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RESTRICTION CODES

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

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P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

CHERYL J. SIM
 USMISSION GENEVA
 PSA
 FAX 41-22-749-4717
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HHK -

Copy to HHK

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
DRL - Harold Koh	Cheryl Sim 
MISSION	DATE:
	MAY 15, 2000
FAX NUMBER	TOTAL NO. OF PAGES INCLUDING COVER:
PROGRAMMED	5
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE:	YOUR REFERENCE NUMBER:

CAT CONCLUSIONS

URGENT FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

HHK:

Attached are the CAT's recommendations and conclusions. In accepting them, I thanked the Committee on behalf the USG, in particular last week's delegation. I noted that the document would be transmitted back to DC immediately and any formal reaction would come from there (this was in response to multiple press inquiries including one from the AP who ^{said} ~~should~~ that he wouldn't accept a non-substantive reply...) I did note, however, that the Committee has give us the date for our next report...November 19, 2001.

CJSIM
 US MISSION GENEVA
 PSA

FAX 41-22 749 4717

VOI HAO HOLOCIW CO

06:41 0007 142W:01

As for substance, there aren't really any surprises based upon the questioning from last week. There are two things I want to bring to your attention. Under C (Subjects of Concern) note Point C which states in part: "much of this ill-treatment by police... seems to be based upon discrimination." Under D (Recommendations) point b: "Take such steps...to ensure that those who violate the Convention are investigated, prosecuted and punished, especially those who are motivated by discriminatory purposes or sexual gratification." I find both of these points to be weirdly presented by the Committee, particularly when one is apparently alluding to sexual abuse of female prisoners as "sexual gratification."

In leaving the room, the Chair was more pleasant than in our other dealings with him. I do thank him for his openness and sincerity. He noted that he gave us the November 19, 2001 date because he realized that there would not be too much more that we could say in the next couple of months -- unlike other governments whom he has asked to return sooner.

There you have it.

Cheryl

CAT/C/XXIV/Concl.6
15 May 2000

Original: ENGLISH
UNEDITED VERSION

COMMITTEE AGAINST TORTURE
24th Session
1-19 May 2000

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Conclusions and Recommendations of the Committee against Torture

United States of America

1. The Committee considered the initial report of the United States of America (CAT/C/28/Add.5) at its 424th, 427th and 431st meetings on 10, 11 and 15 May 2000 (CAT/C/SR.424, 427 and 431), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the comprehensive initial report of the United States of America, which, although almost five years overdue, was prepared in full accordance with the guidelines of the Committee.

3. THE COMMITTEE ALSO THANKS THE STATE PARTY FOR ITS SINCERE COOPERATION IN ITS DIALOGUE WITH THE COMMITTEE AND TAKES NOTE OF THE INFORMATION SUPPLIED IN THE EXTENSIVE ORAL REPORT.

B. Positive Aspects

4. The Committee particularly welcomes the following:

a. The extensive legal protection against torture and other cruel, inhuman or degrading treatment or punishment that exists in the State party and the efforts pursued by the authorities to achieve transparency of its institutions and practices;

b. The broad legal recourse to compensation for victims of torture, whether or not such torture occurred in the United States of America;

- c. The introduction of executive regulations preventing refoulement of potential torture victims;
- d. The State party's contributions to the United Nations Voluntary Fund for the Victims of Torture;
- e. The creation by executive order of an inter-agency working group to ensure coordination of federal efforts towards compliance with the obligations of the international human rights treaties to which the United States of America is a party;
- f. The assurances given by the delegation that a universal criminal jurisdiction was assumed by the State party whenever an alleged torturer is found within its territory;
- g. The obviously genuine assurances of cooperation extended to the Committee by the delegation of the State party to ensure the observance of the Convention.

C. Subjects of concern

- 5. The Committee expresses its concern about:
 - a. The failure of the State party to enact a federal crime of torture in terms consistent with article 1 of the Convention;
 - b. The reservation lodged to article 16 in violation of the Convention, the effect of which is to limit the application of the Convention;
 - c. The number of cases of police ill-treatment of civilians, and ill-treatment in prisons (including instances of inter-prisoner violence). Much of this ill-treatment by police and prison guards seems to be based upon discrimination;
 - d. Alleged cases of sexual assault upon female detainees and prisoners by law enforcement officers and prison personnel. Female detainees and prisoners are also very often held in humiliating and degrading circumstances;
 - e. The use of electro-shock devices and restraint chairs as methods of constraint that may violate the provisions of article 16 of the

Convention;

- f. The excessively harsh regime of the "supermaximum" prisons;
- g. The use of "chain gangs", particularly in public;
- h. The legal action by prisoners seeking redress, which has been significantly restricted by the requirement of physical injury as a condition to bringing a successful action under the Prison Litigation Reform Act;
- i. The holding of minors (juveniles) with adults in the regular prison population.

D. Recommendations

- 6. The Committee recommends that the State party:
 - a. Although it has taken many measures to ensure compliance with the provisions of the Convention, the State party should also enact a federal crime of torture in terms consistent with article 1 of the Convention and should withdraw its reservations, interpretations and understandings relating to the Convention;
 - b. Take such steps as are necessary to ensure that those who violate the Convention are investigated, prosecuted and punished, especially those who are motivated by discriminatory purposes or sexual gratification;
 - c. Abolish electro-shock stun belts and restraint chairs as methods of restraining those in custody. Their use almost invariably leads to breaches of article 16 of the Convention;
 - d. Consider declaring in favour of article 22 of the Convention;
 - e. Ensure that minors (juveniles) are not held in prison with the regular prison population.
 - f. Submit the second periodic report by 19 November 2001.

