

FOIA MARKER

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Folder Title:

Interagency Working Group: Human Rights Treaties [1]

Staff Office-Individual:

Legal Advisor-Krass, Caroline

Original OA/ID Number:

3114

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40	1	3	1	V

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Attendees at Human Rights IWG. Personally Identifiable Information. [CIA Act]. [partial] (5 pages)	11/08/2000	P3/b(3), b(6)

COLLECTION:

Clinton Presidential Records
National Security Council
Multilateral and Humanitarian Affairs (Jane Stromseth/Feldman, Daniel/Shea, Dorothy)
OA/Box Number: 2975

FOLDER TITLE:

Human Rights Treaty Implementation [1]

2011-0168-F

vz3344

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

HR Implementation IWG 11/8/2000

We do not have coordinated response. Some say we don't need.

- ① request for visa or sneak into U.S.
- ② U.S.
- ③ stay or go.

Case studies:

- ① Peruvian torturer: Anderson Koharsen → had noa → testimony before ICJ.
FBI approached him after NGO tip-off
immunity granted after quick consultations
- ② Guatemalan Rios Montt: obtained a visa. Pres Bushnell held his ppt.
- ③ Former Nicaraguan Pres Daniel Ortega got 2-yr multiple entry
visa. He didn't come b/c Embassy said couldn't guarantee ^{validity} ^{get} ^{secret}
- ④ Montesinos two 10-yr multiple entry visas. ^{we thought, intended to not} ^{summed by Int'l Am.} ^{Comm?}
(should we review visas?)
- ⑤ Alien Tort Claims Cases
Li Peng → service in DS. U.S. asked to weigh in
Mugabe → served w/ papers. Default ruling
Yerodia → Belgian judge issued warrant for arrest. State sent
demande ^{Belgium}
Constant → FRAP. Originally held; ordered deported. Ties to CIA. NY.
Bangladeshi Camp Plotter → had been tried in absentia. No extradition
trial.

DOJ

Both immigration + prosecution equities. We have jurisdiction over
any acts committed—even outside the U.S. if after statute passed.

Class System: Are egregious HR abusers entered?

→ must get advisory opinion.

We're dependent on people telling us who should be a "DO"

ENC: 1st challenge $\Rightarrow$ make sure lookout as complete as possible

DJS: War crimes $\Rightarrow$ suspect looks for possible indictment

can facilitate arrest by UN authorities

also in memo to CA, say which offices have a stake.

There are policy issues that come into play

Current system $\neq$ formalized enough.

Catherine

The system exists & has for years.

but people aren't using the system

HTK

Building up the database does not preclude need for inter-agency coordination

ES: What guarantees are there that all stakeholders are table when decisions made?

pro $\left\{ \begin{array}{l} \text{advantage of process} = \text{identify players who have } \underline{\text{stake}}. \\ \bullet \text{ convene a deliberative process} \end{array} \right.$

con - we achieve same results w/o a formal process.

DJS - increasingly unique circumstances

ICTY Prosecutor

DOJ - once they get here, - it's an INS + DOJ problem!

ES

Any deliberation ought to be A/S-level.

Given implication of State's decisions for other agencies, there needs to be some inter-agency consultations.

How formal?

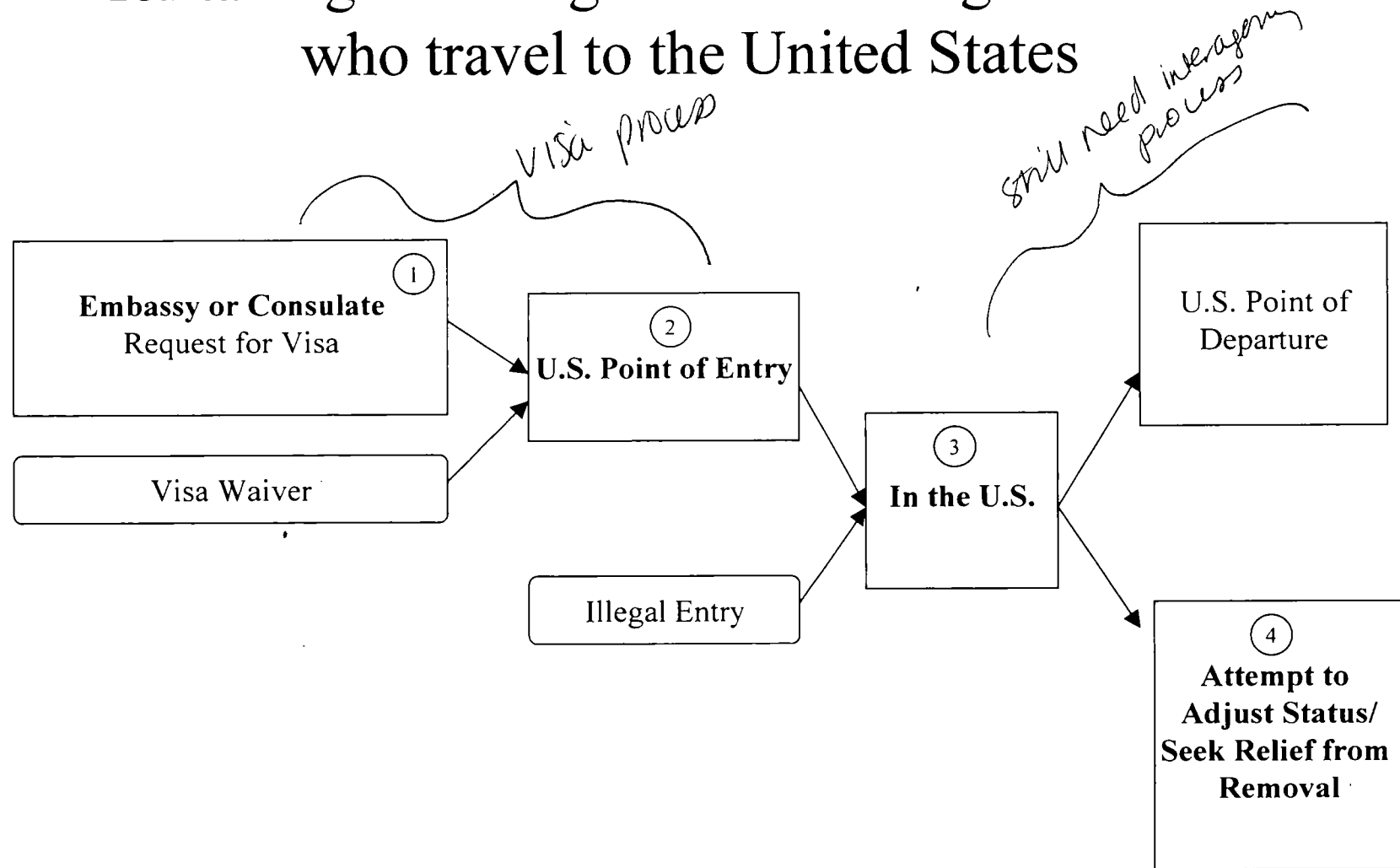
Who sit in chair?

