

FOIA MARKER

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Folder Title:

Interagency Working Group: Human Rights Treaties [8]

Staff Office-Individual:

Legal Advisor-Krass, Caroline

Original OA/ID Number:

3114

Row:	Section:	Shelf:	Position:	Stack:
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Dear Senator Helms:

Thank you for your letter regarding Executive Order 13107 relating to the 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.

In response to your first point, I can confirm that the Order relates only to the implementation of those human rights treaty obligations 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. (Per your request, a list of those treaties is attached.) The Order is not intended to implement any treaty the United States has not ratified or to circumvent the Senate's role of providing advice and consent in the ratification process.

Second, the Order does not cause any non-self-executing treaty provision to take on the force of U.S. law. Rather, the Order reaffirms to Executive Branch agencies their role in fulfilling U.S. obligations under those human rights treaties to which the United States is a party and establishes an interagency process that will enhance our ability to carry out such duties.

Third, the Order is not intended to authorize the unilateral modification by the Executive Branch of current reservations, understandings, or declarations contained in the Senate's resolutions of ratification giving advice and consent to these treaties. My Administration would not [seek to] make such modifications to the resolutions of ratification for these treaties without [seeking] the Senate's advice and consent.

I hope this information allays any concerns that you or your constituents may have about this Order. Please let me know if you need further clarification on these or other points.

Thank you for sharing your thoughts with me on this issue.

Sincerely,

The Honorable Jesse Helms
United States Senate
Washington, D.C. 20510

Human Rights Treaties to Which the United States is a Party

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 and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984.

TO: PRESIDENT

FROM: HELMS, JESSE A
ET AL

DOC DATE: 05 FEB 99
SOURCE REF:

KEYWORDS: HUMAN RIGHTS
CO

EO

PERSONS:

CK

SUBJECT: CONGRESSIONAL LTR FM SEN HELMS & 28 OTHERS RE EXECUTIVE ORDER 13107

ACTION: PREPARE MEMO FOR BERGER

DUE DATE: 01 MAR 99 STATUS: S

STAFF OFFICER: NAPLAN

LOGREF:

FILES: WH

NSCP:

CODES:

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

FOR ACTION
NAPLAN

FOR CONCURRENCE
BAKER
LACKEY

FOR INFO
BUSBY
LEARY
SCHWARTZ
WIPPMAN

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

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSGP

CLOSED BY:

DOC 1 OF 1

United States Senate

WASHINGTON, DC 20510

1091

February 5, 1999

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

A little over one month ago, on December 10, 1998, you signed Executive Order 13107 regarding the Implementation of Human Rights Treaties. The State Department contends that the Executive Order was in part intended to commemorate the anniversary of the Universal Declaration on Human Rights, and to bring coordination to U.S. reporting requirements contained in certain treaties to which the United States is a Party.

Nevertheless, Mr. President, we have great concerns about reports that the Executive Order is merely an extraconstitutional effort to implement treaties that have been signed but to which the United States Senate has never given advice and consent.

Immediately upon your signing the Executive Order a deluge of telephone calls from citizens across the country have flooded our offices expressing concerns that it is your intent to circumvent the Senate's constitutional role of advice and consent with your unilateral order. We therefore will appreciate your confirming in an official manner the following points:

- (1) the Executive Order applies exclusively to treaties that have entered into force for the United States by and with the advice and consent of the Senate;
- (2) the Executive Order does not implement any treaty, and only by enacting a statute may any of the non-self executing treaty provisions take on the force of U.S. law;
- (3) the current reservations, understandings, declarations, or provisos contained in the Senate's resolutions of ratification giving advice and consent to these

treaties can be reversed only with the Senate's advice and consent;

We will also appreciate your providing a list of the human rights treaties to which the Executive Order does apply.

We would be happy to clarify these issues in legislation if that would be more practical.

Sincerely,

Jersey Keene
Don Nickl

Strom Thurmond
J. E. King
Bill Burnbach

OTVOR HAGER

Red Lamm

T. H. Hotalin

Kay Bailey Hutchison
Chuck Grassley

Kent Lott
Pat Doolittle

Jul Johnston
Richard Shelby
Craig Thomas

Jeff Sessions
Bob Smith

John A. Hancock

Mike Crapo
Alfred McConnell

Louky

Mike DeWine
Rick Santorum

Chris Mack
John Warner

Bill Frist

Jim Cooper
Frank R. Lautenberg

Byron Dorgan

THE WHITE HOUSE

WASHINGTON

February 16, 1999

MEMORANDUM FOR GLYN T. DAVIES
NSC Executive Secretariat

FROM: JANET MURGUIA
Legislative Affairs

SUBJECT: PRESIDENTIAL CORRESPONDENCE

Attached are copies of letters sent to the President by various Members of Congress. Since these letters address national security issues, we would appreciate your assistance in drafting the responses.

Thank you very much for your assistance. If you have any questions, please call Eli Joseph at x67500.

The following is a brief description of the letters:

- 1) Sen. Jesse Helms (R-NC) and twenty-eight other Senators, concerning Executive Order 13107,
- 2) Rep. Spencer Bachus (R-AL), concerning the President's recent meeting with Mexican President Zedillo and Operation Casablanca, and
- 3) Rep. Henry Bonilla (R-TX), concerning the production of oil in the Persian Gulf region.

Enclosures

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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 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 and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984.

I also confirm your understanding that any Executive Branch actions under the Executive Order will be subject to any reservations, understandings, and declarations approved by the Senate in giving its advice and consent to ratification. Of course, should the United States decide to ratify any additional

*Ratified
made*

of

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

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JOHN COCKSEY, LOUISIANA
TOM TANCREDI, 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

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RANKING DEMOCRATIC MEMBER

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JOSEPH CROWLEY, NEW YORK
JOSEPH M. HOEFFEL, 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.

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).

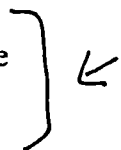
The International Convention on the Elimination of All Forms of Racial Discrimination of December 21, 1965.

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

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

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

CEDAW ACTION PLAN

1. Four strategies: a. straight to floor; b. action-forcing event with key Republican Senators to trigger new hearings; c. all Democratic Senators in support with VP leadership; d. new package of reservations and understandings (this option disfavored)
2. DRL (Koh, Arriaga) and S/PICW meet to develop approach initial strategies to NGOs, members of Congress, and other key administration officials; consult with Office of First Lady, Office of VP, NSC, IWG.
3. Interagency team meets with key NGOs to discuss approaches to key Republican senators. Preliminary discussions already held with Amnesty, Human Rights Watch, Lawyers Committee. Search for support from other NGOs.
4. Briefing on Hill with Sen. Boxer, et al. During Women's Month; consultations with key staffs (e.g. Biden, Collins, Snowe) re preferred option. Search for "neutral" Senator (Moynihan?, Lieberman?) to take "Proxmire role."
5. Plan for High level White House rollout of initiative (President, First Lady, VP, SecState, AG, SecLabor, SecHHS, key Senators)
6. Private calls to SFRC members and chair seeking new hearing date.
7. Mobilization of House-side support
8. High-Level testimony (SecState, AG)
9. Calls to key Senators re Floor vote.
10. Floor vote

INTERAGENCY WORKING GROUP ON HUMAN RIGHTS TREATIES
AGENDA

12 MARCH 1999

2 p.m., Room 208 (OEOP)

Chair: Eric Schwartz

1. Introductions

2. Public/Hill Outreach

- Report on NGO briefing (NSC)
- Status of letters to Smith and Helms (NSC) ← get draft Helms letter
- Hill briefing (State/H)

3. Torture Convention Issues

- Status of Report (State/L) *Senate declaration to Torture Conv.*
- DoD input - looking for it, mil/USMS angle *DOS reviewing Reporters report to what we can say in response*
- Justice input ✓
- Report on Article 3 NGO briefing (INS) - only send people back if Torture Convention issues *INS-Chaired, interview with DOS meeting*
- Status of Task Force on Torturers/Persecutors (DoJ) *won't answer we negotiate*

4. Status of Race Convention Report

- Report on Conversation with Chris Edley (State/DRL) *go ahead*
- Report on Conversation with Gay McDougal (NSC) *Report by May*
- Status of Report (State/L) *target network Chapter 3*

5. Response to Amnesty Report

- AG's placeholder response (DoJ)
- Status of Memo to AG (DoJ)
- Status of Talking Points on U.S. compliance (DoJ/NSC)
- Strategy on Amnesty Commission Resolution

DOS briefing of Geneva group

6. Treaty Ratification

- CEDAW
- Status of State paper (State/DRL)
- ILO Convention 111
- Status of State treaty letter (State)

Category II - high priority

7. Enhancing Compliance of State and Local Entities

- Status of concept paper (State/DRL)

8. New Business

- Response to Annan/Robinson letter
- Incorporating UDHR into primary school curricula (Education)
- Designated Agency Contacts for EO (NSC)

*State new curricula - DOE/Ed
Integrate Pres EO for fed agencies
funding programs
should follow UDHR
to extent possible*

9. Next Meeting: Tuesday, April 13, 4 p.m., 208

0835

THE SECRETARY-GENERAL

19 January 1999

Excellency,

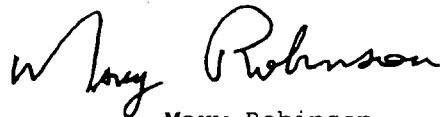
We have just concluded the historic commemoration of the 50th Anniversary of the Universal Declaration of Human Rights. We are most grateful to you and your Government for your participation in this event and for your affirmation of commitment to the purposes of the Universal Declaration.

The United Nations and its Member States could pay no greater tribute to those who framed the Universal Declaration of Human Rights than by giving practical meaning to their ideas and vision. We would jointly urge all Governments to set themselves the following objectives:

- All States should sign and ratify the two Covenants and the four principal Conventions within the next five years;
- All States should make the Universal Declaration known to every one of their citizens, starting by introducing it to all primary education curricula;
- All states should implement the General Assembly's Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, not just formally but in a true spirit of support for human rights defenders everywhere;
- Most importantly, all States should redouble their efforts to implement the 30 Articles of the Universal Declaration in full.

We look forward to hearing from you on the progress made by your Government in implementing the above.

Accept, Excellency, the assurances of our highest consideration.



Mary Robinson
High Commissioner for Human Rights



Kofi A. Annan

His Excellency
Mr. William J. Clinton
President of the United States of America
Washington, D.C.

Summary of Conclusions
IWG on Human Rights Treaty Implementation
March 12, 1999
Chair: Eric Schwartz

1. Public/Hill Outreach

NSC to ensure that Smith and Helms letters get out soon.

NSC to remind State/H of commitment to do Hill briefing with Members who would be supportive of EO.

2. Torture Convention

Report

NSC to contact DoD ASAP about its contribution to Torture Report.

State/L to finalize Torture Rreport for submission before the end of Human Rights Commission meetings. |

Article 3 regs

It was agreed that diplomatic intervention with country of origin or return was not contrary to Article 3.

Status of DoJ Task Force on Torturers/Human Rights Abusers

INS held inaugural meeting of task force.