05/17/00 13:04:30

please pass to HAK.

May 17, 2000

Thomas Pickering
Under Secretary of State
U.S. Department of State
Washington, D.C. 20520
Via Fax: 202-647-4780

Peter

Dear Mr. Secretary:

We write to protest your decision to order the release of Ricardo Tomas Anderson Kohatsu, a man credibly accused of the most vicious torture. His release, on the ground of immunity, casts into doubt the United States' commitment to ensure that torturers are brought to justice in accordance with the United Nations Convention Against Torture. Given the serious implications of the position of the U.S. government regarding this case, we would appreciate an explanation as to why that position was adopted after the Justice Department indicated its willingness to pursue prosecution.

Anderson Kohatsu, a major in Peru's Army Intelligence Service, is accused of participating in 1997 in the brutal torture of Leonor La Rosa Bustamante, who was beaten, burned, raped and electrically shocked in such a manner that she was rendered a paraplegic and is now receiving medical treatment in Sweden. This case was reported in the State Department's 1997 and 1999 Country Reports on Human Rights Practices as well as the Human Rights Watch Report "Torture and Political Persecution in Peru" (December 1997).

Major Anderson Kohatsu was sent by Peru in early March to testify as a character witness at a hearing of the Inter-American Commission on Human Rights in Washington, D.C. into allegations of wire-tapping. While Anderson Kohatsu was in the U.S., some of our organizations provided law enforcement officials with substantial evidence concerning Anderson Kohatsu. These officials also spoke by telephone with Leonor La Rosa Bustamante. As a result, the Justice Department apparently detained Anderson Kohatsu on March 9 in the Houston airport where Anderson Kohatsu was awaiting a plane to leave the United States. However, after a few hours Anderson Kohatsu was allowed to leave the country. We understand that this was due to your intervention and on the ground that Anderson Kohatsu was entitled to immunity.

Your decision raises a number of serious questions. First, why was Anderson Kohatsu given a visa? Second, on what legal basis was it decided that Anderson Kohatsu had immunity? Third, why was he simply allowed to leave the country, rather than having the issue of his immunity decided by a court?

The State Department should not have granted Anderson Kohatsu a visa when it had credible information that he had engaged in numerous acts of torture and rape. In any event, even though Anderson Kohatsu entered the country on a G-2 visa, this did not

automatically provide him with diplomatic immunity. (See United States v. Kostadinov, 734 F.2d 905, 906 (2nd Cir. 1984))

The U.S. is not a party to any treaty that required Anderson Kohatsu to be granted immunity. Nothing in the Vienna Convention on Diplomatic Relations or in the 1975 Agreement between the United States and the Organization of American States applied to the status of Anderson Kohatsu, who was sent voluntarily by Peru to defend its human rights record and was not a diplomatic representative of Peru.

Even if there was some ambiguity about whether Anderson Kohatsu was entitled to immunity, such a decision should have been left to U.S. courts. This was the principled position taken by the British authorities in the case of Gen. Augusto Pinochet. It was entirely inappropriate for the State Department to prejudice the immunity issue by intervening to protect an alleged torturer before the Justice Department could present its case.

We are very concerned that this case not set a precedent that calls into question the United States' willingness to meet its obligations under the Convention against Torture and would appreciate any explanation of your decision.

Yours truly,

José Miguel Vivanco
Executive Director, Americas Division
Human Rights Watch

Gerald Gray
Executive Director
Center for Justice and Accountability

Carlos M. Salinas
Acting Legislative Director
Amnesty International USA

Gay J. McDougall
Executive Director
International Human Rights Law Group

Viviana Krsticevic
Executive Director
Center for Justice and International Law

George Vickers
Executive Director
Washington Office on Latin America

Elisa Massimino
Director, Washington Office
Lawyers Committee for Human Rights



MAY 11, 2000

Harold Hongju Koh
U.S. Assistant Secretary of State, Democracy, Human Rights & Labor

William R. Yeomans
Chief of Staff, Civil Rights Division, U.S. Department of Justice

Reply to Questions from the U.N. Committee Against Torture
GENEVA, SWITZERLAND

Mr. Chairman, Mr. Vice-Rapporteur, and Honorable Members of the Committee:

It is an honor to appear before you again, with my colleagues, to discuss the questions you and the Committee members asked yesterday regarding the United States' initial report of October 1999 concerning its compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. My colleague, Mr. William Yeomans of the Civil Rights Division of the Department of Justice, and I will answer the many questions that were put to us in the order in which they were asked yesterday. Where different Committee members addressed aspects of the same issue, we have sought to give a single and complete answer to those questions. Generally speaking, I will respond to those questions that relate to the responsibilities of the State Department; while Mr. Yeomans will respond to those questions that referred to law enforcement matters, with which the Justice Department is more familiar.

We will begin with the questions put to us yesterday by the Chairman, Professor Burns:

Q: Why was the United States Report delayed? (also Mr. Mavrommatis)

A: At the outset, Mr. Chairman, let me answer the question that both you and Mr. Mavrommatis asked about the delay in filing our initial report. I addressed this question orally at the close of yesterday's session, but wanted to make a more formal response today. As I explained, the task of assembling a comprehensive report to cover a country

of 267 million people requires extraordinary coordination among many agencies and governmental bodies. We must cover the U.S. national government, the fifty states, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, the Northern Marianas, and American Samoa as well as the activities of all of the various federal entities: the Departments of State, Justice, Defense, Labor, Health and Human Services, the Bureau of Prisons, the Immigration and Naturalization Service, etc. We also seek input from non-governmental organizations and concerned individuals. It was precisely to address this complex issue of coordination that President Clinton promulgated Executive Order 13107 on December 10, 1998 to create an interagency working group to foster better coordination of such an interagency and state-federal process. Our completed report to this Committee followed not long after the creation of this interagency working group, and we expect future reports to follow more expeditiously as a result of this improved process of collaboration.