Put it in discussion paper, let TL decide

Nov. 29. 1) do we need a more dedicated process that involves inter
2) if so, what look like

meanwhile, provide add'l named info to CA.

Draft Analysis of Key Decision Points for taking action against human rights abusers who travel to the United States



*PHR
Implementation*

Issues for Analysis

- Key Decision Points

- **1: Visa requested at embassy or consulate**
 - Individual in foreign country applies for a visa to visit the U.S.
 - Visa types: Full Diplomatic (A); Limited Diplomatic (G); Tourist; Immigrant; other
- **2: U.S. point of entry**
 - Individual may be identified and put into “secondary” at point of entry into U.S. for further questioning
- **3: Individual in the U.S.**
 - Individual is present in the U.S., either on a tourist visa, diplomatic visa, green card or illegally.
- **4: Individual in the U.S. seeks to adjust status or seek relief from removal**
 - Individual is present in the U.S. and subsequently identified as a human rights abuser.

- Players

- DOS (Embassies/consulates; P,G, CA; DRL; L; INL; Regional bureaus; IO, S/WCI; S/CT; PM)
- DOJ (INS, Foreign ^{B/INCL. Schumaning} criminal and civil; FBI; DEA)
- DOD (DIA; OSD; JCS) *↳ sometimes amicus brief*
- CIA
- Also consider: NGOs, Private litigants and victims, international organizations, foreign governments

- Questions

- Evidentiary: Is there probable cause to arrest or indict? If not, can adequate evidence be rapidly obtained?
- Immunity: Can the individual make a plausible claim to have some sort of immunity from arrest?
- Policy: What are the foreign policy ramifications of either arresting the individual for prosecution, or of allowing him/her to enter and depart with immunity?

- Possible actions:

- Issue visa, deny visa, revoke visa
- Deny entry, permit entry
- Arrest and prosecute
- Permit adjustment
- Deport

Ø HR
Implementation

Summary of Conclusions
REVISED
Human Rights Treaty IWG
August 18, 2000

It was agreed that:

- Justice will present to the Attorney General's Executive Working Group, when it next meets in November, the issue of how to improve the process by which State/L refers complaints from international human rights entities to state and local governments. The focus will be on identifying appropriate entities within each state to which such complaints can be referred for a proper response. In the meantime, Justice will attempt to organize a staff level meeting with NAAG and NDAA in September.
- ✓ • Harold Koh would present on international human rights issues to attorneys from the Criminal Section of DOJ's Civil Rights Division in September.
- ✓ • NSC will continue to work with State and Justice to reach agreement on final language for the Administration's legislative proposal to expand the bars to admission and grounds of removal for human rights abusers. The bill will be transmitted to the Hill as soon as Congress returns in September.
- the CERD report would be rolled out on September 11 (after the Millennium Summit at the regular State Department briefing), we would not send another letter to the CERD Committee stating that the report was forthcoming, and we would recommend that the President sign the Mary Robinson letter on the World Conference Against Racism at the Millennium Summit, subject to any foreign policy concerns that might arise prior to the Summit.
- in order to respond to the Human Rights Watch report on racial disparities in incarceration (to HRW, other human and civil rights groups, and congressional inquiries), Justice will complete its analysis of the disparities issue and makes whatever recommendations it deems appropriate. At that point, Justice will coordinate the public presentation of their conclusions with the IWG. DPC/COS will emphasize the international ramifications of this issue to the domestic side of the White House.
- NSC and COS will continue to work with State, Justice and Interior to resolve the question of the USG position on issues related to the UN and OAS Draft Declarations on indigenous rights.
- we should not pursue the 1954 and 1961 conventions related to statelessness at this time because both are closed for signature and would require accession packages. Instead, we should use the time remaining in this year's legislative session to push for ratification of the child soldiers protocol.

DOJ
Civil
Rights

INTERAGENCY WORKING GROUP ON HUMAN RIGHTS TREATIES

Agenda

November 8, 2000

2:00 -- OEOB 208

*DHR
Implementation*

1. Brief Review of Summary of Conclusions from last meeting

2. Visits to the US by Human Rights Abusers

a. statement of the problem

- various policy and law enforcement considerations may be implicated in a decision whether to issue a visa to a human rights abuser and whether he or she may be entitled to immunity, underscoring the need for a well-coordinated interagency approach

b. key decision points

- request for visa at consulate abroad
- arrival at port of entry
- individual present in US
- attempt to adjust status or seek relief from removal

c. policy considerations involved in handling such visits

- criminal prosecution
- civil suits (*Li Peng ; Israeli guy*)
- human rights and humanitarian law bars under immigration law
- foreign policy
- human rights and accountability
- diplomatic and other immunity

d. existing mechanisms, if any, to handle such scenarios

- discussion with reference to Anderson Kohatsu

e. recommendations for improved interagency coordination

- process for convening IWG on emergency basis *YES*
- informal watch list *YES*
- cable to posts to promote broader interagency information sharing *YES*
- improvements in visa outlook system *YES*
- other ideas?