INS to give IWG timetable for when Task Force will be operational.

INS to include State in Ttask Fforce as soon as possible. |

Response to Rapportuer's Report

Justice to get relevant information to State/L ASAP.

3. Race Report

A/S Koh reported that Chris Edley, author of President's forthcoming race book, did not have problem with CERD report coming out before President's book.

State/L to seek to submit report prior to end of Human Rights Commission meetings (end of April).

Justice to work with State/L on filling gaps in report.

4. Amnesty Issues

A/S Koh and NSC Schwartz to meet with Amnesty leadership to discuss proposed resolution against the U.S.

NSC to arrange Justice briefing for U.S. Human Rights Commission team prior to March 19.

Justice to prepare non-paper for Commission team on key domestic human rights issues.

Justice to get AG placeholder response out ASAP.

5. Treaty Ratification

CEDAW

State/DRL to convene meeting to flesh out CEDAW ratification strategy in greater detail.

ILO Convention 111

Labor to contact NEC (Holly Hammonds) to discuss ratification strategy.

67. Compliance

NSC and State/DRL to convene IWG sub-group (including Justice) to discuss this issue.

78. New Business

Education to prepare options paper on how to permissible options for increasing exposure to Universal Declaration in primary school curricula (per request in Annan/Robinson letter).

Agencies confirmed designated persons for implementation of EO: State (Koh); Justice (Castello); Labor (DeShazer); Education (Wohl); DoD (Scheer? Koplow?)

89. Next meeting: Tuesday, April 13, 4 p.m., Room 208

INTERAGENCY WORKING GROUP ON HUMAN RIGHTS TREATIES

12 MARCH 1999

2 p.m., Room 208 (OEOB)

Chair: Eric Schwartz

SUBJECT

1. Introductions
2. Public Outreach
 - Report on NGO briefing (NSC)
 - Status of letters to Smith and Helms (NSC)
 - Hill briefing (State/H)
3. Torture Convention Issues
 - Status of Report (State/L)
 - DoD input
 - Justice input
 - Report on Article 3 NGO briefing (INS)
 - Status of Task Force on Torturers/Persecutors (DoJ)
4. Status of Race Convention Report
 - Report on Conversation with Chris Edley (State/DRL)
 - Report on Conversation with Gay McDougal (NSC)
 - Status of Report (State/L)
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 - Status of State paper (State/DRL)
 - ILO Convention 111 (Labor/State)
 - Status of State treaty letter
7. Monitoring Compliance of State and Local Entities
 - Status of concept paper (State/DRL)
8. New Business
 - Response to Annan/Robinson letter
 - Incorporating UDHR into school curricula (Education)
 - Official Agency Contacts (NSC) ?
9. Next Meeting: Tuesday, April 13, 4 p.m., 208

CK
FDC

**U.S. DEPARTMENT OF JUSTICE
OFFICE OF LEGAL COUNSEL
WASHINGTON, D.C. 20530**

FACSIMILE TRANSMISSION SHEET

DATE: DECEMBER 2, 1998

FROM:  ROSEMARY HART
SENIOR COUNSEL

OFFICE PHONE: 202/514-2027

TO: MAC REED
ASSOCIATE GENERAL COUNSEL
OFFICE OF MANAGEMENT AND BUDGET

OFFICE PHONE: 202/395-5363

FACSIMILE NUMBER: 395-7294

NUMBER OF PAGES: 4 (PLUS COVER SHEET)

Mac: Comments on the proposed Executive Order on international human rights treaties.
Please share these with Scott Busby.

ANY QUESTIONS, PLEASE CONTACT OUR ADMINISTRATIVE OFFICE ON 514-2067
OFFICE OF LEGAL COUNSEL FACSIMILE MACHINE NUMBER - 514-0563

**U.S. Department of Justice****Office of Legal Counsel**

Office of the
Deputy Assistant Attorney General

Washington, DC 20530

December 2, 1998

TO: Robert G. Damus
General Counsel, Office of Management and Budget

FR: William Treanor *WTA*
Deputy Assistant Attorney General
Office of Legal Counsel

RE: Draft Executive Order, "Implementation of Human Rights Treaties"

Attached are the comments of the Department of Justice on the Draft Executive Order, "Implementation of Human Rights Treaties." The Department has both legal and policy concerns with the proposed Executive Order ("EO").

Two treaties named in the executive order - the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Race Discrimination - were ratified by the Senate subject to declarations of non-self-execution, and they have never been implemented by domestic legislation. A non-self-executing treaty "shall not become effective as domestic law without the enactment of implementing legislation." See Restatement (Third) of Foreign Relations Law of the United States § 111(4)(a), at 43 (1987). Until implementing legislation is enacted, such a treaty does not create private rights of action; it does not supersede statutes; and it does not impose justiciable obligations on the executive branch of government. In short, it does not operate in and of itself as domestic law in the United States. Nonetheless, the EO is entitled, "Implementation of Human Rights Treaties" and it sets out a specific scheme to "implement" U.S. responsibilities and policies, which it terms "obligations," under these treaties. Thus, section 1(a) of the EO states, "It shall be the policy and practice of the Government of the United States . . . fully to respect and implement its obligations under the international human rights treaties to which it is a party . . ." We are concerned, as a result, that this directive may improperly give rise to arguments that these two treaties are being executed by presidential directive; we are also concerned that use of the term "obligations" improperly suggests that these treaties can be read to have the stature of domestic law.

It may be the case that the President has other authority, outside the treaties, to direct the Executive Branch to act in accordance with treaty principles, and we would need more time to consider specific applications fully. The proposed draft, however, raises serious enough concerns to warrant further review and discussion within the Executive Branch. At the least, we would recommend additional language clarifying that the EO does not contemplate creating any rights or requiring any executive action inconsistent with the Constitution, federal statutes, or any reservation or amendment to a treaty, any understanding attached to a treaty by the Senate, or any condition of the Senate's advice and consent to a treaty. From a policy perspective, we would also urge that close consideration be given to the way that the terms of these treaties, especially as they may be interpreted by international bodies, could potentially undermine current civil or criminal law enforcement and national security interests or policies.

With respect to private enforcement of the proposed EO, we note that when the President intends to prohibit enforcement rights by private litigants under an Executive Order, the standard practice is to include a provision stating that the order does not create such rights. We assume that it is not the intent of this EO to create new private rights of action. If this is correct, we propose that the following standard language be included in a new final section of the EO:

"Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person."

We have additional concerns regarding specific language in the EO.

Section 1(c): We understand the need to designate a single contact officer at each department and agency who will be responsible for overall coordination of the implementation of the EO, and recognize that this is a common procedure when inter-agency working groups are created. We do note, however, that to the extent the EO may expose the federal government to increased litigation risks, the individual designated as the contact officer may be subject to significant discovery in any litigation.

Section 2: While we share the common goal of improving coordination among the departments and agencies on the various areas of concern set forth in the EO, the Justice Department does have a discrete role in certain areas that are placed within the "lead responsibility" of the State Department. In the extradition area, for example, the Justice Department is actively involved in determining the countries with which we should negotiate new treaties, the contents of those treaties and their actual implementation, and litigation during extradition hearings, including dealing with alleged human rights violators. Language clarifying the Justice Department's role in extradition should be added to the list of responsibilities in Section 3(ii).

Section 3(i): It is unclear what is meant by the language in the EO referring to the Justice Department's lead responsibility for "[d]omestic implementation of international human

rights as a question of federal law, concerning in particular coordinating that implementation with the guarantees and protections established by the United States constitution and laws, including the laws concerning impermissible discrimination and the protection and promotion of civil rights." Is the Department of Justice supposed to "enforce" the provisions of international human rights treaties? Must the Department seek to ensure that federal and state practices are consistent with the various covenants? The Justice Department can only enforce any treaty obligations to the extent they are consistent with the Constitution and federal statutes. This provision needs to define more precisely the responsibilities that the Justice Department is expected to undertake.

Section 3(ii): Add "capital punishment" after "law enforcement and related subjects, including . . ."

Section 3(iii): This section is written broadly and the scope of the monitoring responsibility referred to is unclear, especially the extent to which this provision may add new responsibilities to the Justice Department's current activities. Moreover, the absence of similar provisions in the lists of responsibilities for other agencies can be interpreted to mean that the Department of Justice has the exclusive federal authority for monitoring activities by state and local authorities. Does this subsection augment the risk that the federal government may be held accountable to other countries for the compliance of state governments with international obligations? This provision has the potential for being quite burdensome since there may be no limit to the obligation to "promote actions by state and local authorities consistent with the relevant treaty obligations." Without fully exploring the scope of the responsibilities intended, the Department is unable to adequately assess the resource implications of this provision.

Section 3(iv): Add a section to read: "Enforcement responsibility for those domestic criminal laws passed in furtherance of our international human rights convention obligations." See, e.g., 18 U.S.C. §§ 1091-1093 (Genocide Convention Implementation Act), 18 U.S.C. §§ 2340-2340B (implementing Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

Section 4: We think it is important that the EO state the following: "The United States has recognized Indian tribes as domestic dependent nations under its protection and, through treaties, has guaranteed tribal rights to self-government." This language should be added to this section or to the Preamble or Section 1.

Section 5: The language in this section does not reflect the Department's role in providing legal advice and resolving legal questions within the Executive Branch. Thus, we suggest adding the following after the first paragraph: "With respect to legal questions, however, under long-established practice, the Department of Justice has been responsible for the interpretation of treaties with regard to domestic law. In addition, the Attorney General, pursuant to Executive Order 12146, has been charged with the responsibility for resolving any legal dispute whenever 'two or more Executive agencies whose heads serve at the pleasure of the President are unable to resolve such a legal dispute.' Nothing in this section shall alter the Department of

Justice's role with regard to the resolution of legal questions."

Section 6: What expectations are being created here? Does an individual's call to the Department of Labor or the Department of Justice, for example, entitle him to an investigation? Is that agency obligated to report back (compare the obligations to "respon[d] to inquiries ... and complaints" and to "keep appropriate records of its efforts on these matters")? Does the investigatory and reporting obligation extend to complaints about state government actions, since the obligation is defined with reference to the Departments' "areas of responsibilities as defined in sections 2-5 of this order," which, for the Department of Justice, obviously includes obligations under Section 3(iii). Will this require the creation of a whole new bureaucracy to respond to complaints, keep records, and file reports? Depending upon the scope of this provision, these new requirements could be unduly burdensome. Finally, to address another point implicated by this provision, it would be helpful to include clarifying language stating that this provision is not intended to alter or interfere with the Justice Department's statutory role as the government's chief litigator, see 28 U.S.C. §§ 516-519.

Section 7: What is the purpose of the Interagency Working Group? Is it a forum for coordination and exchange? We assume that the IWG has only an advisory and coordinating capacity, and it will not have any operational authority that would override established institutional roles, such as the issuance of legal opinions or the conduct of litigation.

Section 7(c)(iii): Does "international organizations" include non-governmental organizations? If so, that should be made clear. The current wording is generally used and understood to include only government entities.