Q: In the United States, does a person have access to a relative or a doctor upon arrest?

A. Yes. If a person is in need of medical attention at the time of arrest, such attention is routinely provided. Under the due process clauses of the Fifth and Fourteenth Amendments of our federal constitution, a pre-trial detainee in both federal and state custody has the right to appropriate medical care, which, of course, includes access to a physician if warranted. Indeed, judicial interpretation of the Eighth Amendment to our Constitution provides that state officials cannot exhibit "deliberate indifference" to a convicted prisoner's serious medical needs, for example, by intentionally denying or delaying access to medical care or intentionally interfering with treatment once prescribed.

Under the First and Fourteenth Amendments to our Constitution, ~~all~~ pre-trial detainees also have a constitutional right to communicate with friends, relatives, attorneys, and public officials by means of visits, correspondence, and telephone calls, subject to reasonable limitations imposed by security needs. Under the Fifth and Sixth Amendments to our Constitution, pre-trial detainees also have a right to contact an attorney.

In our federal system, the Federal Bureau of Investigation observes a strict policy of having parents present whenever its agents are interviewing juveniles.

Q: Why did the United States adopt an understanding of the definition of "torture" under Article 1 which varies from the definition articulated in the Convention? (also Mr. Yakovlev)

A: We believe that there is no inconsistency between the U.S. understanding and Article 1 of the Convention. Contrary to the apparent perception of some members of the Committee, where official mistreatment results solely in mental suffering, such mistreatment constitutes "torture" under our understanding of Article 1 of the Convention

so long as it constitutes prolonged mental harm, and is caused by or results from four sources: (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the administration or application, or threatened infliction or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (3) the threat of imminent death; or (4) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality.

In our view, this understanding does not modify the meaning of Article 1. Rather, it clarifies that Article by recognizing the reality that torture can – and does – occur through the infliction of mental suffering, while at the same time, providing the precision required by U.S. domestic law. The United States sees no inconsistency, therefore, between its understanding and Article 1. Rather, the United States considers that its understanding of the term “torture” is fully consistent with the definition of that term in Article 1.

Q: Shouldn’t the United States maintain a single, comprehensive collation of statistics regarding incidents of torture and cruel inhuman or degrading treatment or punishment?

A: As we note in paragraphs 72-93 of our initial report, this theoretical desideratum is very difficult to achieve in practice because of the vast diffusion of criminal justice authority among the federal government, the fifty states, and the various territories of the United States. To address the lack of reliable information on incidents of the use of excessive force by police, Congress in 1994 mandated the collection and annual reporting of data on the subject by the Attorney General of the United States, who has in turn charged the Bureau of Justice Statistics of the Department of Justice and the National Institute of Justice to issue periodic reports on the National Data Collection on Police Use of Force. Other federal sources of statistical information include the annual report of the Federal Bureau of Investigation on “Crime in the United States,” the FBI’s Uniform Crime Reporting Program, which canvasses some 16,000 law enforcement agencies throughout the country; the Justice Department’s National Crime Victimization Survey; and the annual report of the U.S. Parole Commission. At the state and local level, each state has its own uniform crime reporting and criminal justice information center or records bureau, and other information is available from the National Center for State Courts, the U.S. Census Bureau, and the Department of Justice’s Bureau of Justice Statistics. We will inquire with these various entities regarding the feasibility of merging these various data bases into a single uniform set of statistics.

Q: If the Convention is indirectly already part of U.S. law, why has the U.S. not made its provisions self-executing, and therefore available to individuals to use before U.S. courts?

A: First, the United States' declaration that various articles of the treaty are non-self-executing is not a reservation, but simply a declaration about how the treaty's terms shall be implemented as United States domestic law. The declaration does not limit US international obligations under the Convention. It simply means that, as a matter of United States domestic law, the Convention cannot, in and of itself, provide a private cause of action in US courts. Nothing in the Covenant requires States parties to make it self-executing under their domestic law. Indeed, Articles 2 and 4 specifically leave it up to State parties to determine how best to implement their obligations under the Convention. The real question is not whether the Convention should or should not be self-executing, but whether the obligations accepted by the United States in adhering to the Convention are, in fact, fully guaranteed by domestic law to people within the United States. As our initial report made clear, those obligations are in fact fully guaranteed by U.S. law.

Q: Why does the U.S. construe Article 3 to require proof that it is “more likely than not” that someone will be returned to conditions of torture differently than the Convention as interpreted by the Committee?

A: Under U.S. law existing at the time of ratification of the Torture Convention, an individual could not normally be expelled or returned to a State where his “life or freedom would be threatened . . . on account of race, religion, nationality, membership in a particular social group, or political opinion.” The US Supreme Court had interpreted this provision—derived from Article 33 (the “non-refoulement provision”) of the 1951 Convention Relating to the Status of Refugees-- to mean that a person entitled to its protections could not be deported to a country where it was more likely than not that he would be persecuted. Insofar as Article 3 of the Convention Against Torture extended the prohibition on deportation and removal under US law to all cases of torture—even if they did not involve persecution on one of the five listed impermissible grounds-- the “more likely than not” understanding ensured that the Article 3 protection against non-return to conditions of torture would be applied in a manner consistent with existing U.S. law regarding non-refoulement (non-return) to other forms of persecution. To ensure consistency, this interpretation was similarly extended to cases of extradition to conditions of torture. Yesterday, the Chairman suggested that under Article 3, by analogy to common law tort law, the issue should be whether there is a “real risk” that a person might be returned to torture, and that a “real risk” might be determined by less than a probability. With respect, I should point out that the evidentiary standard of proving a common law tort is also “more likely than not.”