3. Next regular meeting – **December 7, 2:00, OEOB 208**

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Shea, Dorothy C. (MULTILAT)

Subject: Updated: HR IWG (focusing on visits to the US by human rights abusers)
Location: 208 WAVES U42005
Start: Wed 11/8/00 2:00 PM
End: Wed 11/8/00 3:30 PM
Show Time As: Tentative
Recurrence: (none)
Meeting Status: Not yet responded
Required Attendees: Schwartz, Eric P. (MULTI); Shea, Dorothy C. (MULTILAT)

Dorothy - FYI (list of invitees)

HR IWG on November 8th (invitees) from 2:00 - 3:30 p.m. in Room 208

♣ indicates clearance

♣Phillip L. Antweiler Tel: 202-647-1383

State/DRL

DOB

SSN

(b)(6)

[001]

♣Catherine Barry Tel: 202-663-1153

State/CA

DOB

SSN

(b)(6)

Laura Baxter Tel: 202-305-8413

YES

INS/OGC

DOB

SSN

(b)(6)

♣Mike Bermeister Tel: 202-647-5589 NO (Michael Pan attending in his place)

State/WCI

Anita Botti Tel: 202-647-5440

State/G/PICW

DOB

SSN

♣Catherine Brown Tel: 202-647-0688

YES

State/L

DOB

SSN

(b)(6)

Bueno, Irene Tel:
White House

(b)(3)

YES

♣ Christopher Camponovo Tel: (202) 647-4053 YES

State/L

DOB

SSN

(b)(6)

Deborah Carr Tel: 202-514-5130
WH Task Force on Racism Conference

[001]

♣ James Castello Tel: (202) 514-3392

DOJ/Associate Deputy AG

DOB

SSN

(b)(6)

♣ Paige Chabora Tel: 202-776-8438

DRL

DOB

SSN

(b)(6)

♣ Owen "Bo" Cooper Tel: 514-2895

ofc will call back

DOJ/INS

DOB

SSN

(b)(6)

♣ Eliana Davidson Tel: (703) 697-7215 (cannot attend)

OSD

♣ Julie Fernandes Tel: 202-353-8608

DOJ/CRT

DOB

SSN

(b)(6)

Joel Fishman Tel:
State/PAS (USIA)
DOB
SSN

Franciso Garcia Tel:
Education
DOB
SSN

♣Molly Groom Tel: 202-514-3195 YES
DOJ/INS
DOB (b)(6)
SSN (b)(6)

♣Mort Halperin Tel: 202-647-2972 yes
State/SP
DOB (b)(6)
SSN (b)(6)

Christina Ho Tel: 6-5581 [001]
DPC

♣Richard Jerome Tel: 202-514-8696
DOJ/Assoc. AG office
DOB (b)(6)
SSN (b)(6)

♣David Killion Tel: (202) 647-9379
State/H
DOB (b)(6)
SSN (b)(6)

♣Harold Koh Tel: (202) 647-2126
State/DRL
DOB (b)(6)
SSN (b)(6)

David Koplow Tel:
DOD/GC
DOB
SSN

Caroline Krass Tel: 6-9111

NSC/Legal

William "Bill" Lann Lee Tel:
DOJ/CRT
DOB
SSN

♣George C. Lannon Tel: 202-647-9584 yes
State/CA
DOB (b)(6)
SSN

♣Michael Pan Tel: (202) 647-7996 (replacing Bermeister)
State/War Crimes
DOB (b)(6)
SSN

♣Theodore Piccone Tel: (202) 647-3599 yes
State/S/P
DOB (b)(6)
SSN

[001]

♣Nancy Rubin Tel: 202-244-8247 out-of-country
State/IO
DOB (b)(6)
SSN

♣Kelly Ryan Tel: 202-514-3211 (out of the office until the 13th)
DOJ/INS

Nancy Sambaiew Tel:
State/CA
DOB
SSN

♣James "Jim" Schear Tel: (703) 614-0451 (direct) NO
OSD/PKHA
DOB (b)(6)
SSN

♣Ambassador David Scheffer Tel: 202-647-5074 YES
State/War Crimes
DOB: (b)(6)
SSN:

♣Bruce Swartz Tel: 202-514-2333

DOJ

DOB

SSN

(b)(6)

Nancy Sambaiew (replaced by George C. Lannon Tel: 202-647-9584)

♣Andre Surena Tel: (202) 647-4035 YES

State/L

DOB

SSN

(b)(6)

♣Yoel Tobin Tel: 202-514-5165 YES

DOB

SSN

(b)(6)

Reynaldo Valencia Tel: 6-5506
White House

♣Steven Wagenseil Tel (202) 647-1255

[001]

State/DRL

DOB

SSN

(b)(6)

Elizabeth Wilcox Tel:

Treasury

DOB

SSN

Alex Wohl Tel:

DOB

SSN

♣Beverly Zweiben Tel: (202) 647-3902

State/IO

DOB

SSN

(b)(6)

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

From: Depaepe, Michael B. (STP)
Sent: Thursday, October 12, 2000 12:19 PM
To: Tierney, Mary "Theresa" T. (MULTI)
Cc: Akers, Dale W. (STP); Clifford, Donald N. (STP); Crowder, Stevan D. (WHSR/STP); Jordan, Kristine A. (STP); Kalka, Jean-Francois (JF) (STP); Lowden, Michael R. (STP); Snyder, Julie A. (STP)
Subject: RE: Cordull Hull request [UNCLASSIFIED]
Your dates have been changed in outlook.

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

From: Tierney, Mary "Theresa" T. (MULTI)
Sent: Thursday, October 12, 2000 12:00
To: Clifford, Donald N. (STP)
Cc: @STP - Sys & Tech Planning
Subject: RE: Cordull Hull request [UNCLASSIFIED]

Don - can you move the meeting below to November 8th from 2-3:30 pm ?

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

From: Tierney, Mary "Theresa" T. (MULTI)
Sent: Thursday, October 12, 2000 11:24 AM
To: @STP - Sys & Tech Planning
Subject: Cordull Hull request [UNCLASSIFIED]

Please reserve Room 208 from 1-2:30 on October 17th for the HR IWG
(chair Eric Schwartz) **(unclass, no AV)**
Please send a confirmation back to @ multi - Thanks!

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

From: Patten, Wendy L. (MULTI)
Sent: Thursday, October 05, 2000 7:24 PM
To: Tierney, Mary "Theresa" T. (MULTI)
Cc: @MULTILAT - Multilateral and Humanitarian Affairs
Subject: setting up HR IWG [UNCLASSIFIED]

T -- as we discussed, please set up the next meeting of the HR IWG (focusing on visits to the US by human rights abusers) for the week of the 23rd. Here are the key people whose schedules must be checked such that you find a day and 90 min block when all can attend:

HR IWG (focusing on visits to the US by human rights abusers)

New date: (Nov. 8th (Wednesday) from 2 - 3:30 p.m.)