Summary of Conclusions
IWG on Human Rights Treaty Implementation
February 11, 1999
Chair: Eric Schwartz

1. Response to Hill Concerns about EO

NSC to finalize response to Smith letter and circulate for clearance.

Helms letter expected.

State(H) to arrange Hill briefing on EO for staff of members likely to be supportive.

NSC, State(DRL) and Justice to arrange briefing for NGOs on EO and other Administration actions on human rights in U.S. prior to Human Rights Commission meetings in March.

2. Torture Convention Issues

Report

Goal still to submit report prior to beginning of Human Rights Commission in March.

DoJ (Castello) to see whether ~~other~~ DoJ components other than INS and the Civil Division (?) have prepared ~~comments~~ on report.

DoD (Koplow) to check on status of DoD contribution to report.

Article 3 Regs

DoJ and State to issue regs by February 18.

INS to do briefing with NGOs soon thereafter.

Prosecuting Torturers

Justice considering formation of task force on this issue.

3. Race Report

State/NSC reported that President's Initiative on Race would not be releasing the President's race "book" until mid-April. Preliminary thinking was that submission of CERD report should not precede issuance of rRace book.

ASS Koh to talk to Chris Edley about timing of issuance of race book and relation to issuance of CERD report.

DoJ and State (L) will discuss gaps in report and determine who will fill in these gaps.

4. Response to Amnesty Report

DoJ to check on AG's placeholder response to Amnesty.

DoJ to finalize memorandum to AG on Amnesty Report, which in turn will be vehicle for considering formal response.

DoJ to prepare talking points on compliance with human rights in U.S. to be used upon issuance of annual State human rights reports at end of February.

5. Treaty Ratification

CEDAW

State (DRL) to prepare brief strategy paper on how to pursue ratification of CEDAW.

ILO Convention 111

Labor to discuss ratification strategy with NEC.

State (L) to ensure that this treaty is on State's ratification list.

6. Monitoring State and Local Compliance

State (DRL) to prepare written proposal on this issue.

7. Other Business

NSC reported that, consistent with EO, individual complaints or inquiries relating to EO will be referred to appropriate agency for response.

8. Next meeting: Friday, March 12, 2 p.m., Room 208.

Krass, Caroline D.

From: Krass, Caroline D.
Sent: Thursday, February 11, 1999 7:38 PM
To: Busby, Scott W.; Schwartz, Eric P.
Cc: @LEGAL - Legal Advisor
Subject: IWG Meeting: FACA Issues [UNCLASSIFIED]

Eric and Scott --

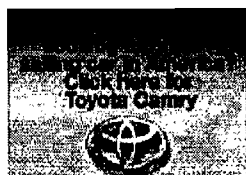
At the meeting today, it was suggested that we consider inviting a representative of the National Association of States Attorneys General to our meetings. I wanted to caution that that proposal could well transform the meetings into ones covered by the Federal Advisory Committee Act. As I am sure you appreciate, there would be a significant litigation risk if one group was invited to participate but not others.

Similar problems will need to be evaluated in connection with the proposed group to work on ratification of CEDAW. I will call State/Legal to alert them to these issues, as well as the anti-lobbying concerns.

Many thanks to Eric for remembering to emphasize the anti-lobbying restrictions under which we operate.

Call Jim Thessin ✓ done
+ 4th A issue

CK



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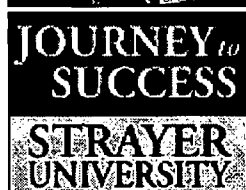
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Use of Indian Mascots Brings Justice Dept. to N.C. Town

By Sue Anne Pressley

Washington Post Staff Writer

Wednesday, February 17, 1999; Page A03

ASHEVILLE, N.C.—Rayne Merzlak never dwelt much on his Lakota Sioux heritage, being a teenager with other things on his mind, until one day at a pep rally for the Erwin High School Warriors and Squaws. As a whooping mascot in a feathered headdress ran out onto the floor, other students chanted about their intentions for the opposing team: "Let's scalp 'em!"

And, as if he were seeing the scene for the first time, Merzlak said, he felt deeply offended. "They thought it was a joke," said the 1998 graduate, now 18. "But I didn't think it was a joke."

After two years of intense debate in this North Carolina mountain town about whether Erwin High's mascot and team names should be changed, the federal government has decided to enter the fray. The Justice Department has launched its first investigation into whether these symbols violate the civil rights of Native American students—to the chagrin of some, who resent what they call interference in a local matter, and to the delight of others, who say Indians have been belittled for far too long.

The issue resonates around the country, from the Los Angeles School District, where board of education officials decided in 1997 to remove all Indian-themed mascots, to the nation's capital, where Native American groups urge the Washington Redskins pro football team to adopt another name. It touches deep wells of resentment among Native Americans, who see themselves as about the last ethnic group others feel free to mock with impunity, and it raises questions about how much harm such stereotyping does to the youth involved.

"I don't think any racist images should be used as mascots, but if they agree to spread the honor--when we have the Washington Blackskins or the San Francisco Chinks or the Los Angeles Chicanos--I'll shut my mouth," said Rayne's mother, Pat Merzlak, a nurse who wrote the Justice Department requesting the investigation. "Nobody would

consider anything like that, but it's okay to treat Indian culture as something other than human."

To others, however, the controversy seems a case of hypersensitivity in an age when political correctness has gone to extremes. They contend the issue is too trivial to warrant weighty discussion, much less intervention by the federal government. And, they say, there is no need to tamper with harmless sports traditions that were only meant to honor the Indian spirit.

Whatever the view, the debate has gained tremendous momentum nationwide. Native American groups estimate that more than 600 schools, including Stanford University and Miami University of Ohio, have gotten rid of Indian mascots and names. But more than 2,500 other schools around the country still employ those images.

The University of North Dakota is fighting a resolution in the state legislature that would urge the school to drop the name "The Fighting Sioux." Last fall, a United Methodist Commission on Race urged the denomination to move its general conference out of Cleveland in 2000 in protest of Chief Wahoo, the grinning, befeathered symbol of baseball's Cleveland Indians. And Dallas public schools, following the lead of Los Angeles, moved last year to ban the American Indian mascots used at nine of its schools--at a cost of about \$40,000 to cover the changes in uniforms and school emblems on gym floors and walls.

"When the American Indian community came to us and lodged a complaint, we determined the mascots violated our diversity-anti-harassment policy," said Clarence Glover, Dallas's special assistant to the general superintendent for intercultural relations. "I think people had gone along with these mascots for so long, it was a matter of timing, when the American Indians came to the table, like the African Americans and Asians and Hispanics before them."

Professional sports teams--the Atlanta Braves, the Kansas City Chiefs, the Chicago Blackhawks, and of course, the Cleveland Indians and Washington Redskins--also have come under attack. But they are in a different league from public schools and state-supported colleges, which depend on public funds. Nonetheless, Native American groups hammer away, staging small protests outside the stadium, for instance, when the Atlanta Braves and Cleveland Indians faced off in the 1995 World Series.

Last May, a Native American group urged a federal agency to cancel the trademark protection of the Redskins, which could forfeit the club's exclusive rights to use the Redskins name on T-shirts and caps. No decision has been rendered, said Redskins spokesman Mike

McCall.

Here, outside Erwin High School, a 30-foot-tall Indian figure greets visitors with a "How" gesture, a tomahawk clutched in the other hand. Supporters see it fondly as an abiding school symbol; others, like Monroe Gilmour of the Western North Carolina Citizens for an End to Institutional Bigotry, see it as a "lawn jockey." A big sign declares Erwin to be the "Home of the Warriors and Squaws."

Erwin is the most diverse school in largely white Buncombe County, said Principal Malcolm Brown. Of its 1,100 students, he said, about 10 percent are African American, 2 to 3 percent are Hispanic, and fewer than 1 percent are Native American.

The school also reflects the area's unusually large Ukrainian community, he said, with Ukrainian students accounting for about 3 percent of the school's enrollment.

Initially, Brown said, the dispute here focused on the word "squaw" to describe the female athletes. Although many view the term as innocuous, Native Americans consider it pejorative, derived from an Algonquin word describing female genitalia, said David Rider, a psychologist who teaches at New Orleans' Xavier University and has spoken often against the abuse of Indian symbols. Indeed, a movement also is afoot to expunge the word from place names such as the Squaw Creek Wildlife Refuge in Missouri.

Principal Brown said he can understand the objection.

"From the onset, I have said publicly numerous times, I felt the 'Squaws' should be changed, after learning things I did not know. . . . I have a wife and daughter, and it would not please me to hear them called that," he said.

What Brown and many others here object to, however, is the Department of Justice's query about whether the school has created "a racially hostile environment," as stated in the Jan. 22 letter the agency sent to Buncombe County school superintendent Bob Bowers. Although the U.S. Department of Education has investigated similar cases before, this is the first time the Justice Department has taken on the issue, said Justice spokeswoman Christine DiBartolo.

The agency's letter also requests answers to 14 questions, including a detailed history of the mascots, a copy of district policy on racial discrimination, and an explanation of how the mascot is portrayed on school stationery.

The Justice Department's interest in the case raises the stakes considerably. A fight to keep Erwin's Indian theme could jeopardize the \$8 million in federal funding the school district receives each year

and could cost as much as \$500,000 in legal fees, said Buncombe County school board chairman Wendell Begley.

"That's the money issue, but there's also an emotional issue," he said.

Judging from the speakers at recent hearings staged by the school board, and from callers to local radio talk shows, it seems that many people here are more determined than ever to keep the mascots, inflamed by the federal government's inquiry. But the final decision lies with the board, which will take up the case at its March 4 meeting.

"My listeners are conservatives," said Matt Collins, who hosts "The Matt Collins Show" each morning on WTZY-AM in Asheville, "and they think the federal government getting involved in what is a minor issue is a waste of time and money. They're using our taxpayer money to fight us. It has raised the passions of people."

Rayne Merzlak is not sorry about that. Now working as an electrician and attending technical college, he said the controversy has awakened in him an awareness of what it really means to be an ethnic minority.

"They're saying, 'We don't want to change it. Leave us alone. If the Indians have a problem, they can leave. There's one of you and hundreds of us,' " said Merzlak, who has two younger sisters who will someday attend the high school. "I think it just goes to show how ignorant people can be."

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INTERAGENCY WORKING GROUP ON HUMAN RIGHTS TREATIES
11 FEB 1999

4 p.m., Room 208 (OEOB)

Chair: Eric Schwartz

SUBJECT	ACTION
1. Introductions	
2. Response to Hill Concerns about EO	NSC
3. Torture Convention Issues	
-- Status of Report	State/L
-- Status of Article 3 Regs	State/INS
-- Response to Amnesty Concerns about Torturers in U.S.	DoJ
4. Status of Race Convention Report	State/L
5. Response to Amnesty Report	Justice
6. Treaty Ratification	
-- CEDAW	State/DRL
-- ILO Convention 111	Labor
7. Monitoring Compliance of State and Local Entities (Discussion)	All
8. Other Business	
9. Next Meeting: Friday, March 12, 2 p.m.?	