Q: Given the U.S. understandings concerning the definition of “torture,” how does the United States address questions of command and control?

A: The U.S. understandings to Article 1 are consistent with the scope of the Convention, which is limited to torture “inflicted by or at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity.” Thus, the Convention clearly applies to torture that occurs in the context of

governmental authority, and excludes torture that occurs as a wholly private act. To use terminology used elsewhere in U.S. law, the Convention applies to torture committed “under color of law.”

Q: Article 5 requires States to establish universal jurisdiction over torture. If a non-US citizen commits torture abroad, and he is later found in the United States and no country requests his extradition, can the United States prosecute him for torture? Or, if extradition were requested, and the United States declined, could the United States still prosecute the individual for torture?

A. The answer is yes in both cases. The United States has criminal jurisdiction over the crime of torture committed abroad by any official, irrespective of nationality, if that person is later found in the United States. Chapter 18 of the United States Code, 18 U.S.C. 2340A, provides, in relevant part:

“Whoever outside the United States commits or attempts to commit torture [as defined elsewhere in the Act in a manner consistent with U.S. obligations under the Convention] shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

(b) Jurisdiction. There is jurisdiction over the activity prohibited in subsection (a) if—

(1) the alleged offender is a national of the United States; or

(2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.”

I should also note that since the landmark case of Filartiga v. Pena-Irala, 630 F.2d 774 (2d Cir. 1980), based on the theory of the “transitory tort,” the United States federal courts have exercised civil jurisdiction under the Alien Tort Claims Act of 1789, 28 U.S.C. sec. 1350, over suits by alien plaintiffs against alien torturers based on acts of torture committed outside the United States. See United States Initial Report, paras. 277-280.

Q: Has the United States responded to all of the past communications addressed to it from the Special Rapporteur on Torture?

A. We apologize to the Special Rapporteur for the time that it has taken us to respond to his communications. Further, I wish to emphasize that we fully support his work. Nevertheless, I am pleased to report that we have completed a detailed response to his November 1998 communication, which includes detailed answers to all of the Special

Rapporteur's prior communications. As we speak, that response is being formally communicated to the Special Rapporteur by the United States Mission here in Geneva and will be supplied to this Committee under separate cover. We also now have under examination the November 1999 communication from the Special Rapporteur, for which I assure you a more timely response will be provided.

Q: Why do tasers (immobilizers), stun guns, and stun belts not constitute torture or cruel, inhuman or degrading treatment or punishment?

A: The Civil Rights Division at the Department of Justice has sought stringent restrictions on the use of electro-shock weapons in both law enforcement agencies and corrections facilities, as well as increased training for officers using such weapons. The use of such restraints does not violate constitutional standards *per se*. Used appropriately, stun belts and stun guns can be effective tools for law enforcement under limited and closely regulated conditions in which the use of force is warranted due to the actions of a prison inmate or suspect whom an officer is justifiably attempting to detain or arrest. These devices are not designed to punish, to the contrary, they often reduce violence by serving as an effective, non-lethal alternative where deadly force would otherwise be justified to protect the lives of officers or bystanders.

The Justice Department's Bureau of Prisons ("BOP") currently maintains only fifty-one custody control belts (stun belts) in the entire country. These belts are used only when transporting maximum custody inmates and must be authorized by the warden of a high or administrative security level institution or his or her designee. BOP regulations specify that these belts may only be used to prevent escapes or to prevent the loss of life or grievous bodily harm. Furthermore, custody control belts will only be utilized by the BOP when it has been determined that an inmate requires greater security than is afforded through conventional restraints and the inmate has no medical condition that would preclude the use of a control belt. We are advised by the BOP that, as of April 2000, there had not been a single incident in which the custody control belt was actually activated by BOP staff.

Q: What is the U.S. government doing to address the appearance of impunity and lack of police accountability which has arisen from the apparently small number of prosecutions by the federal government of police officers each year on charges of police misconduct? (also Mr. Yu)

A: Criminal prosecutions by the federal government are only one part of what the U.S. government and the nation as a whole are doing to combat police misconduct. State prosecutors across the nation are engaged in efforts to combat misconduct in their jurisdictions, through criminal prosecutions, and more effective oversight. Local police forces themselves are working to improve accountability through training, enhanced discipline practices, citizen complaint procedures, and improved communication with their communities.

The Justice Department is combating police misconduct in four specific ways. First, at any given time, we are investigating several hundred individual allegations of police misconduct for violations of criminal civil rights laws around the country. For example, we brought the successful federal prosecution involving the beating of Rodney King after acquittals in state proceedings in Los Angeles. Since 1993, we have criminally prosecuted more than 300 law enforcement officers for willful violations of constitutional rights.

Second, the Civil Rights Division at the Justice Department brings civil suits alleging patterns or practices of police misconduct such as the use of excessive force, the failure to adequately discipline and train officers, and racial profiling resulting from systemic management failures. We were given this authority by Congress in 1994.