Mort Halperin PA: Helen 202-647-2972 (Nov. 8th is ok for 2 - 3:30 p.m.)
Harold Koh PA: Donna Tel: 202-647-2126 (Nov. 8th is ok for 2 - 3:30 p.m.)
David Scheffer PA: Lee Tel: 202-647-5074 (Nov. 8th is ok for 2 - 3:30 p.m.)
James Castello PA: Margo Tel: (202) 514-3392 (Nov. 8th is ok for 2 - 3:30 p.m.)
or Bruce Schwartz (He's from Justice. 514-2333 Fax: 202-514-0108
(both better, but one of the two at a minimum)

The only conflict on my calendar that week that cannot be changed is the ethics training. The following week I am totally open

Once you set the time, please get 208 **(unclass, no AV)** and then notify the rest of the IWG. Fax is fine. Tell them meeting will focus on visits to the US by human rights abusers and that a detailed agenda will be sent to them in advance of the meeting. Also, make sure that your invite list includes Catherine Brown from State/L and Nancy Sambaeiw of State/CA (their fax info is on doc #2 below, but the most updated overall info is in doc #1).

Then please add the meeting to my calendar. thanks very much -- WLP

DRAFT CHAPTER ON U.S. DOMESTIC COMPLIANCE

The roots of the modern international human rights system, during the immediate post-World War II era, reflected both the devastation of the Holocaust in Europe as well as the domestic challenges facing the United States. When President Roosevelt outlined his four freedoms in 1941, he certainly had in mind not only the turmoil abroad, but also America's own devastating economic depression. And when Eleanor Roosevelt galvanized the drafting of the Universal Declaration of Human Rights later in the decade, her ideas were shaped by her advocacy on behalf of American women, racial minorities, and workers during the depression and the war.

It was thus fitting that President Clinton, in his commemoration of the 50th anniversary of the Universal Declaration of Human Rights remarked that "we must practice at home what we preach abroad." Among the president's announcements on that occasion was an executive order establishing a new bureaucratic structure designed to strengthen U.S. domestic compliance with its human rights treaty obligations.¹

Executive Order 13107 highlights the responsibilities of the federal government's domestic policy agencies for ensuring conformity with the human rights treaties to which the United States is a party (particularly the International Covenant on Civil and Political Rights, Convention on the Elimination of Racial Discrimination, and Convention Against Torture).² Promulgation of this order reflects an important, and appropriate, shift in focus

¹ The Lawyers Committee for Human Rights had been a strong proponent of such measures, including in the 1996 edition of the current publication.

² The formal names of the latter two treaties are, respectively, the International Convention on the Elimination of Racial Discrimination and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

away from the view that international human rights treaties are the exclusive province of the State Department and towards an understanding that implementation (as opposed to negotiation) of the treaty provisions is very much a matter for the domestic agencies.

The bulk of U.S. human rights policy is oriented outward (complaints about the violations of other governments). So it is not surprising that the issue of domestic compliance, which to date has meant little more than submitting periodic reports to the UN expert bodies charged with monitoring state compliance, has traditionally been put into the foreign policy basket and handled by the State Department. This arrangement has tended to prevent the treaties from producing their intended effect: improving federal and state governments' performance and protection of human rights. Achievement of this goal necessarily involves education of government actors and changes in domestic law and policy, steps that are largely outside the remit of the State Department. When treated mainly as the province of diplomacy—the exchange of reports, speeches, and demarches—human rights treaty obligations are approached largely in a defensive posture, and not, as they should be, as opportunities to advance human rights protections here at home.

The Executive Order explicitly signals to the domestic agencies the central role they must play in bringing human rights treaty obligations into their own policy agendas. As such it reflects a real paradigm shift towards a more rigorous application of international human rights law to the workings of our own society.

As the Executive Order indicates, a wide range of federal agencies must become engaged in order to assess and improve the state of compliance with our obligations. A further step, beyond what is directed by the Executive Order, should be taken to give it

greater effect; the Department of Justice should be designated the lead federal agency for these matters. In other areas of policy, the implementation of an international treaty to which the United States is a party is the province of whichever domestic agency has responsibility for the subject matter of the treaty. Agreements respecting aviation are implemented by the Federal Aviation Administration; those governing telecommunications are handled by the Federal Communications Commission. It stands to reason, therefore, that implementation of treaties regarding human rights would be monitored in large part by the agency with the greatest responsibility for protection of human rights here at home—the Department of Justice.

The federal government itself, however, is just a part of the compliance picture, of which state and local governments are equally integral. Much of the subject matter of the treaties falls within the jurisdiction of state and local governments. In order for the treaties to truly become part of “the law of the land,” greater dialogue between federal, state and local authorities should be a priority for federal offices involved in this issue.

Congress, too, should become more engaged in bringing U.S. law into greater harmony with international human rights obligations. By and large, the U.S. system of governance and justice holds to a very high standard of rights protection. Even so, the need for adjustments arises, as when our accession to the Convention Against Torture necessitated legislation on accountability of torturers for their offenses. Reforms in the Senate's process of advice and consent on human rights treaties would also promote stronger American compliance.

THE NATIONAL INTEREST IN DOMESTIC COMPLIANCE

A solid record of U.S. compliance with international human rights standards is an essential underpinning for our ability to press concerns about abuses elsewhere. Some critics of the international regime of human rights treaties have tried to paint it as a biased device reflecting the culture and whims of the industrial powers—a political weapon the haves use against the have-nots. The ability of the Western countries to rebut this charge depends on honest self-evaluation and accountability; in other words, universality begins at home.

This point is particularly critical as it pertains to rogue governments who are under pressure to halt abuses. Violators of human rights often try to deflect criticism by highlighting any perceived hypocrisy on the part of their critics. Greater attention to domestic compliance by U.S. officials will bolster American credibility and deprive abusive governments of any such pretext.

It is almost a truism to say that no government or system of governance is perfect, yet it bears repeating. The American constitutional system and overall human rights record of the current period are a source of understandable pride. The international human rights system bears to a great extent the mark of American models and authorship. The official record of compliance with human rights treaties should reflect this.

Even so, there are areas in which the United States lags behind international standards of rights protection. These problems in law and practice should be identified and the obstacles to progress should be honestly addressed. The defense of the U.S. record in international fora should be a balanced one that reflects this reality. A strongly defensive posture would only contribute to a perception that America sees itself as above

the law. The U.S. has more to gain from presenting a frank assessment of its flaws and how they are being addressed than by denying their existence.

CREATE A NEW JUSTICE DEPARTMENT OFFICE OF INTERNATIONAL HUMAN RIGHTS

An Office of International Human Rights should be created within the Department of Justice to take the lead on issues of domestic compliance with international human rights obligations. Working closely with the State Department and the Interagency Working Group on Human Rights Treaties, the office should spearhead the review of federal legislation, coordination with state and local governments, treaty-mandated reporting and response to complaints lodged with international bodies, and training and education on international human rights.