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No. of pages to follow:

4

RE:

Andre - Here's official
incoming ~~to~~ Smith letter on
E.O. Can you modulate
draft response accordingly?

Mx.

01/22/99 14:23 FAX 2022257485

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Chairman

0488

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Chief of Staff

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KATHLEEN BERTELSSEN HOLLAND
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 2022257485

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.

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

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No. of pages to follow: 1

RE:

Reminder: There will be a meeting of the Human Rights Treaty
IWG today at 4 p.m. in Room 208, OEOB. Attached is the
agenda. If you plan to attend but have not yet called in your
clearance info, please do so with Dora or Rosie at 456-9141.
Thanks.

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STEVE WAGONSEIL 647-4344
Date/Time: JAMES CASTELLO 514-6817
No. of pages to follow: 1 CAROLINE KRASS 69110

RE:

FYI. Only real question
relates to point # 2 of
Helm's rather ostensible letter.
Proof will be in pudding.

Alert

FAMILY
RESEARCH
COUNCIL

Family Research Council Urges You to Sign Senator Helms' Letter on Implementing Human Rights Treaties

Clarification Needed on Executive Order 13107

Senator Jesse Helms is currently circulating a letter for Senators' signature requesting clarification from the White House on Executive order 13107 which deals with the implementation of human rights treaties.

The Family Research Council urges you to Sign on to the Helms letter asking the White House to ensure that the Executive Order is not an attempt to circumvent the Senate's constitutional role of advice and consent for the approval of treaties.

Many Americans have expressed concern that *Executive Order 13107* may allow the President to implement treaties that have been signed but not approved by the Senate. Senator Helms' letter asks the White House to address these concerns by asking the President to clarify several key points.

Senator Helms is Asking the President to:

1. Confirm that the Executive Order applies exclusively to treaties to which the Senate has given advice and consent.
2. Make clear that the Executive Order does not permit the President to implement treaties.
3. Clarify that no existing treaties may be altered or reversed without consent of the Senate.

These are important questions of constitutional checks and balances that deserve to be addressed. The Family Research Council urges you to contact Senator Helms to lend your support to this effort to make sure that the Senate's constitutional authority is not circumvented.

Contact Senator Helms today to sign on to the letter to the President seeking clarification of Executive Order 13107.

Contact: Dan Garcia (202) 637-4605

January 29, 1999

801
G Street, NW
Washington, DC
20001
(202) 393-2100
FAX (202) 393-2134
Legislative Hotline
(202) 763-HOME
Order Line
1-800-225-4008
Internet Site
<http://www.frc.org>

NATIONAL SECURITY COUNCIL

OFFICE OF MULTILATERAL AND HUMANITARIAN AFFAIRS

FAX COVER SHEET

NATIONAL
SECURITY
COUNCIL17th & Penn, N.W.
Washington, D.C.
20504Did you get a complete,
clear transmission? If not,
please call:

(202) 456-9141

From: Scott Busby 456-9141 (phone) /456-9140 (fax)

To: CAROLINE KRASS

FAX

69110

Date/Time:

No. of pages to follow: 1

RE:

Here's DoJ's draft response.
Both State + I have
problems w/ the last two
sentences in 2nd
paragraph.

15/99 20:09 202 514 9077

DOJ

002

R. K. Brown
 Dear Mr. Boyle:

Thank you for your letter to National Security Advisor Sandy Berger, voicing your complaint against the University of Illinois and alleging that it has violated the Convention on the Elimination of all Forms of Racial Discrimination (CERD). I am responding on Mr. Berger's behalf.

We appreciate your kind words about the President's Executive Order of December 10 and the Interagency Working Group created by that order. Your letter also requests that the Working Group take certain action "to bring the University of Illinois and the State of Illinois into compliance with the CERD." While the Working Group is empowered to consider a range of issues relating to the implementation of human rights treaties to which the United States is a party, its mandate does not extend to the review of, and the initiation of actions that might remedy, particular complaints of non-compliance with those treaties. Moreover, as a non-self-executing treaty, the CERD does not operate in and of itself as domestic law and therefore cannot be invoked by the federal government against state and local institutions absent implementing legislation.

You can be assured, however, that I will share your letter and memorandum with the other members of the Working Group. Again, thank you for letting this office know of your concern about this matter.

Sincerely,

Scott Busby
 Office of Multilateral and Humanitarian Affairs

Professor Francis A. Boyle
 College of Law
 202 Law Building
 504 East Pennsylvania Avenue
 Champaign, IL 61820

*and memorandum to
 Departments of State
 + Justice
 I have referred it to the
 to the Department of
 State
 evaluation*

Krass, Caroline D.

From: Krass, Caroline D.
Sent: Monday, January 25, 1999 7:31 PM
To: Busby, Scott W.
Cc: @LEGAL - Legal Advisor
Subject: RE: H.R. Treaty E.O. -- Interpretive Letter [UNCLASSIFIED]

Scott -- After talking to Jamie, I realize that I should have cautioned that, while a published interpretive letter from the President is a legally available option, we do not believe that it would be a good idea. Such a letter would be almost unprecedented; indeed, OLC cannot remember an instance in which the President (rather than OLC) has published an interpretation of an executive order. Due to prudential and Presidential/institutional considerations, we are concerned about the precedential consequences of issuing such a letter in this case.

-----Original Message-----

From: Busby, Scott W.
Sent: Friday, January 22, 1999 7:16 PM
To: Krass, Caroline D.
Cc: @LEGAL - Legal Advisor
Subject: RE: H.R. Treaty E.O. -- Interpretive Letter [UNCLASSIFIED]

Super. Thanks for the quick get-back. I will send to you a copy of the incoming letter we just received from Chris Smith. Our response should be the interpretive letter, I think.

-----Original Message-----

From: Krass, Caroline D.
Sent: Friday, January 22, 1999 7:12 PM
To: Busby, Scott W.
Cc: @LEGAL - Legal Advisor
Subject: H.R. Treaty E.O. -- Interpretive Letter [UNCLASSIFIED]

I talked to OLC, and they said that it would be fine to publish in the Federal Register a letter from the President interpreting the executive order. OLC would need to take a look at the letter before it was signed given their involvement in the drafting of the E.O.

INTERAGENCY WORKING GROUP ON IMPLEMENTATION OF HUMAN RIGHTS
TREATIES

13 JAN 1999

3 p.m., Room 208 (OEOB)

Chairs: Eric Schwartz, Jamie Baker

<u>SUBJECT</u>	<u>ACTION</u>
1. Welcome/Introductions	NSC
2. Explanation of IWG Goals	NSC
3. IWG Process	NSC
4. Business	
A. Hill Reactions to E.O. and Our Response	NSC
B. Treaty Ratification	NSC/State
1. CEDAW	
2. Convention on the Rights of the Child	
C. US Report on Torture Convention Status of First Report	State
D. U.S. Report on Race Convention Status of First Report	State
E. Civil and Political Covenant Report Status of Second Report	State
F. Responses to UN Special Rapporteur on Torture and other Cruel, Inhuman Punishment and Treatment Status Report	State/DoJ
G. Response to OCT 98 Amnesty Report Status Report	DOJ/State
H. Monitoring Compliance of State and Local Entities	NSC/State/DoJ
5. Other Business	
6. Proposed Next Meeting: Thurs. Feb. 11, 2 p.m.	

C. Krass

NATIONAL SECURITY COUNCIL

OFFICE OF MULTILATERAL AND HUMANITARIAN AFFAIRS

FAX COVER SHEET

**NATIONAL
SECURITY
COUNCIL**

17th & Penn, N.W.
Washington, D.C.
20504

Did you get a complete,
clear transmission? If not,
please call:

(202) 456- 9141

From: Scott Busby 456-9141 (phone) /456-9140 (fax)

FAX

To: See attached list

Date/Time: January 15, 1999

No. of pages to follow: 4

RE:

Attached is a list of attendees for the inaugural meeting of the Interagency Working Group on Human Rights and a summary of conclusions. The next meeting is scheduled for Thursday, February 11 at 2 p.m., Room 208, OEOB.

Please let me know if you have questions or concerns.

**INTERAGENCY WORKING GROUP
HUMAN RIGHTS TREATIES**

<u>NAME</u>	<u>AGENCY</u>	<u>PHONE</u>	<u>FAX</u>
Scott Busby	NSC	456-9141	456-9140
Joel Fischman	USIA	619-6550	619-5646
Eliana Davidson	DOD/OGC	703/697-7215	703614-9789
Jim Schear	DOD/SOLIC	703/614-0451	703/614-0442
Craig Baab	USAID	712-4768	216-3394
Macarthur DeShazer	DOL	219-6044	219-5980
Beverly Zweiben	State	647-1153	647-4628
Col. Scott Custer	JCS/J5	703-614-0243	703/614-1158
Andre Surena	State/L/HRR	647-4065	736-7116
Harold Koh	State/DRL	647-2126	647-5283
Jamie Baker	NSC	456-9111	456-9110
Joan Mackin Barrett	DOL/ILAB	219-7471	219-9074
Julie Misner	DOL	219-6241	219-9074
Caroline Krass	NSC	456-9111	456-9110
Steve Wagenseil	State/DRL/MLA	647-1255	647-4344
Col. Garth Chandler	CJCS/LC	703/697-1137	703/693-1619
James K. Robinson	DOJ/Crim. Div.	514-7200	514-9412
James Castello	DOJ/ODAG	514-3392	514-6897
Paul Virtue	INS/Gen. Coun.	514-1270	514-5491
Bill Lee	DOJ	514-2151	514-0293
Scott Palmer	PIR	395-1047	395-1020

Summary of Conclusions
IWG on Human Rights Treaty Implementation
January 13, 1999
Chairs: Eric Schwartz, Jamie Baker

1. IWG Goals. Eric Schwartz proposed the following primary goals for the group: (1) monitoring our procedural compliance with human rights treaties, i.e., reporting requirements, response to formal complaints, etc.; (2) developing our position and strategy on ratification of human rights treaties to which we are not a party and on application and interpretation of existing treaties; (3) considering adoption of administrative measures consistent with current domestic law to ensure compliance with human rights treaty obligations; and (4) facilitating compliance by state and local entities with human rights treaty obligations.

2. Process. Jamie Baker noted that group would have two basic procedural functions: (1) inform the Deputies and Principals Committees of legal and policy issues relating to human rights treaties; and (2) provide a mechanism for agencies to ask questions about treaty implementation as well as to assist agencies in implementing U.S. obligations.

Jamie also pointed out the IWG really is composed of two separate IWGs: one focused on policy, the other on law. Eric will take the lead on the policy IWG; Jamie will take the lead on the legal IWG.

Jamie proposed that the group would meet once a month or as needed.

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State to brief Helms staffer and others on intent and meaning of EO.

State and Justice will prepare legal response to question of whether Executive Branch has authority to act on treaty obligations in the absence of implementing legislation.

State and Justice will develop Qs and As on the EO and the IWG.

State and Justice will arrange NGO briefings on the EO.