We have reached agreements with the police departments in Pittsburgh, Pennsylvania, the state of New Jersey, Stubenville, Ohio; and Montgomery County, Maryland concerning use of force, racial profiling and other constitutional violations. We are currently investigating a number of other police departments including Washington, D.C.; Los Angeles, California; New Orleans, Louisiana; and, New York City. The investigation of the NYPD includes examination of that Department's Street Crime Unit, the division involved in the shooting of Amadou Diallo.

The third way the Justice Department has worked to bring about change in law enforcement is through employment discrimination litigation. Over the years, we have brought hundreds of lawsuits that have helped lead to long-term change in the racial and gender composition of our nation's law enforcement departments.

Combating employment discrimination also helps us combat police misconduct. Police forces that reflect the diversity of the communities they serve are better able to form positive working relationships with community members, leading to more effective — and less combative — law enforcement. When someone who grows up in a neighborhood becomes an officer there, there is less fear and mistrust, and less misconduct.

Fourth, the Department of Justice has many programs that support the concept of community-oriented policing. We are augmenting our enforcement efforts with outreach and training programs in which we have brought together police departments, union leaders, community groups, and experts to develop best practices and to make recommendations so that problems can be avoided.

Q: Why was the Peruvian official Ricardo Anderson Kohatsu permitted to return to Peru following his recent trip to the United States?

A: In March 2000, Ricardo Anderson Kohatsu, a Peruvian official, traveled to Washington, D.C., U.S.A. as a member of a Peruvian delegation to the OAS Inter-American Commission, an organ of the Organization of American States, to testify on

behalf of Peru at a hearing of that international organization. Based on the circumstances of his travel and the specific provisions of the 1975 Agreement between the United States and the OAS on privileges and immunities of member state delegations, the Government of Peru asserted a claim of immunity from arrest on Mr. Anderson's behalf and sought permission for Mr. Anderson to depart the United States. Based on the advice of the Legal Adviser of the State Department, the United States Government concluded that its treaty obligations to the Organization of American States required the United States to honor that request.

Q: The Chairman also asked whether it would be possible for the United States to pass federal legislation regarding torture.

A: Enactment of federal legislation regarding torture is not only possible, but indeed, it is an historical fact in the United States. Since the beginning of our Republic, Article I, Section 8, Clause 10 of our Constitution has granted Congress the power to punish piracies and offences against the law of nations. Under this provision, not only has the U.S. Congress enacted legislation creating criminal jurisdiction over torturers present in the United States who committed acts of torture abroad (as noted above), it has also enacted the Torture Victims Protection Act of 1992, which creates a civil remedy for any person – U.S. citizen and alien alike – who has suffered torture abroad and the Torture Victims Relief Act of 1998, which provides relief to victims of torture residing in the United States.

Q: Why has the United States declined to extradite Emmanuel Constant, a Haitian citizen, back to Haiti even though the Government of Haiti has requested his extradition?

A: In the case of Emmanuel Constant, the Chairman's question is based on a misunderstanding of fact. As of the present, the United States Government has never received any request for Mr. Constant's extradition from any government, including the Government of Haiti. The United States is aware of reports that Mr. Constant committed acts of torture in Haiti, and the United States emphatically has no interest in harboring torturers. However, based upon the facts as publicly reported, it appears that the only ground for exercising independent criminal jurisdiction over Mr. Constant in the United States would be under 18 U.S.C. section 2340A, which was enacted on April 30, 1994. Because the acts of torture abroad alleged to have been committed by Mr. Constant would have taken place before this law's enactment, the prohibition in the Sixth Amendment to the U.S. Constitution against the retroactive application of criminal statutes (*i.e.*, *ex post facto* laws) might well stand as a bar to his prosecution.

Q: Can the U.S. confirm that there have been no extraditions for torture since submission of its report?

A: Yes. To the best of our knowledge, since the submission of the U.S. Report to the Committee Against Torture in October 1999, we know of no requests for the extradition of a person for the offense of torture.

Q: Are medical students in the United States trained to recognize the indicia of torture and techniques for treatment of victims of torture?

A: Although we are not aware that such training is a required part of any medical school curriculum, medical schools throughout the United States offer electives in the area of health care and human rights. Prominent programs exist at the Harvard School of Public Health, Yale University Schools of Medicine and Public Health, and other medical and public health schools throughout the country. Part of the instruction received in these courses covers issues related to those identified by the Chairman. NGOs in the United States, such as the Center for Victims of Torture in Minnesota, Doctors of the World, and Physicians for Human Rights, advocate and assist in providing instruction in these areas. We also understand that Professor Jack Saul of the New York University Medical Center has a clinic for Torture Survivors which teaches medical students and doctors how to diagnose and treat torture victims, as does Dr. Douglas Shenson of the Montefiore Medical Center in New York city. Their work may be the beginning of a standard curriculum for American medical students on the subject. The United States strongly applauds the development of training programs along these lines.

Let me now turn to the Questions of the Vice-Rapporteur, Mr. El Masry:

Q: What is the U.S. doing to abide by the United Nations Minimum Rules with regard to the questioning and detention of juveniles? (also Mr. Burns, Mr. Rasmussen, Mr. Yu)

A: The Federal Bureau of Investigation has a policy of having parents present while its agents are interviewing juveniles. The Supreme Court protects juveniles with the same privileges against self-incrimination that are provided to adults. Thus, while there is no specific constitutional or statutory right to have a juvenile's parent present before a statement made by a juvenile could be admitted into open court, as with any statement admitted against a witness in a criminal case, an inquiry would be made as to the voluntariness of the juvenile's statement. Any such inquiry would take into account the age and maturity of the individual making the statement.