The Justice Department has traditionally played a role in reviewing federal law in preparation for ratification of human rights treaties, though the State Department Legal Adviser has borne primary responsibility. The Department of State will inevitably remain deeply involved in any matter relating to treaty ratification, but the U.S.'s main *domestic* legal agency should take the lead.

The 1998 Executive Order calls for the review of any new legislation proposed by members of Congress or the administration to ensure that it conforms with existing human rights obligations. Responsibility for assessing the legality of proposed legislation generally rests with Department of Justice. The Department's Office of Legal Counsel, for instance, reviews legislation for its constitutionality. This responsibility should be expanded to include review of pending legislation for compliance with human rights treaty requirements.

In addition to enhanced focus on federal legislation, close cooperation between federal, state, and local authorities will be crucial to strengthening domestic compliance. The proposed new Office of International Human Rights should also be charged with designing and implementing a system of regular communication and interaction with state and local governments. Meaningful interaction between federal and state authorities is necessary both to educate government officials about their responsibilities under the treaties, and to gain an accurate picture for purposes of compliance reporting of how rights are being protected at the state level.

In 1994 the international Human Rights Committee, established by the International Covenant on Civil and Political Rights to monitor the compliance of all the Convention's states parties, reviewed the first official report of the United States as a party to the treaty. The Committee noted that the U.S. report focused heavily on protections afforded by the letter of existing law without addressing the question of whether treaty standards are met in practice, and failed to address whether law and practice at the state level satisfy treaty requirements. Officials around the country should be educated about international standards, consulted about perceived problems, and, when possible, included in U.S. delegations presenting compliance reports in international fora.

Given the breadth of this mandate, the new Office of International Human Rights should begin by focusing its attention on existing national networks of relevant officials, such as the National Governors Association, National Association of Attorneys General, U.S. Conference of Mayors, etc. Working with the Interagency Working Group and the other relevant federal agencies, the Justice Department's new office should approach

these associations and propose compliance-related items for the agendas of their national meetings.

The new office should also be given lead responsibility for preparing responses to complaints and reports on compliance that are submitted to international bodies. The State and Justice Departments will need to work very closely on these documents, but a stronger role for Justice will help insure that their substance delves more deeply into the practice of domestic policy authorities.

One gauge of whether the new office is equipped to be effective will be the staffing of the reporting function. Currently a single attorney in the State Department Legal Adviser's office, who also has significant unrelated responsibilities, is charged with overseeing the compilation of reports for all three of the treaties on which this chapter is focused. At a minimum, there should be a staff member devoted to each treaty. These individuals could maintain familiarity with relevant federal laws and legal developments in the sphere of his or her particular treaty, develop reasonable timelines for each report, collect material from other federal agencies and relevant state and local authorities, and meet with interested NGOs.

THE INTERAGENCY WORKING GROUP

The Interagency Working Group on Human Rights Treaties is, as with most intra-governmental bodies such as this, convened and chaired by the National Security Council Staff, part of the president's White House staff. Since the NSC is, like the State Department, a foreign policy making organization, it should share responsibility with its domestic counterpart, the Domestic Policy Council (DPC). Designating the DPC as co-chair of the Working Group will help strengthen its links to the domestic policy agencies.

As has been noted, one of the central challenges of domestic implementation of international human rights treaties is the sheer breadth of obligations they impose and the complexity of America's federal system of governance. For this reason, one of the priorities of the Working Group should be to compile a catalogue of treaty obligations that specifies the agencies and offices whose responsibilities are affected by these requirements.

As the Working Group and Office of International Human Rights develop a fuller picture of U.S. human rights compliance, materials should be developed to educate both officials and the wider public about our international obligations. Public education should stress opportunities for citizens to contribute to compilation of treaty-mandated reports; opportunities for people to raise concerns should also be highlighted. All of these education efforts will be helpful in building domestic understanding of and support for international human rights standards.

THE CONGRESS AND HUMAN RIGHTS TREATIES

For some segments of America's political leadership, reverence for the U.S. Constitution is accompanied by a deep-seated suspicion of international law, which is seen as subverting the authority of the Constitution, and by extension America's basic sovereignty. This suspicion has been manifested generally in hostility towards the international human rights legal regime and, more specifically, in reliance on an extensive series of reservations, understandings, and declarations (RUDs) that have been attached to U.S. ratification of human rights treaties.

These RUDs reflect an effort to ensure that the treaties effected virtually no change in domestic U.S. law. Under their conditions, the U.S. declined to accede to

almost all of the treaties' terms where they were at odds with existing U.S. law or practice and stated that other provisions should be construed to be congruent with, but not broader than, our existing law. In addition, to avoid having the treaty standards interpreted to create private rights enforceable in the courts, the United States declared that the treaties were "non-self-executing."

Rather than twisting international treaties to conform to domestic law, the U.S. could alternatively enact implementing legislation that brings our laws into harmony with the treaties' requirements. The U.S. adopted the latter approach, to an extent, when it ratified the Convention Against Torture in 1994. Congress wrestled with the issue of how to hold torturers accountable and enacted provisions creating a new federal offense for acts of torture committed outside the U.S. where the offender is a U.S. citizen or a foreign national who is subsequently found on U.S. territory. In October 1998 Congress additionally enacted legislation to implement the CAT's prohibition on returning persons to places where they will likely face torture; the INS promulgated regulations under this legislation in 1999.

Two congressional reforms are proposed to harmonize U.S. law and international human rights law more effectively. First, for all RUDs proposed when the Senate considers human rights agreements for advice and consent, implementing legislation addressing the same issues should be considered simultaneously. Congress should look at these alternatives side by side. Second, the Congress should review the implementation of all treaties to which we are party every five years. Examining the experience with the agreements over time can help determine whether the RUDs attached to the initial ratification may possibly be abandoned.