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Our first report is over three years overdue. It was agreed that we would try to submit this report by March 1, prior to the beginning of the Human Rights Commission in Geneva.

Defense and Justice will provide their report inputs to State(L) (Andre Surena) by January 27. Inputs should be current through end of December 1997.

5. Race Convention Report

Report is also over three years overdue. State distributed first draft of report; agencies agreed to provide comments to State(L) (Andre Surena) by February 3. Report should be current through end of December 1997.

State, President's Race Initiative and NSC will confer on coordinating timing of the submission of report with the release of the President's report on race.

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First follow-up report is already overdue.

State will turn to the drafting of this report as soon as we have completed and submitted the above first-time reports.

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State(L) to provide Justice with copies of communications for preparation of response.

8. Response to Amnesty Report

Justice and State will prepare talking points responding to report for use at the Human Rights Commission.

Justice will share with NSC AG "placeholder" response to Amnesty.

Justice-State working group will prepare recommendation for the group on whether we should prepare special response to Amnesty report and what our policy should be generally on responding to similar human rights reports on the U.S.

9. Monitoring of State and Local Compliance

Discussion on this issue was deferred until next meeting. Agencies should come prepared to discuss ways of improving our work in this area.

10. Treaty Ratification

A. CEDAW

Agencies agreed that ratification of CEDAW should remain a top Administration priority but strategy for achieving this result remains unclear.

State(DRL) to prepare proposed action plan to be used in evaluating whether and how to pursue CEDAW ratification.

B. Convention on the Rights of the Child

It was agreed that we should not push for ratification of this Convention at this time.

C. ILO Convention 111: Discrimination (Occupation and Employment)

Labor would like to push for USG ratification of this Convention. Labor will present on this issue at next IWG.

11. Next Meeting

The next IWG meeting will take place on Thursday, February 11 at 2 p.m. in Room 208, OEOB.

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9808478
RECEIVED: 18 DEC 98 14

TO: BERGER

FROM: BOYLE, FRANCIS A

DOC DATE: 14 DEC 98
SOURCE REF:

KEYWORDS: HUMAN RIGHTS
NSA CORRESPONDENCE

TREATIES

PERSONS:

SUBJECT: RAISES UNIVERSITY OF ILLINOIS MASCOT AS VIOLATION & FILES FORMAL COMPLAINT

ACTION: PREPARE MEMO FOR BERGER

DUE DATE: 30 DEC 98 STATUS: S

STAFF OFFICER: NAPLAN

LOGREF:

FILES: PA

NSCP:

CODES:

DOCUMENT DISTRIBUTION

FOR ACTION
NAPLAN

FOR/CONCURRENCE
BAKER

FOR INFO
BUSBY
SCHWARTZ
WIPPMAN

COMMENTS:

DISPATCHED BY _____ DATE _____ BY HAND W/ATTCH

OPENED BY: NSDMK

CLOSED BY:

DOC 1 OF 1

UNCLASSIFIED

3915
UNIVERSITY OF ILLINOIS
AT URBANA-CHAMPAIGN

TO: MULTILAT
LEGAL
ACTION: RESPONSE
FOR GRB
SIGNATURE

College of Law
202 Law Building
504 East Pennsylvania Avenue
Champaign, IL 61820

December 14, 1998

Interagency Working Group
on Human Rights Treaties
c/o Mr. Samuel Berger
Assistant to the President
for National Security Affairs
The White House
Washington, D.C. 20504
FAX: 202-456-2461
BY FAX AND MAIL

**COMPLAINT AGAINST THE UNIVERSITY OF ILLINOIS FOR VIOLATING THE
CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL
DISCRIMINATION (CERD)**

Dear Mr. Berger:

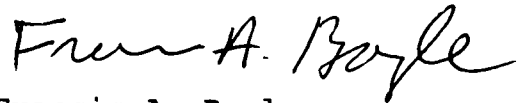
I have read President Clinton's Executive Order of December 10, 1998 on the Implementation of Human Rights Treaties. Pursuant thereto, you have been put in charge of organizing the Interagency Working Group on Human Rights Treaties. One of the "principal functions of the Interagency Working Group shall include: ... (v) developing recommended proposals and mechanisms for improving the monitoring of the actions by the various States, Commonwealths, and territories of the United States ... including the review of State, Commonwealth and territorial laws for their conformity with relevant treaties, the provision of relevant information for reports and other monitoring purposes, and the promotion of effective remedial mechanisms ..." Section 1 of President Clinton's Executive Order states: "(a) It shall be the policy and practice of the Government of the United States, being committed to the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including ... the CERD."

Pursuant to this pathbreaking Executive Order by President Clinton, I hereby file the first Complaint before your Interagency Working Group against the University of Illinois, an instrumentality of the State of Illinois, for violating the CERD because of its abuse, degradation, and exploitation of a Native American as the mascot for its sports teams and for the quite mercenary and venal purpose of raising over \$1 billion from its alumni. In support of this Complaint, attached you will find a signed Memorandum of Law by me entitled Illiniwak: Racial Discrimination! dated 25

July 1997, that was sent to the Board of Trustees of the University of Illinois. This Memorandum details at great length precisely how the University of Illinois' Chief Illiniwak violates the CERD. I hereby incorporate this Memorandum as an integral part of this Complaint. I hereby repeat, reaffirm, and reallege each and every statement of fact and conclusion of law set forth in my Memorandum.

In addition to grossly violating the CERD, the University of Illinois' Chief Illiniwak has inflicted grave, immediate, and irreparable harm upon the Native American Students, Faculty, and Staff here at the University of Illinois: threats, insults, bullying, harassment, intimidation, and outright terrorization. For these reasons, I ask you and the Interagency Working Group to secure the immediate termination of Chief Illiniwak in order to bring the University of Illinois and the State of Illinois into compliance with the CERD.

Yours very truly,



Francis A. Boyle
Professor of Law
Board of Directors
Amnesty International USA (1988-1992)

Attachment

**Francis A. Boyle
Law Building
504 East Pennsylvania Avenue
Champaign, Illinois 61820
Phone: 217-333-7954
Fax: 217-244-1478
fboyle@law.uiuc.edu**

ILLINIWAK: RACIAL DISCRIMINATION!

by

Francis A. Boyle

Professor of Law

University of Illinois at Urbana-Champaign

Board of Directors, Amnesty International USA (1988-92)

Holder of 2 Football Season Tickets (Since About 1981)

Holder of 2 Basketball Season Tickets (Since About 1982)

In his letter of 16 July 1997 to Ms. Susan Gravenhorst, Chair of the Board of Trustees of the University of Illinois, Professor Mort Winston, Chair of the Board of Directors of Amnesty International USA (AIUSA) and a prominent University of Illinois Alumnus, called "Chief" Illiniwak a "human rights violation," condemned it in no uncertain terms, and demanded the elimination of this racist mascot. Before he joined the AIUSA Board, Professor Winston was the leading AIUSA expert on, and activist against, racism and apartheid in South Africa prior to the Mandela revolution. Professor Winston knows a human rights violation when he sees one.

The same is true for me. In addition to serving four years as a Member of the Board of Directors of Amnesty International USA, I

was the person who single-handedly convinced the ultra-conservative Faculty of the University of Illinois College of Law to introduce a course on International Human Rights Law into the Law School Curriculum as Law 370, and have taught this course for many years to about 30 students per year. Illiniwak is indeed a human rights violation.

The United States government is a contracting party to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination. Hence, this Racial Discrimination Convention is a "treaty" and thus the "supreme Law of the Land" under the so-called Supremacy Clause of Article VI of the United States Constitution:

Article VI

....

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

In other words, the Racial Discrimination Convention absolutely binds the entirety of the State of Illinois, including therein the University of Illinois.

Article 1(1) of the Racial Discrimination Convention defines the term "racial discrimination" as follows: "In this Convention the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on

an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." (Emphasis added.) Obviously, Illiniwak is a "distinction" on the multiple bases of "race," and "colour," and "descent."

Illiniwak definitely has the "effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" for Native American Students, Faculty, Staff and Community Members here at the University of Illinois in Urbana-Champaign. In accordance with the terms of this Racial Discrimination Convention to which the United States is a party, Illiniwak constitutes "racial discrimination" by the University of Illinois against Native Americans.

Article 2, paragraph 1 of the Racial Discrimination Convention provides as follows:

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms, and promoting understanding among all races, and to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division. [Emphasis added.]

Clearly, Illiniwak places the United States of America in breach of these most solemn obligations under Article 2 of the Racial Discrimination Convention. Illiniwak contravenes Racial Discrimination Convention Article 2. The conclusion is inexorable that to be in accordance with the terms of the Racial Discrimination Convention, the University of Illinois must eliminate Illiniwak.

Article 4 of the Racial Discrimination Convention clearly requires the Government of the United States of America to eliminate Illiniwak in no uncertain terms:

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination, and to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination. [Emphasis added.]

Notice in particular the requirement of Article 4(c) of the Racial Discrimination Convention: "Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination." To the contrary, the University of Illinois deliberately promotes and incites racial discrimination against Native Americans by means of Illiniwak for the quite mercenary purpose of making money!

Article 5 of the Racial Discrimination Convention expressly requires the United States government "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights..." (Emphasis added.) The conclusion is inexorable that Illiniwak contravenes Article 5 of the Racial Discrimination Convention.

Furthermore, Illiniwak also contravenes Article 6 of the Racial Discrimination Convention:

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies through the competent national tribunals and other State institutions against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals

just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Finally, Illiniwak contravenes Article 7 of the Racial Discrimination Convention:

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

The conclusion is inexorable that to be in accordance with the terms of the International Convention on the Elimination of All Forms of Racial Discrimination the University of Illinois--a Public Institution--must eliminate Illiniwak.

As can be seen from the above analysis, the International Convention on the Elimination of All Forms of Racial Discrimination expressly incorporates by reference the 1948 Universal Declaration of Human Rights (UDHR). No point would be served here by detailing all the provisions of the UDHR that are currently being violated by Illiniwak. But in particular, I wish to draw to your attention UDHR Articles 1 and 2:

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or

other opinion, national or social origin, property, birth or other status. (Emphasis added.)

The United States government has been in the vanguard of the worldwide movement to establish that these fundamental provisions of the Universal Declaration of Human Rights, inter alia, constitute customary international law. Customary international law is part of the common law of the United States of America and the common law of all the States of the Union. Customary international law applies to and binds the State of Illinois and the University of Illinois.

Clearly, by means of Illiniwak the University of Illinois refuses to act towards Native Americans "in a spirit of brotherhood" in violation of UDHR Article 1. Similarly, Illiniwak constitutes a "distinction" on the prohibited grounds of race, colour and religion, inter alia, in gross violation of UDHR Article 2. In other words, Illiniwak violates these most fundamental protections of the Universal Declaration of Human Rights, inter alia, and thus violates customary international law and therefore the common law of both the United States and the State of Illinois.