With regard to the detention of juveniles, as a condition of receiving federal grants or funding, states must hold juveniles who are being processed in the juvenile justice system separately from adults. Thus, it is the general practice in the states to separate juveniles from adults both in pre-trial facilities and in prisons.

In the federal system, juveniles are never housed with adult offenders. While in limited circumstances juveniles can be convicted of federal offenses, the Federal Bureau of Prisons contracts such cases with state and local agencies, and private corrections firms

that house juvenile offenders. This process facilitates maintaining close family ties. The federal prison system has only one institution which confines a limited number of juvenile offenders. That facility, the Metropolitan Detention Center in Guyanabo, Puerto Rico, maintains strict separation between juvenile and adult offenders.

The Immigration and Naturalization Service does not detain juveniles together with adults. INS uses juvenile facilities that are licensed by an appropriate authority at the local, State, or Federal level and specially trained INS personnel inspect each facility on an annual basis to help ensure that all facilities are in compliance with INS' requirements for housing juveniles;

The Chairman also expressed concern over the housing of juvenile inmates on death row. Under the law of some states, persons aged 16 and above may be sentenced to death where the nature of their crime requires they be tried as an adult. In some circumstances, these individuals will be housed on death row after they have been tried, convicted, and sentenced to death. However, it is important to recognize that while these inmates may be under the age of 18, under U.S. law, the nature of their conduct warrants a determination that they clearly have reached the age of majority in advance of their eighteenth birthday, and, therefore, should be tried, convicted, sentenced and imprisoned as an adult.

Q: Has there been an evaluation of the use of restraint procedures such as restraint chairs and shackles? (also Mr. Yu)

A: Restraint devices are used in settings such as hospitals and nursing homes for patient safety reasons in addition to their use in jails and prisons. Such devices should only be used to keep an inmate from hurting himself or others, when less restrictive means of controlling the inmate have failed. They are not designed as punishment, but rather as an effective means of short-term control of a suicidal inmate or one who is engaging in self-mutilation, for example, until such time as a mental health professional can be brought to the scene. Unfortunately, we have uncovered circumstances in which jails and prisons were using restraint chairs or four or five-point restraint on a bed for excessive time or when other less restrictive methods of preventing harm had not been attempted. The Department of Justice condemns such use and has sought to remedy it when we have uncovered such practices.

The U.S. Constitution does not permit use of restraint as a means of punishment or for purposes of interrogation, and we seek to eliminate such uses when we find them.

Prior to adopting the use of restraint chairs, the Federal Bureau of Prisons (BOP) implemented a pilot program to evaluate their effectiveness. Use of the restraint chairs was determined to be beneficial for the specified, limited purposes of short-term transportation.

In the federal prison system, the restraint chair is not intended for routine use in the Hospital or Special Housing Unit, nor it is utilized in lieu of progressive or four-point restraints.

With regard to Mr. Yu's question about allegations that women in labor have been restrained through the use of shackles, we do not have specific knowledge of instances where restraints have been used on women-prisoners in labor. We are, however, aware of Amnesty International's unconfirmed allegation that restraints have been used in unidentified facilities. If provided with specific, reliable information of such incidents, we would be willing to investigate these incidents further.

Q: Is it true that 11 people have died in restraint chairs?

A: We acknowledge that there have been deaths reported from improper restraint practices in health care facilities, and these may have been some in jails and prisons as well. We have been working aggressively to uncover full information on those incidents. Last year the Senate Appropriations Committee's Subcommittee on Labor, Health, Human Services, Education, and Related Agencies held hearings on this subject, and the Health Care Financing Administration has been working on improving the use of restraints in health care facilities receiving federal funding.

Q: Are people interrogated in restraint chairs?

A: It is unconstitutional to interrogate people in restraint chairs. If the Civil Rights Division of the Justice Department found that a law enforcement entity was using restraint chairs as part of its interrogation process, we would seek to stop the practice. To the best of our knowledge, this issue has not arisen in any of our enforcement activities.

Q: Have juveniles been put in restraint chairs?

A: In our investigations, the Justice Department has found some juvenile facilities that do, in fact, use restraint chairs. In those cases, we have required in our remedial agreements that such devices never be used for punishment and only be used to control youths who are dangers to themselves or others after less restrictive means of control have failed. We have required that youths restrained in chairs must be constantly monitored, with frequent checks by supervisors, and must be removed from the restraints as soon as they have regained control of their behavior.

Q: The Committee expressed concern about so-called "supermax" prison facilities. What are the procedures used to commit persons to supermax facilities? What are the procedures for being transferred out of these facilities? Are there complaint mechanisms accessible by supermax inmates? (also Rasmussen)

A: For certain violent inmates, supermax facilities have proven to be a necessity for United States law enforcement. However, where federal facilities are concerned, use of such facilities is scrupulously controlled. Prisoners are screened and monitored for mental illness; opportunity for exercise is provided; and classification systems are in place so that confinement is not indefinite and that prisoners meeting certain criteria are transferred to less structured settings where appropriate.

An example of one such federal facility is the Administrative Maximum Security Institution (ADX) in Florence, Colorado. The mission of ADX Florence is to confine inmates with chronic behavioral patterns or management issues that cannot be addressed in any other facility. It is used only for inmates who have shown they are incapable of functioning in open penitentiaries. The procedures for designating inmates to ADX Florence may be found in the Bureau Program Statement No. 5100.07, Security Designation and Custody Classification Manual, which is available on the Internet at www.bop.gov.

