEMO FOR BERGER

DUE DATE: 05 FEB 99 STATUS: S

STAFF OFFICER: BUSBY

LOGREF:

FILES: PA

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION
BUSBY

FOR CONCURRENCE
BAKER
RUDMAN

FOR INFO
FICKLIN
LEARY
NAPLAN
SCHWARTZ
WIPPMAN

COMMENTS: IF FINAL REPLY CANNOT BE PREPARED BY DUE DATE, AN INTERIM RESPONSE
MUST BE PREPARED FOR MARA RUDMAN'S SIGNATURE.

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSDMK

CLOSED BY:

DOC 1 OF 1