I wish to end this Memorandum by joining those eloquent and powerful words addressed to Trustee Susan Gravenhorst by Professor Mort Winston, Chair of the Board of Directors of Amnesty International, my fellow AIUSA Board Colleague and Comrade-in-Arms in the long but successful struggle against racism and apartheid in South Africa:

In your present position as Chair of the Board of Trustees, you can steer university policy on this issue towards the greater good. I urge you to do so. UIUC's sport's fans and the marching band can find another mascot. Have a contest.

Pick an animal or some culturally neutral symbol. Show some moral leadership so that perhaps the professional sports teams that also dishonor American Indians by debasing their cultural symbols will one day follow suit. But above all stop pretending that keeping "Chief Illiniwek" alive is somehow "honoring" the Native Americans who once roamed the plains where the University of Illinois now stands. In short, "Do the Right Thing -- Get Rid of the Chief!"

F. A. B.

F.A.B.
25 July 1997

Hunerwadel, Joan S.

From: Busby, Scott W.
Sent: Wednesday, January 13, 1999 7:27 PM
To: @LEGAL - Legal Advisor
Cc: @MULTILAT - Multilateral and Humanitarian Affairs
Subject: Human Rights IWG Summary of Conclusions [UNCLASSIFIED]



Human Rights IWG
Summary of Co...

~~Jamie, Caroline~~ - Please clear.

Summary of Conclusions
IWG on Human Rights Treaty Implementation
January 13, 1999
Chairs: Eric Schwartz, Jamie Baker

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State(DRL) to prepare proposed action plan to be used in evaluating whether and how to pursue CEDAW ratification.

B. Convention on the Rights of the Child

It was agreed that we should not push for ratification of this Convention at this time.

C. ILO Convention 111: Discrimination (Occupation and Employment)

Labor would like to push for USG ratification of this Convention. Labor will present on this issue at next IWG.

11. Next Meeting

The next IWG meeting will take place on Thursday, February 11 at 2 p.m. in Room 208, OEOB.

Attendees list attached.

 LEGI-SLATE Report for the 106th Congress Wed, January 13, 1999 12:42pm (EDT)

BILL TEXT Report for H.R.62
 As introduced in the House, January 6, 1999

 H.R.62 As introduced in the House, January 6, 1999

I

106th CONGRESS
 1st Session

H. R. 62

To provide that the provisions of Executive Order 13107, relating to the
 implementation of certain human rights treaties, shall not have any legal
 effect.

 IN THE HOUSE OF REPRESENTATIVES

January 6, 1999

Mr. Barr of Georgia introduced the following bill; which was referred to the
 Committee on International Relations

A BILL

To provide that the provisions of Executive Order 13107, relating to the
 implementation of certain human rights treaties, shall not have any legal
 effect.

=====

Be it enacted by the Senate and House of Representatives of the United
 States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "United States Federal Government
 Preservation Act of 1999".

SEC. 2. FINDINGS.

Congress finds the following:

(1) Article II, section 2, clause 2 of the Constitution of the United
 States provides that "He [the President] shall have Power, by and with
 the Advice and Consent of the Senate, to make Treaties, provided two
 thirds of the Senators present concur;"

(2) The International Covenant on Civil and Political Rights (ICCPR),
 the Convention Against Torture and Other Cruel, Inhuman or Degrading
 Treatment or Punishment (CAT), the Convention on the Elimination of All
 Forms of Racial Discrimination (CERD), and other relevant treaties
 concerned with the protection and promotion of human rights, are treaties
 with respect to which the Senate has not given its advice and consent to
 ratification.

(3) On December 10, 1998, President Clinton circumvented the
 intention of the Framers of the Constitution by issuing Executive Order
 13107 (63 Fed. Reg. 68991 (December 15, 1998)) which states in part "[i]t
 shall be the policy and practice of the Government of the United States,
 being committed to the protection and promotion of human rights and
 fundamental freedoms, fully to respect and implement its obligations
 under international human rights treaties to which it is a party,
 including the ICCPR, the CAT, and the CERD."

(4) Executive Order 13107 also states that "[a]ll executive

departments and agencies . . . shall maintain a current awareness of United States international human rights obligations that are relevant to their functions and shall perform such functions so as to respect and implement those obligations fully. The head of each agency shall designate a single contact officer who will be responsible for overall coordination of the implementation of this order."

(5) Executive Order 13107 also establishes an Interagency Working Group in Human Rights Treaties for the "purpose of providing guidance, oversight, and coordination with respect to questions concerning the adherence to and implementation of human rights obligations and related matters."

SEC. 3. NULLIFICATION OF EXECUTIVE ORDER 13107.

The provisions of Executive Order 13107 (63 Fed. Reg. 68991 (December 15, 1998); relating to the implementation of certain human rights treaties) shall not have any legal effect.

 LEGISLATE Report for the 106th Congress Wed, January 13, 1999 12:41pm (EDT)

BILL TEXT Report for H.R.63
 As introduced in the House, January 6, 1999

 H.R.63 As introduced in the House, January 6, 1999

I

106th CONGRESS
 1st Session

H. R. 63

To prohibit the use of funds to administer or enforce the provisions of
 Executive Order 13107, relating to the implementation of certain human
 rights treaties.

IN THE HOUSE OF REPRESENTATIVES

January 6, 1999

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 Committee on International Relations

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 Executive Order 13107, relating to the implementation of certain human
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 under international human rights treaties to which it is a party,
 including the ICCPR, the CAT, and the CERD."

(4) Executive Order 13107 also states that "[a]ll executive

departments and agencies . . . shall maintain a current awareness of United States international human rights obligations that are relevant to their functions and shall perform such functions so as to respect and implement those obligations fully. The head of each agency shall designate a single contact officer who will be responsible for overall coordination of the implementation of this order."

(5) Executive Order 13107 also establishes an Interagency Working Group in Human Rights Treaties for the "purpose of providing guidance, oversight, and coordination with respect to questions concerning the adherence to and implementation of human rights obligations and related matters."

SEC. 3. PROHIBITION ON USE OF FUNDS TO ADMINISTER OR ENFORCE EXECUTIVE ORDER 13107.

None of the funds appropriated in any Act for any fiscal year may be used to administer or enforce the provisions of Executive Order 13107 (63 Fed. Reg. 68991 (December 15, 1998); relating to the implementation of certain human rights treaties).

Human Rights Treaty Implementation IWG Script

1. Welcome (ES)

- Introductions
- Distribution of EO

2. Goals (ES)

Four of them:

- (1) Monitor our procedural compliance with human rights treaties, i.e., reporting requirements, response to formal complaints, etc.
- (2) Develop our position and strategy on ratification of human rights treaties to which we are not a party and on application and interpretation of existing treaties.
- (3) Consider adoption of administrative measures consistent with current domestic law to ensure compliance with obligations with human rights treaties to which we are party

 (e.g., INS and State implementation of measures regarding Article 3 - non-refoulement clause -- of the Torture Convention)
- (4) Facilitate compliance by state and local entities with human rights treaty obligations
- Reactions/Comments?

3. Process (JB)

- IWG has two basic process functions.
 - 1) inform DC/PC process and decisionmaking from both policy and legal perspective.
 - 2) provide a mechanism for agencies to ask questions about treaty implementation as well as to assist agencies in implementing US obligations under treaties.

- Legal/Policy Dichotomy/Two IWGs in one: In the first instance this is a policy IWG. However, because there are many legal questions that are raised in this context, we thought it appropriate to also have legal representation. However, in the first instance, Eric will take the lead. Where legal questions are presented I will take the lead with agency counterparts, in effect working as a legal subgroup to the overall IWG.
- When meet: At least once a month. And as needed. Call Scott or Caroline Krass with agenda items and timelines.
- Finally, this is intended as a constructive mechanism. Not too ambitious. But useful to all agencies addressing their questions, concerns, and policy initiatives.
- Reactions/Comments?

4. Agenda (ES)

A. Hill reaction and response

- Report on Barr bill that aims to strip the EO of all legal effect
 - How to respond?
- Ask State to discuss its plans for meeting with Helms' staffer tomorrow
 - Will/should DoJ also attend?
- Wonder if we should do letter that addresses the key questions that have been raised on the Hill
 - what treaties other than those named are covered by the EO?
 - clarify meaning of language in preamble
 - clarify that this does not affect Senate role in ratification process (i.e., Senate role)

B. Treaty Ratification

- CEDAW
 - ES to lay out where things were left off on this last session
 - comments from State
 - ask State to formulate view on strategy for upcoming session

-- Convention on the Rights of the Child

-- Ask State for update

-- task State with doing paper on ratification posture we should take.

C. Torture Convention Report

-- Ask State for status

-- Ask DoD and Justice for timeframe for providing their input to State

D. Race Convention Report

-- Ask State L for update

-- Ask rep from President's Race Initiative for quick comment on issuance of POTUS report on race

E. ICCPR Report

-- Ask State L for update

F. Response to UN Special Rapporteur on Torture

-- Ask State L

G. Response to Amnesty Report on Human Rights in U.S.

-- Ask Castello to report on Justice-organized process

H. Monitoring State and Local Compliance

-- Big issue that we cannot come to closure on today.

-- Ask whether it would make sense for State and Justice to prepare a brief paper on this issue for group to consider at next meeting.

5. Other Business

6. Proposed Next Meeting

-- Thurs, Feb. 11, 2 p.m., Room 208

SEC. 2216. HUMAN RIGHTS REPORTS.

Section 116(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d)) is amended—

- (1) by striking "January 31" and inserting "February 25";
- (2) by redesignating paragraphs (3), (4), (5), and (6) as paragraphs (4), (5), (6), and (7), respectively; and
- (3) by inserting after paragraph (2) the following new paragraph:

"(3) the status of child labor practices in each country, including—

"(A) whether such country has adopted policies to protect children from exploitation in the workplace, including a prohibition of forced and bonded labor and policies regarding acceptable working conditions; and

"(B) the extent to which each country enforces such policies, including the adequacy of the resources and oversight dedicated to such policies;"

SEC. 2217. REPORTS AND POLICY CONCERNING DIPLOMATIC IMMUNITY.

Title I of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a et seq.), as amended by this division, is further amended by adding at the end the following new section:

"SEC. 56. CRIMES COMMITTED BY DIPLOMATS.

"(a) **ANNUAL REPORT CONCERNING DIPLOMATIC IMMUNITY.**—

"(1) **REPORT TO CONGRESS.**—180 days after the date of enactment, and annually thereafter, the Secretary of State shall prepare and submit to the Congress, a report concerning diplomatic immunity entitled 'Report on Cases Involving Diplomatic Immunity'.

"(2) **CONTENT OF REPORT.**—In addition to such other information as the Secretary of State may consider appropriate, the report under paragraph (1) shall include the following:

"(A) The number of persons residing in the United States who enjoy full immunity from the criminal jurisdiction of the United States under laws extending diplomatic privileges and immunities.

"(B) Each case involving an alien described in subparagraph (A) in which an appropriate authority of a State, a political subdivision of a State, or the United States reported to the Department of State that the authority had reasonable cause to believe the alien committed a serious criminal offense within the United States, and any additional information provided to the Secretary relating to other serious criminal offenses that any such authority had reasonable cause to believe the alien committed before the period covered by the report. The Secretary may omit from such report any matter the provision of which the Secretary reasonably believes would compromise a criminal investigation or prosecution or which would directly compromise law enforcement or intelligence sources or methods.