The ADX contributes to safe and secure operations in the Bureau of Prisons' other institutions by concentrating in one facility those inmates presenting very serious security and safety risks. Most inmates housed at the ADX were transferred from other Federal institutions because of their highly dangerous behavior while incarcerated. The primary reasons for transfer to the ADX include the following:

- murder or attempted murder of another inmate;
- serious assaults on staff or other inmates; or
- escape or attempted escape from other BOP facilities.

Some inmates present an extraordinary threat to public safety by the nature of their offenses or previous criminal histories. The Bureau of Prisons reserves the discretion to ensure public safety by placing those inmates at the ADX. Additionally, several recent domestic and international terrorism convictions have resulted in court recommendations for the direct placement of inmates in the ADX. These judicial recommendations are considered by the Bureau, but the final determination of placement lies with the Bureau of Prisons, based on the above criteria.

Prior to referring an inmate to the ADX, designation to another high security institution is considered first. If transfer to another institution is not appropriate, Wardens refer the designation request to their respective Regional Director. If approved, the recommendation is forwarded to the North Central Regional Director (the ADX is located within the Bureau's North Central Region).

A referral for ADX designation will include:

- A memorandum from the Warden to the appropriate Regional Director with the specific rationale supporting the institution's recommendation;

- Copies of all disciplinary reports, investigative materials or other official documentation related to the behavior prompting the referral;
- A current Progress Report;
- A copy of the inmate's latest Presentence Investigation Report;
- A recent psychiatric or mental health evaluation; and
- A memorandum from the Regional Director recommending the referral.

Inmates currently diagnosed as suffering from serious psychiatric illnesses are not referred for placement.

Very few inmates serve their entire sentences at ADX Florence; most will return to the general population at other penitentiaries after progressing through a stratified housing program. This program, designed around general populations, intermediate, transitional and pre-transfer units, allows inmates to function in progressively less structured environments as they demonstrate more responsible behavior.

With regard to supermax facilities operated by state correctional agencies, many states have modeled their supermax facilities after the federal ADX facility, and we anticipate that most states will follow the federal example in the future. The Civil Rights Division of the U.S. Department of Justice monitors conditions at state facilities and actively investigates credible allegations of mistreatment. Indeed, as noted in our presentation yesterday and in our report, one such investigation resulted in the institution of remedial measures at a facility in Maryland to require the provision of adequate medical and mental health care to inmates.

Q: Given the fact that prison investigations are done in the first instance by the prison itself, are U.S. federal courts not the only effective means of oversight of prison practices? Does the United States intend to create independent review mechanisms to review complaints & monitor conditions?

A: No to both questions. In our judgment, an independent review mechanism to review prison complaints and monitor prison conditions is unnecessary, and would needlessly replicate the work of the Federal Bureau of Prisons, the National Institute of Corrections, the Department of Corrections in the fifty states and in the territories, the work of the Civil Rights Division of the Department of Justice, not to mention the many private entities who monitor prison conditions, including the American Correctional Association, which accredits prisons and jails. State and federal courts have also engaged in extensive oversight in prisons in response to lawsuits brought by government agencies, as well as inmates, both individually and in class action litigation.

Q: Why does the Prison Litigation Reform Act not conflict with Article 1 of the Convention? Is the requirement that a prisoner must show physical injury to receive a remedy for mistreatment compatible with either the Convention or the 8th Amendment of the U.S. Constitution? Also, Mr. Yakovlev noted that under the Prison Litigation Reform Act, a prisoner must exhaust administrative remedies

before suing for unconstitutional conditions. How do you respond to the argument that this is an unreasonable barrier for prisoners to overcome?

A: The Prison Litigation Reform Act (PLRA) requires a physical injury as a predicate to an award for monetary relief for unconstitutional conditions of confinement in a federal lawsuit filed by an inmate. However, prisoners who have suffered non-physical injuries that result from violations of their constitutional rights can still sue in federal court to obtain a full range of injunctive relief. For example, prisoners may obtain injunctions requiring a smoke-free environment, adequate fire safety and sanitation and environmental conditions without having suffered physical injury. Many such inmates will have the option of seeking monetary relief in state courts.

With respect to Mr. Yakovlev's question, all prisons have prisoner grievance mechanisms. The requirement that a prisoner exhaust administrative remedies provides a means for the correctional facility to provide appropriate relief in the first instance, perhaps obviating the need for judicial action. If the administrative mechanism provided by the prison fails to remedy the alleged violation, the prisoner may still bring his or her case to federal court. In the federal prison system, roughly twenty percent of grievance complaints are resolved in favor of the inmate, making court action unnecessary.

Let us now turn to the Questions of Mr. Camara:

Q: Art. 27 of the Vienna Convention on the Law of Treaties states that a state party to a treaty cannot rely on internal difficulties to excuse its failure to fulfill international obligations that it has assumed. Is the United States acting in accordance with this principle?

A: Yes. We agree entirely with the Committee's restatement of this basic principle of treaty law. The United States' statement about federalism in its general reservation to the treaty does not, and is not intended to, exempt the United States from ensuring that both state and federal law is in compliance with US obligations under the Convention. Instead, it concerns the steps to be taken domestically by state and federal authorities to give effect to US obligations under the Convention.

The United States has a federalist system of government, with a federal government of limited powers. Those powers not delegated to the federal government are expressly reserved for the states and the people under the Tenth Amendment to the US Constitution. So, while the federal government cannot dictate the basic form or internal workings of state government, it can establish and enforce uniform standards for the respect of the right to be free from torture and cruel and unusual punishment, which could include direct invalidation of any offending laws at the state level under the Supremacy Clause, Article VI of the Constitution. To make this point explicit, the United States instrument of ratification specifies that "to the extent that constituent units [of the United States] exercise jurisdiction over such matters, the Federal Government

shall take appropriate measures, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of this Convention.”