RECOMMENDATIONS

To develop a policy apparatus that examines our own record of adherence in greater depth and reflects the domestic rather than international nature of compliance, the United States should:

- Create an Office on International Human Rights in the Department of Justice which has lead responsibility for promoting domestic compliance with treaty obligations;
- Designate the Domestic Policy Council as a co-chair of the Inter-Agency Working Group on Human Rights Treaties, together with the National Security Council, and allocate additional resources to strengthen administrative support for the Working Group;
- Work with state and local authorities to identify issues relating to the U.S.' treaty obligations. The National Association of Attorneys General, National Governors Association, and other networks of officials whose departments have pertinent functions are suggested as a key focus;
- Educate federal, state and local officials, and the general public about treaty commitments and their implications. The Working Group should take an inventory of treaty requirements and the relevant agencies and offices associated with them;
- Consider potential implementing legislation in Senate deliberation over human rights treaties as an alternative to reservations, understandings, and declarations. The Congress should also undertake a periodic review (perhaps every five years) of U.S. treaty obligations and compliance.

Agenda
 IWG on Human Rights Treaty Implementation
 4:00 p.m., October 27, 1999
 OEOB, 208

1. Reports

- Roll-out of Torture Convention report
 - Report (State/Justice)
 - Follow-up meeting with NGOs (NSC)
- Status of Race Convention report (NSC/State)
- Status of ICCPR report
- Status of efforts to increase resources for reports (State/L & NSC)

• Refugee Protocol only of the Convention (no current reports due)
 Brochure on Convention

only 3 reports outstanding

2

- 2. World Conference on Racism (NSC) — Is Maria going to hold a mtg of all relevant agencies w/ a view towards doing a domestic prepcomm?
- 3. Status of Human Rights Abusers Task Force (DoJ/INS)
- 4. ~~CNMI & Refugee Protocol (DoJ/INS)~~
- 5. Treaty Ratification
 - CEDAW update (State/DRL & NSC)

7. State and Local Compliance (All)

8. Meetings

- Lawyers Committee for Human Rights
- Pierre Sane — Amnesty Sec Gen

state/Justice
 DRL
 Harold/Steve
 Andrea Severino
 - James Costello
 - Julie Fernandez — Bill Can Lee
 - Richard
 SP Ad

9. Other Issues

- Rene Buezo — DRC

Getting Andre addl staff
 Eric phone call to State Admin.

way to kickstart our own effort on state & local implementation

12/15 Torture Convention Mtg w/ NGO's (CCIF, ~~HRW~~ HRW, others)

Hold mtg w/NGOs to review our Torture submission

Some time in late Oct/early Nov.

Get NGOs on Board

Need to get Justice there

W/Race:

- Get input from Race NGOs, after submission of Agencies, re: - other areas we're missing
- framework for Domestic Accountability ~~Reporting~~ ^{Implementation Reporting} of Intl Conventions

Scott: - Can't invite NGOs to IWC, but can convene a mtg to get input from them; just shuffle the members frequently to look like getting wide advice

Scott - Need to get direction from our internal group (Lundeth, etc.) for the direction of CORD report, & to get Advisory Group up & running

• Work w/ Chris Cord - v. good

Agenda
IWG on Human Rights Treaty Implementation
3:00 p.m., September 13, 1999
OEOB, 208

1. Public Outreach
 - Meetings with NGOs and UNHCR (NSC)
 - Letter on the Death Penalty
2. Reports
 - Roll-out of Torture Convention report (State/L)
 - Status of Race Convention report (State/L)
 - Follow-up meeting with relevant agencies on Sept. 17 (NSC)
 - Status of efforts to increase resources for reports (State/L & NSC)
3. World Conference on Racism (State/DRL & IO)
4. Status of DoJ task force on human rights abusers (DoJ)
 - Response to Leahy legislation
5. Treaty Ratification
 - CEDAW update (State/DRL)
6. Other Issues

Richard C. Dieter
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DEATH PENALTY INFORMATION CENTER

September 2, 1999

Scott Busby
Chair, Interagency Working Group on Human Rights Treaties
National Security Council
The White House
Washington, DC 20504

Dear Mr. Busby:

I would first like to thank you and the other members of the Human Rights Treaties Working Group for the opportunity to present our concerns about the United States use of the death penalty. I think the meeting on August 5th was a good start in what will hopefully become a fruitful dialogue.

At the meeting, you asked those of us concerned about the death penalty to put in writing our suggestions about what the United States might do to better conform with the human rights treaties and send them to you. After discussing these issues with others who attended the meeting, I have prepared our recommendations. Clearly, the legal and empirical support for these points would require a much longer document. We would be prepared to provide additional information if that would be helpful.

Recommendations:

A. That the President, the Attorney General, and the Solicitor General strongly advocate compliance with the international consensus against applying the death penalty to those under the age of eighteen at the time of their crime. In particular:

- That the Administration's and the Solicitor General's position in *Domingues v. Nevada* (No. 98-8327, cert. pending) should be one in which:

- the U.S. urges compliance with the customary international law prohibition against juvenile offender executions;
- the U.S. declines to rely on its legally suspect reservation to the International Covenant on Civil and Political Rights regarding the execution of juvenile offenders;
- the U.S. advocates that such a treaty, which imparts enforceable rights to citizens, is self-executing.

- That the Administration urge the Senate to give its advice and consent to the ratification of the U.N. Convention on the Rights of the Child, and that such ratification be made without reservations regarding capital punishment.
- B. That the President, the Attorney General, and the Solicitor General concur with the Secretary of State that the execution of foreign nationals, who have not been afforded their full rights under the Vienna Convention on Consular Relations, be halted. In particular:
- That the Administration respect injunctions on executions issued by the International Court of Justice (ICJ) such as those unanimously approved in the case of *Angel Breard and Walter LaGrand*, and indicate that it intends to comply fully with the final judgment of the ICJ in *Germany v. U.S.A.*
 - That the Administration impress upon all members of the law enforcement community the obligations of the Vienna Convention on Consular Rights and recommend procedures whereby those jurisdictions which do not comply with these obligations will be ineligible for certain federal funds.
 - That the Administration immediately withdraw its opposition to the creation of appropriate judicial remedies in the domestic courts, by recognizing that the plain language of Article 36 of the Vienna Convention on Consular Rights confers specific rights on individual foreign nationals, which may be invoked by them in U.S. court proceedings.
- C. That the Administration take an active role in supporting a national exemption from the death penalty for anyone suffering from mental retardation or other severe mental disability.
- D. That the Administration take an active role in introducing the Racial Justice Act (as passed by the House of Representatives in 1990 and 1994), or similar legislation, which would allow defendants to appeal death sentences on the basis of sophisticated statistical studies demonstrating patterns of racial bias.
- E. That the Administration take an active role as *amicus curiae* and through the office of the Solicitor General in urging the U.S. Supreme Court to consider the extensive time that inmates spend on death row as a disproportionate, cruel, and unimposed punishment under the Eighth Amendment. This is an issue that falls under the purview of the Torture Convention, decisions by international courts, and the Supreme Court's denial of certiorari in *Lackey v. Texas* (1995) and *Elledge v. Florida* (1998).