"(C) Each case described in subparagraph (B) in which the Secretary of State has certified that a person enjoys full immunity from the criminal jurisdiction of the United

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Sec. 110.⁴⁹ Cost-Sharing and Funding Limits.—No assistance shall be furnished by the United States Government to a country under sections 103 through 106 of this Act until the country provides assurances to the President, and the President is satisfied, that such country provide at least 25 per centum of the costs of the entire program, project, or activity with respect to which such assistance is to be furnished, except that such costs borne by such country may be provided on an "in-kind" basis.⁵⁰

Sec. 111.⁵¹ Development and Use of Cooperatives.—In order to strengthen the participation of the rural and urban poor in their country's development, high priority shall be given to increasing the use of funds made available under this Act for technical and capital assistance in the development and use⁵² of cooperatives in the less developed countries which will enable and encourage greater numbers of the poor to help themselves toward a better life.⁵³

Sec. 112.⁵⁴ Prohibiting Police Training.—* * * [Repealed—1974]

Sec. 113.⁵⁵ Integrating Women Into National Economies.—(a) In recognition of the fact that women in developing countries

⁴⁹ 22 U.S.C. 2151h. Sec. 110 was added by sec. 2(3) of the FA Act of 1973. Sec. 1211(a)(3) of the International Security and Development Cooperation Act of 1985 deleted par. (b) and removed the "(a)" designation from the preceding paragraph. Par. (b) previously read as follows: "No grant assistance shall be disbursed by the United States Government under sections 103 through 106 of this Act for a project, for a period exceeding thirty-six consecutive months, without further justification satisfactory to the Congress and efforts being made to obtain sources of financing within that country and from other foreign countries and multilateral organizations."

The initial phrase of subsec. (b), which had been added by Public Law 95-88 (91 Stat. 535), was struck by sec. 112(b)(2) of the International Development and Food Assistance Act of 1978 (92 Stat. 949). It previously read as follows:

"Except for grants to countries determined to be relatively least developed based on the United Nations Conference on Trade and Development list of 'relatively least developed countries'."

⁵⁰ The following phrase, as added by Public Law 94-161 (89 Stat. 849) and previously appeared at this point, was struck by sec. 112(b)(1) of the International Development and Food Assistance Act of 1978 (92 Stat. 949): "and except that the President may waive this cost-sharing requirement in the case of a project or activity in a country which the agency primarily responsible for administering part I of this Act determines is relatively least developed based on the United Nations Conference on Trade and Development list of 'relatively least developed countries'."

⁵¹ 22 U.S.C. 2151i. Sec. 111, as added by sec. 2(3) of the FA Act of 1973, was amended by sec. 308 of Public Law 94-161 (89 Stat. 849). It formerly read as follows: "In order to strengthen the participation of the urban and rural poor in their country's development, not less than \$20,000,000 of the funds made available for the purposes of this chapter shall be available during the fiscal years 1974 and 1975 only for assistance in the less developed countries which will enable and encourage greater numbers of the poor to help themselves toward a better life."

⁵² The words "technical and capital assistance in the development and use" were inserted in lieu of "assistance in the development" by sec. 107(a) of the International Development and Food Assistance Act of 1977 (Public Law 95-88; 91 Stat. 535).

⁵³ A sentence that earmarked funds specifically for technical assistance to carry out the purposes of this section and had previously appeared at this point was repealed by sec. 122 of the International Development Cooperation Act of 1979 (Public Law 96-53; 93 Stat. 366).

⁵⁴ Sec. 112, as added by sec. 2(3) of the FA Act of 1973, was repealed by sec. 30(b) of the FA Act of 1974. (See sec. 660 of this Act, "Prohibiting Police Training".)

⁵⁵ 22 U.S.C. 2151k. Sec. 113, as added by sec. 2(3) of the FA Act of 1973, was amended and restated by sec. 108 of the International Development and Food Assistance Act of 1977 (Public Law 95-88; 91 Stat. 536). Sec. 113 formerly read as follows:

"SEC. 113. INTEGRATING WOMEN INTO NATIONAL ECONOMIES.—Part I of this Act shall be administered so as to give particular attention to those programs, projects, and activities which tend to integrate women into the national economies of foreign countries, thus improving their status and assisting the total development effort."

Subsecs. (b) and (c), as added by Public Law 95-88 and which required a report from the President concerning the impact of development programs, projects, and activities on the integration of women into the developing economies of countries receiving assistance under this part, were repealed by sec. 122 of the International Development Cooperation Act of 1979 (Public Law 96-53; 93 Stat. 366) (such report was submitted to the Congress on August 3, 1978). This subsec. (b), originally added as subsec. (d) by Public Law 95-424 (92 Stat. 947), was redesignated as subsec. (b) by Public Law 96-53.

play a significant role in economic production, family support, and the overall development process of the national economies of such countries, this part shall be administered so as to give particular attention to those programs, projects, and activities which tend to integrate women into the national economies of developing countries, thus improving their status and assisting the total development effort.

(b)⁵⁵ (1) Up to \$10,000,000 of the funds made available each fiscal year under this chapter and chapter 10 of this part⁵⁶ shall be used, in addition to funds otherwise available for such purposes, for assistance on such terms and conditions as the President may determine to encourage and promote the participation and integration of women as equal partners in the development process in the developing countries. These funds shall be used primarily to support activities which will increase the economic productivity and income earning capacity of women.

(2) Nothing in this section shall be construed to authorize the establishment of a separate development assistance program for women.

(c)⁵⁵ Not less than \$500,000 of the funds made available under this chapter for fiscal year 1982 shall be expended on international programs which support the original goals of the United Nations Decade for Women.

Sec. 114.⁵⁷ Limiting Use of Funds for Abortions or Involuntary Sterilization.—* * * [Repealed—1978]

Sec. 115.⁵⁸ Prohibiting Use of Funds for Certain Countries.—* * * [Repealed—1978]

Sec. 116.⁵⁹ Human Rights.—(a) No assistance may be provided under this part to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction and clandestine detention of those persons,⁶⁰ or other flagrant denial of the right to life, liberty, and the security of person, unless such assistance will directly benefit the needy people in such country.

(b) In determining whether this standard is being met with regard to funds allocated under this part, the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs⁶¹ of

The current text of subsec. (c) was added by sec. 305 of the International Security and Development Cooperation Act of 1981 (Public Law 97-113; 95 Stat. 1533).

⁵⁴ Sec. 562 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101-513; 104 Stat. 2026), added a new chapter 10 to part I of this Act, providing for long-term development in sub-Saharan Africa, and made a conforming amendment by inserting "and chapter 10 of this part" here.

⁵⁷ Sec. 114, as added by the FA Act of 1973, was repealed by sec. 104(b) of the International Development and Food Assistance Act of 1978 (Public Law 95-424; 92 Stat. 947). See sec. 104(f) of this Act for new language concerning this issue.

⁵⁸ Sec. 115, as added by the FA Act of 1974, was repealed by sec. 102(f) of the International Development and Food Assistance Act of 1978 (Public Law 95-424; 92 Stat. 942).

⁵⁹ 22 U.S.C. 2151n. Sec. 116 was added by sec. 310 of Public Law 94-161 (89 Stat. 849). See also in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, sec. 541, relating to special authorities, and sec. 544, relating to eligibility for assistance.

⁶⁰ This phrase beginning with "causing the disappearance of * * *" was added by sec. 701(a) of the International Security and Development Cooperation Act of 1980 (Public Law 96-533; 94 Stat. 3156).

⁶¹ Sec. 9(a)(6) of Public Law 103-437 (108 Stat. 4588) struck out "International Relations" and inserted in lieu thereof "Foreign Affairs". Subsequently, sec. 1(a)(5) of Public Law 104-14 (109

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the House of Representatives may require the Administrator primarily responsible for administering part I of this Act to submit in writing information demonstrating that such assistance will directly benefit the needy people in such country, together with a detailed explanation of the assistance to be provided (including the dollar amounts of such assistance) and an explanation of how such assistance will directly benefit the needy people in such country. If either committee or either House of Congress disagrees with the Administrator's justification it may initiate action to terminate assistance to any country by a concurrent resolution under section 617 of this Act.

(b)⁶² No assistance may be provided to any government failing to take appropriate and adequate measures, within their means, to protect children from exploitation, abuse or forced conscription into military or paramilitary services.

(c)⁶³ In determining whether or not a government falls within the provisions of subsection (a) and in formulating development assistance programs under this part, the Administrator shall consider, in consultation with the Assistant Secretary of State for Democracy, Human Rights, and Labor—⁶⁴

(1) the extent of cooperation of such government in permitting an unimpeded investigation of alleged violations of internationally recognized human rights by appropriate international organizations, including the International Committee of the Red Cross, or groups or persons acting under the authority of the United Nations or of the Organization of American States; and

(2) specific actions which have been taken by the President or the Congress relating to multilateral or security assistance to a less developed country because of the human rights practices or policies of such country.

(d)⁶⁵ The Secretary of State shall transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate, by January 31 of each year, a full and complete report regarding—

Stat. 186) provided that references to the Committee on Foreign Affairs of the House of Representatives shall be treated as referring to the Committee on International Relations of the House of Representatives.

⁶² Sec. 599D of the of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101-513; 104 Stat. 2066), added this second subsec. (b).

⁶³ Sec. 111 of the International Development and Food Assistance Act of 1977 (Public Law 95-88; 91 Stat. 537) amended and restated subsecs. (c) and (d), and added a new subsec. (e). Subsecs. (c) and (d) formerly read as follows:

"(c) In determining whether or not a government falls within the provisions of subsection (a), consideration shall be given to the extent of cooperation of such government in permitting an unimpeded investigation of alleged violations of internationally recognized human rights by appropriate international organizations, including the International Committee of the Red Cross, or groups or persons acting under the authority of the United Nations or of the Organization of American States.

"(d) The President shall transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate, in the annual presentation materials on proposed economic development assistance programs, a full and complete report regarding the steps he has taken to carry out the provisions of this section."

⁶⁴ Sec. 162(e)(1) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236; 108 Stat. 405), struck out "Assistant Secretary for Human Rights and Humanitarian Affairs" and inserted in lieu thereof "Assistant Secretary of State for Democracy, Human Rights, and Labor". Previously, "Assistant Secretary" was inserted in lieu of "Coordinator" by sec. 109(a)(2) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Public Law 95-105; 91 Stat. 646).

(1)⁶⁵ the status of internationally recognized human rights, within the meaning of subsection (a)—

(A) in countries that receive assistance under this part, and

(B) in all other foreign countries which are members of the United Nations and which are not otherwise the subject of a human rights report under this Act;

(2)⁶⁶ wherever applicable, practices regarding coercion in population control, including coerced abortion and involuntary sterilization;

(3)⁶⁶ the votes of each member of the United Nations Commission on Human Rights on all country-specific and thematic resolutions voted on at the Commission's annual session during the period covered during the preceding year;

(4)⁶⁶ the extent to which each country has extended protection to refugees, including the provision of first asylum and resettlement; and

(5)⁶⁶ the steps the Administrator has taken to alter United States programs under this part in any country because of human rights considerations.

(e)^{63, 67} The President is authorized and encouraged to use not less than \$3,000,000 of the funds made available under this chap-

⁶⁵ Paragraph (1) was amended and restated by sec. 504 of the International Development Cooperation Act of 1979 (Public Law 96-63; 93 Stat. 378) by adding the requirement contained in clause (B). Sec. 504 also required a report from the Secretary of State by November 15, 1979, on the impact on the foreign relations of the United States of the reports required by this Act on the human rights practices of foreign governments.

⁶⁶ A new para. (2) was added and the former para. (2) was redesignated as para. (3) by sec. 127 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Public Law 100-204; 101 Stat. 1342). Subsequently, sec. 201(a) of Public Law 104-319 (110 Stat. 3864) struck out "and" at the end of para. (2), redesignated para. (3) as para. (5), and added new paras. (3) and (4).

⁶⁷ The first phrase, "The President is authorized and encouraged to use not less than", was added by sec. 109(1) of the International Development and Food Assistance Act of 1978 (Public Law 95-424; 92 Stat. 947).

The authorization level of \$3,000,000 and the reference to funds available under chapter 4 of part II were added by sec. 1002(a)(1) of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (Public Law 98-164; 97 Stat. 1052). Previously, amendments by sec. 306 of the International Security and Development Cooperation Act of 1981 (Public Law 97-113; 95 Stat. 1533), sec. 504 of Public Law 96-533 (94 Stat. 378), and sec. 109(2) of Public Law 95-424 (92 Stat. 947) authorized the use of \$1,500,000 for this purpose in fiscal years 1982-1983, fiscal year 1981, and fiscal year 1979, respectively. The original text of subsec. (e), added by sec. 111 of Public Law 95-88 (91 Stat. 537), authorized the use of \$750,000 for this purpose during fiscal year 1978.

The authorization level of \$1,500,000 for the fiscal year 1986 and for each fiscal year thereafter was added by sec. 202 of Public Law 99-440 (100 Stat. 1095).

Paragraph designation "(1)" and a new par. (2) were added to subsec. (e) by sec. 1002(a)(3) of the Department of State Authorization Act, Fiscal Years 1984 and 1985 (Public Law 98-164; 97 Stat. 1052). Par. (2) subsequently was repealed by sec. 4(a)(3)(B) of the South African Democratic Transition Support Act of 1993 (Public Law 103-149; 107 Stat. 1505), and the designation for par. (1) was struck out.

Par. (2) of subsec. (e) had stated a priority, with supporting guidelines and conditions, for giving grants to "nongovernmental organizations in South Africa promoting political, economic, social, juridical, and humanitarian efforts to foster a just society and to help victims of apartheid."

Section 4(a)(3)(B) of the South African Democratic Transition Support Act of 1993 (Public Law 103-149; 107 Stat. 1505) also repealed subsec. (f) and (g) of sec. 116, which had been added by sec. 202(b) of Public Law 99-440 (100 Stat. 1095).

Subsec. (f) directed not less than \$500,000 under section (e)(2)(A) to be used "for direct legal and other assistance to political detainees and prisoners and their families, including the investigation of the killing of protesters and prisoners, and for support for actions of black-led community organizations to resist, through nonviolent means, the enforcement of apartheid policies...."

Subsec. (g) directed \$175,000 each fiscal year to "be used for direct assistance to families of victims of violence such as 'necklacing' and other such inhumane acts", and another \$175,000 to "be made available to black groups in South Africa which are actively working toward a

Continued

ter, chapter 10 of this part,⁶⁸ and chapter 4 of part II for each fiscal year for studies to identify, and for openly carrying out, programs and activities which will encourage or promote increased adherence to civil and political rights, as set forth in the Universal Declaration of Human Rights, in countries eligible for assistance under this chapter or under chapter 10 of this part, except that funds made available under chapter 10 of this part may only be used under this subsection with respect to countries in sub-Saharan Africa. None of these funds may be used, directly or indirectly, to influence the outcome of any election in any country.

Sec. 117.⁶⁹ Assistance for Disadvantaged South Africans.—
* * * [Repealed—1993]

Sec. 117.⁷⁰ Environment and Natural Resources.—(a) The Congress finds that if current trends in the degradation of natural resources in developing countries continue, they will severely undermine the best efforts to meet basic human needs, to achieve sustained economic growth, and to prevent international tension and conflict. The Congress also finds that the world faces enormous, urgent, and complex problems, with respect to natural resources, which require new forms of cooperation between the United States and developing countries to prevent such problems from becoming unmanageable. It is, therefore, in the economic and security interests of the United States to provide leadership both in thoroughly reassessing policies relating to natural resources and the environ-

multi-racial solution to the sharing of political power in that country through nonviolent, constructive means."

⁶⁸ Sec. 562 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101-513; 104 Stat. 2026), added a new chapter 10 to part I of this Act, providing for long-term development in sub-Saharan Africa, and made a conforming amendment by inserting "chapter 10 of this part," here, and text at the end of the first sentence beginning at "or under chapter 10".

⁶⁹ Formerly at 22 U.S.C. 2151o. Sec. 117 was repealed by sec. 4(a)(3)(B) of the South African Democratic Transition Support Act of 1993 (Public Law 103-149; 107 Stat. 1505). It had been added originally by sec. 201(b) of Public Law 99-440 (100 Stat. 1094). Sec. 117 provided assistance for disadvantaged South Africans through South African nongovernmental organizations, such as the Educational Opportunities Council, the South African Institute of Race Relations, READ, professional teachers' unions, the Outreach Program of the University of the Western Cape, the Funda Center in Soweto, SACHED, UPP Trust, TOPS, the Wilgespruit Fellowship Center (WFC), and civic and other organizations working at the community level which did not receive funds from the Government of South Africa.

A previous version of sec. 117, "Infant Nutrition", was repealed in 1978.

⁷⁰ 22 U.S.C. 2151p. Sec. 117 was redesignated from being sec. 118 by sec. 301(1) of Public Law 99-529, resulting in the creation of two sections 117. Sec. 301(2) of Public Law 99-529 (100 Stat. 3014) further deleted subsec. (d) of that section, which dealt with tropical forests, and then sec. 301(3) of Public Law 99-529 added a new section 118 entitled "Tropical Forests". This section, as added by sec. 113 of Public Law 95-88 (91 Stat. 537) and amended by sec. 110 of Public Law 95-424 (92 Stat. 948) and sec. 122 of Public Law 96-53 (93 Stat. 948), was further amended and restated by sec. 307 of the International Security and Development Cooperation Act of 1981 (Public Law 97-113; 95 Stat. 1533). This section previously read as follows:

"Sec. 118. Environment and Natural Resources.—(a) The President is authorized to furnish assistance under this part for developing and strengthening the capacity of less developed countries to protect and manage their environment and natural resources. Special efforts shall be made to maintain and where possible restore the land, vegetation, water, wildlife and other resources upon which depend economic growth and human well-being especially that of the poor.

"(b) In carrying out programs under this chapter, the President shall take into consideration the environmental consequence of development actions."

See also sec. 534 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101-167; 103 Stat. 1228), as amended, relating to "Global Warming Initiative".

See also sec. 533 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101-513; 104 Stat. 2013), as amended, relating to "Environment and Global Warming".

See also sec. 532 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law 102-391; 106 Stat. 1666), relating to "Environment".

ment, and in cooperating extensively with developing countries in order to achieve environmentally sound development.

(b) In order to address the serious problems described in subsection (a), the President is authorized to furnish assistance under this part for developing and strengthening the capacity of developing countries to protect and manage their environment and natural resources. Special efforts shall be made to maintain and where possible to restore the land, vegetation, water, wildlife, and other resources upon which depend economic growth and human well-being, especially of the poor.

(c)(1) The President, in implementing programs and projects under this chapter and chapter 10 of this part,⁷¹ shall take fully into account the impact of such programs and projects upon the environment and natural resources of developing countries. Subject to such procedures as the President considers appropriate, the President shall require all agencies and officials responsible for programs or projects under this chapter—

(A) to prepare and take fully into account an environmental impact statement for any program or project under this chapter significantly affecting the environment of the global commons outside the jurisdiction of any country, the environment of the United States, or other aspects of the environment which the President may specify; and

(B) to prepare and take fully into account an environmental assessment of any proposed program or project under this chapter significantly affecting the environment of any foreign country.

Such agencies and officials should, where appropriate, use local technical resources in preparing environmental impact statements and environmental assessments pursuant to this subsection.

(2) The President may establish exceptions from the requirements of this subsection for emergency conditions and for cases in which compliance with those requirements would be seriously detrimental to the foreign policy interests of the United States.

Sec. 118.⁷² Tropical Forests.

(a) **IMPORTANCE OF FORESTS AND TREE COVER.**—In enacting section 103(b)(3) of this Act the Congress recognized the importance of forests and tree cover to the developing countries. The Congress is particularly concerned about the continuing and accelerating alteration, destruction, and loss of tropical forests in developing countries, which pose a serious threat to development and the environment. Tropical forest destruction and loss—

(1) result in shortages of wood, especially wood for fuel; loss of biologically productive wetlands; siltation of lakes, reservoirs, and irrigation systems; floods; destruction of indigenous peoples; extinction of plant and animal species; reduced capacity for food production; and loss of genetic resources; and

⁷¹ Sec. 562 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101-513; 104 Stat. 2026), added a new chapter 10 to part I of this Act, providing for long-term development in sub-Saharan Africa, and made a conforming amendment by inserting "and chapter 10 of this part" here.

⁷² 22 U.S.C. 2151p-1. Sec. 118 was added by sec. 301(3) of Public Law 99-529 (100 Stat. 3014). See also footnote 70.

INTERAGENCY WORKING GROUP ON HUMAN RIGHTS TREATIES

DRAFT AGENDA

13 JAN 1999

3 p.m., Room 208 (OEOb)

Chairs: Eric Schwartz, Jamie Baker

SUBJECT	ACTION
1. Convocation of IWG by Chairs	NSC
2. Distribution of EO 13107 of 10 Dec 98	NSC
3. Explanation of IWG Goals	NSC/State(DRL)
4. New Business	
A. US Report on Torture Convention Status of First Report DOJ and DOD owe comments	State(L)
B. U.S. Report on Race Convention Status of First Report	State(L)
C. Civil and Political Covenant Report Status of Second Report	State(L)
D. Responses to UN Special Rapporteur on Torture and other Cruel, Inhuman Punishment and Treatment Status Report	DOJ
E. Response to OCT 98 Amnesty Report Status Report	DOJ/State(DRL)
F. Monitoring Compliance of State and Local Entities Discussion of Methodology	ALL
G. Treaty Ratification	State(L) and (DRL)
1. CEDAW	
2. Convention of the Right of the Child	
5. Other Business	
6. Next meeting	