- F. That the Administration take action to assure that the federal death penalty be brought into greater conformity with international treaties; that it be sought only in the most extreme cases of national importance; that the racial disparities which exist both in cases prosecuted and death sentences imposed be examined carefully with the goal of eliminating such disparities; and that the federal death penalty never be sought in crimes where no death has occurred.
- G. That the Administration respond to the international resolutions from such organizations as the U.N. Commission on Human Rights calling for a world-wide moratorium on executions by establishing a national blue-ribbon commission to study the rationale for, and the feasibility of, enacting such a moratorium in the United States. In particular, the commission should look at whether the death penalty in the U.S. is applied in an arbitrary manner, more dependent on race, wealth, geography, quality of representation, and opportunity to present a thorough appeal, than on legitimate penological characteristics.

I believe that all of these positions are directly warranted by the human rights treaties which the United States has ratified and by the renewed commitment to "promote respect for international human rights" which President Clinton has ordered on December 10, 1998. If I can be of any assistance to your office in clarifying these issues further, please do not hesitate to call on me. I trust that you will circulate these recommendations to the other members of the Working Group.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard C. Dieter", with a stylized, flowing script.

Richard C. Dieter

Agenda
IWG on Human Rights Treaty Implementation
3:00 p.m., September 13, 1999
OEOB, 208

1. Public Outreach

- Meeting with NGOs and UNHCR (NSC)
- Letter on the Death Penalty

Ask Scott to brief on both meetings. I'll distribute letter we received from NGOs on death penalty issues.

Action #1: Ask agencies - Justice and State -- for formal views on recommendations in letter by next IWG.

Action #2: Ask INS to fully engage the government of the Northern Mariana Islands to establish a refugee status determination process there. (As a U.S. territory, they are bound by Refugee Protocol but since INA does not apply, there is at present no process there. I'm told by Justice that a lawsuit has been filed against the government of CNMI on this issue.)

2. Reports

- Roll-out of Torture Convention report (State/L)

Ask Harold and/or Steve Wagonseil to brief on plans for roll-out on Thurs. Will there be a statement? Q&As? Who will rep Justice? Who will contact NGOs with roll-out info?

- Status of Race Convention report (State/L)
 - Follow-up meeting with relevant agencies on Sept. 17 (NSC)
 -

Ask Andre to brief. In sum, Andre thinks this project is more difficult than he had already imagined and wants/needs to more fully incorporate other agencies into the drafting of this report. Andre and I have agreed to convene a separate meeting this coming Friday afternoon with relevant players to discuss the process for finalizing this report.

- Status of efforts to increase resources for reports (State/L & NSC)

Ask Andre to brief. Andre informs me that there has been no progress on the request he has submitted within State. This argues once again in favor of your making a call to the right person at State.

3. World Conference on Racism (State/DRL & IO)

Steve Wagonseil to brief. Bottomline: UN expects there to be national and then regional prepcomms prior to conference. We need to identify USG actor who should convene national conference. (State doesn't think it should do that.) DPC? Our One America (formerly Race) office?

4. Status of DoJ task force on human rights abusers (DoJ) -- Response to Leahy legislation

Ask Bo to brief on what Justice and INS have accomplished on this since last meeting. James C. (who won't be at the meeting) informs me that he spoke to one of Leahy's staffers who said that they would not push the legislation if we have a process for accomplishing the same result administratively. But we need to accomplish that result!

5. Treaty Ratification

- CEDAW update (State/DRL)

Ask Harold for a quick update. I'm not aware of any new developments on this.

6. Other Issues

Feldman, Daniel F. (MULTI)

From: Crocker, Bathsheba N. (NSA)
Sent: Sunday, September 12, 1999 1:58 PM
To: Busby, Scott W. (MULTI); @NSA - Natl Security Advisor
Cc: @MULTILAT - Multilateral and Humanitarian Affairs; @LEGAL - Legal Advisor; @LEGISLAT - Legislative Affairs
Subject: RE: Torture Convention Report [UNCLASSIFIED]

On this, Jim wrote "What is the lead?" (I inquired as to what this meant, and he said what's the story going to be? What's the worst news we'll get?)

Thanks, Sheba

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

From: Busby, Scott W. (MULTI)
Sent: Friday, September 10, 1999 6:27 PM
To: @NSA - Natl Security Advisor
Cc: @MULTILAT - Multilateral and Humanitarian Affairs; @LEGAL - Legal Advisor; @LEGISLAT - Legislative Affairs
Subject: Torture Convention Report [UNCLASSIFIED]

Please pass to Sandy and Jim.

Sandy/Jim --

This is a head's up e-mail on an impending USG report that may get some public attention.

State is putting the final touches on our first report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. A/S Harold Koh, along with a yet-to-be-determined rep from Justice, is slated to roll out the report at a press conference on Thursday, September 16.

The Torture Convention entered into force for the United States in November 1994. The treaty requires that States-party submit a report on measures they have undertaken to give effect to the Convention's provisions a year after the treaty comes into force.

The report focuses primarily on domestic actions we have taken to ensure compliance with the Convention. It is well balanced in our view. While it highlights the various ways in which we seek to prevent torture, it also discusses cases and areas where there have been shortcomings (e.g., police misconduct). A good portion of the report is devoted to the procedures we have established to ensure that we do not deport or extradite aliens to countries where they would be tortured.

Needless to say, many have been critical of the lateness of our report -- now almost four years overdue. (This has been a problem with all of the reports we are required to submit under the human rights treaties to which we are party. We are seeking to address it through our Human Rights Treaty IWG, which was established last year.) Other than this issue, we do not anticipate significant negative public reaction to the report.

-- Scott

9/13

NSC Mtg.

Public Outreach -

Death Penalty

Current Status on Review of Policy

~~Dominique~~^{was} Case -

We won't be taking part of The S's
Consultation b/w State & DOJ

SG product

Brief objectives: ① not be controversial
② not address difficult issues, but
don't want to have cert. granted

Asst SG will present draft brief after comments
by agencies

Beth Nolan

Made request to DOJ to see brief

Ask Justice how far forward - leaning we can
be, or wait?

Brief - state law?

Fed. Law: No juvenile DP.

Racial discrimination issues addressed.

Brief will reflect Admin's. views.

⇒ Focus attention on Brief.

Put response to letter on DP on hold.

UNHCR - What's ~~the~~ ~~status~~ CNMI?

Testimony re Senate 1052

Asylum applicants under CNMI? Sienna Hai?

Our intl obligation applies, but INA does not apply.

What ~~with~~ agency has obligation to advise ~~2~~ CNMI?
State? Justice? Not Interior.

Reports

Roll-out of Torture; ~~E~~

HK: I did great job. Rodney King etc.

Thurs. roll out.

DOT person - Domestic obligations

Standard op. procedures to addressing torture
through our crim. justice system

Reaction: ① Criticism for being late.

② Comment on how exhaustive it is.

③ Don't pursue torture institutionally

~~2~~ we did not clear DOT contributions to Andre.

Timing Issue: Putting on web sites.

Q's on Roll-out will be:

1. How closely we're complying.

2. High-profile cases:

- Rodney King

> Don't include some
b/c still under investigation

Don't think our admin's. of DP is illegal, so
not in report.

State - Notice to press. Press Briefing.

We briefed it here. Not much attention.

2.3. Andie - Race Convention report

Further iteration @ to circulate.

Major event in last draft:

It's prep. doesn't belong in L. - # of major
policy Q's. (2 affirmative Action in light
of federal & state.)

Torture paper was just x & p.

Who should participate in drafting? - Commission of Govt
It's, as an indepen. entity.

Our submission will prob. be reviewed in March 2001.

2 pm - Fri., 208

↑ Increasing Resources ~~issues~~ at L
Competing requests for resources.
Want 2 addl attys.

3. World Conf. on Racism

South Africa prepared to host; mid-year 2001

Regional & national preparatory ~~com~~ mtgs.

US

Allowed to participate?

Yes - US grandfathered in by Congress.

American Mtg.

Inter-American Mtg.

Work w/ Pres.' Initiative on Race

Now: One America Office

What is the vehicle?

Need to do something that represents
U.S. interest.

Q's: - What that shld be?
- Who?

Scott - Brief Maria & Ben; text back
to Julie & her group (Gay; Peter
Bundlett)

4. DOJ Task Force on H.P. abusers:
4 changes to way

Q w/in DC of INS - Dist on that group.

Special Interest Division. Coordinately
& Directly Throught country. Direct
& (4?) attys. (2) Agents working
specifically on that.

(3) Develop legis. package addressing holes
in IMA. ^{designated by State}
Amend § 212 & § 237 of IMA.
7 categories: particular violation of religious
genocide; crimes against humanity;
terrorism; war criminals;

Gray McDougal -
Intl HR
Law Group

e.g. - Cld become a citizen if marry a citizen.
Plug holes.

(1) What we're doing on criminal side. Creating MOV w/ FBI
in how to handle case. Coordinate better.
FBI will marshal greater resources.

Dep AG w/ Leahy's staff. Bengel Howell.
Opposed to Leahy.

INS - Admission & Deportation

Leahy - Creates a mini-INS for HR abusers.

Criminals

{ U.S. citizens
~~foreigners~~ who committed torture abroad after 94

legis. package - want to get to DTS by end of next week.

5. CEDAW Update

Shift from more public strategy to private one.
Koh spoke to Ferragold. Not willing to do it.
Evan Bayh. (not on Foreign Relations); go
w/ Collins or Snowe.

Back-ups: Toricelli, then Liberman
Working on that now.

Scott : DOJ provide draft of Domingues to us
& with counsel.

Wait ~~for~~ to respond to DJ letter.

INS reengage (NM) on refugee
status determine.

1:30-THURS

Torture Report - Harold to participate.

DOJ - Big piece is Crim. Law & Const Rts.

Race Report - we'll convene only on Fri.
NSC to follow up resources.

NSC brief Mauer & Be for

INS & DOJ to proceed. Legts.

Harold - continue to work on CEDAW.

LEHR - Study on how US, Canada, Australia
transmit.

GM4 : Recruiting them at 1 age & putting them
into combat at another. Talk to Jane Strasser.

Age is when in at Armed Conflict.

9/24 | WG

Inessa
Bueno

DRL
Andres ~~Severson~~ - L
Bueno

Ed, EEOC, HHS, State, DOJ, Office of Civil Rts. in attendance
DPC, HUD NOT DOJ, *

CERD

entered into in 1969

Carter signed, but

NOT party until Nov. 94 (Senate provided Advice & Consent); Fully bound by all provisions

Broad provisions:

Condemn Racial Discrim.

Mostly a call to action to States

Art. 9, 9.1

Our report was due Nov. 95; not yet submitted it
Told Comm. we'd submit by end of this calendar
year, & we'll report on it to March 2001
State/L has been responsible for submitting reports
til now

Last year, on 50th Ann. of UN, EO signed to
better implement & report on HR treaties

Ex's of ways needed to update draft:

- Update affirmative action
- Update Indigenous Peoples

Ag - Will need something on black farmers

give 2 weeks to read over draft

First report on ICCPR - State Dept Web Page
www.dosfan.lib.uic.edu/erc/law.html

Only report we've ever submitted under our intl h.v. treaties

Audience :

- Directly - UN
- Indirectly - All civil Rts U.S. Ntios & American population
- Ntios will go over these w/ a fine-toothed comb

Critics look for individual outrageous cases:

- ~~Almer~~ Loriaima
 - Rodney King
 - cut-off date for coverage: Dec. 31, 1999
- Anything in last 4-5 years
Ratification $\Rightarrow$ 1999

Get from slavery $\Rightarrow$ modern times

Timetable for Race Book

Meet Again 10/8 1:10

10/8

IWG

Q's on Report

Ed: Look at text & decide

Ed: - Most not salvageable; What's story we want to convey to world & then frame the reports like that?

-
Is overall msg of report inconsistent w/ what we're doing w/ civil rts?

~~Scott~~: Don't want

⇒ Report Before Pres' Policy on Affirm. Action - 96/97
Chris Edley / Stephanopoulos

acknowledge serious probs; but addressing them;

Exec - Statute, Enforcement of Statute

Framework

State - ~~Chris Campanola~~
~~Andres Serrano~~

CHRIS CAMPANOVA

ANDRE SURENA - STAB/L/HR

KATHLEEN AHNS - ONE AMERICA