Q: How does the U.S. respond to the argument that the only permissible reservation to the Convention is pursuant to Article 28, i.e., with respect to the competence of the Committee to receive state-state complaints under Article 20? (also Mr. Gaspar)

A. With respect, we must take issue with this interpretation of the Convention. Under the Vienna Convention on the Law of Treaties and the Permanent Court of International Justice’s Advisory Opinion regarding Reservations to the Genocide Convention, a state party may condition its ratification of a multilateral treaty unless the instrument itself prohibits reservations or such a condition would defeat the object and purpose of the treaty, as viewed by other parties to the multilateral convention. We note the Convention Against Torture does not prohibit reservations, and no state party to the Convention has adopted Mr. Camara’s interpretation.

Q: What kind of treatment is received by asylum seekers? Are they held in prisons with criminals? Is there a restriction on their work authorization and general freedom of movement? Are they placed in high-security facilities? (also Mr. Burns).

A: The Immigration and Naturalization Service (INS) strives to ensure that all aliens in detention, regardless of whether they have made asylum claims, are treated humanely. The INS is committed to providing a safe, secure, and humane environment for all detainees. The INS does not automatically release an alien upon the filing of an asylum claim in order not to encourage fraudulent claims, which often can contribute to skepticism regarding meritorious asylum claims. However, being sensitive to the special circumstances of legitimate asylum seekers, INS policy favors release of any alien who is found to have a credible fear of persecution, provided that the alien’s needs would be met following release.

The INS seeks to house all detained asylum seekers in INS-run facilities, where it has a policy of housing non-violent detainees apart from criminal aliens and where it has greater control over the facilities. Where there is no available bed space in INS facilities, the INS seeks to ensure that non-violent detainees are afforded an environment free from harassment or fear from others who have a history of violence. To achieve this goal, INS uses a classification system that takes into account information relevant to a detainee’s potential for violence. This technique, along with proper supervision and special housing, has proven effective.

When an asylum-seeker is released, his freedom of movement is generally not restricted, except that he is required to keep the INS apprised of his location, to appear for any immigration proceedings, and to comply with any conditions placed on his release, such as periodic reporting to the INS. He may not be granted work authorization based on the asylum application until he is granted asylum, or until 180 days have passed without a decision on the asylum application. This is a relatively new provision, adopted by asylum reform measures in 1994. From 1990 to 1994 (when a person who applied for asylum was automatically granted work authorization), more than 425,000 asylum applications were filed in the U.S., and many of those were determined to be frivolous. These frivolous claims, often filed solely to obtain work authorization, overwhelmed the asylum system. Under the 1994 asylum reforms, genuine asylum seekers are quickly identified and granted protection, and incentives for abuse have been minimized.

Let us now turn to the unanswered questions of Mr. Gaspar:

Q: How can the U.S. comply with the CAT if prisons are operated by private companies? (also Mr. Burns).

A: The fact that a correctional facility that houses state or local inmates is operated by a private company in no sense insulates that facility, or its employees, from scrutiny under our federal constitution or statutes. State and local contracting agencies are ultimately accountable for conditions in institutions housing individuals in the state's legal custody. The individuals operating the facility become state actors for these purposes.

This point is made clear by the fact that a number of the Civil Rights Division's cases pursued to protect the constitutional rights of prisoners have involved private providers who house or otherwise provide services to individuals in the custody of states or local subdivisions. Most recently, for example, we obtained extensive relief involving a private juvenile facility in the state of Louisiana.

In short, a corporation that operates a prison facility under a contract with the state is subject to the same liabilities under federal law as a public facility. Thus, a prison official working in a private facility that contracts with a state to house state prisoners is subject to prosecution under federal criminal civil rights laws for misconduct, including the use of excessive force and racial discrimination.

Q: Is the use of chain gangs permissible in the United States? (also Mr. Yu)

A: Absent injury or other harm, chain gangs are not *per se* unconstitutional. Nevertheless, the use of chain gangs in prisons in the United States is rare. Most chain gang work involves highway cleanup and maintenance projects. Participation is frequently on a volunteer basis. In order to determine whether the particular use of a chain gang violates the Constitution one would need to review the kind of work and conditions of work for prisoners on chain gangs to determine whether the conditions fall

below those required by the 8th Amendment's protection against cruel or unusual punishment.

Q: We understand that under U.S. immigration law, a person could arrive in the U.S. as a child, and then be subject to deportation many years later. Why does this not violate Article 16?

A: Article 16(1) generally requires that States Parties undertake to prevent in their territory state sanctioned acts of cruel, inhuman, or degrading treatment or punishment. Article 16(2) further specifies that the provisions of this Convention do not prejudice the provisions of other international or domestic instruments prohibiting such treatment or punishment, or relating to extradition or expulsion. Under some circumstances a person who arrived in the U.S. as a child may be subject to removal many years later if he has not become a U.S. citizen and if, for example, he engages in criminal activity that makes him deportable. This does not violate U.S. obligations assumed under either provision of Article 16.

The INS takes care to ensure that the proceedings to determine whether an alien is removable, any detention incidental to those proceedings, and the removal process itself are all administered in a humane fashion. Further, the proceedings to determine whether such an alien is in fact removable incorporate mechanisms to ensure compliance with all domestic and international legal provisions relating to expulsion. For example, there are opportunities within these proceedings for an alien to seek, and where necessary to be granted, protection from removal under Article 3 of the CAT and under Article 33 of the Refugee Convention.

We now turn to the as-yet unanswered questions posed by Mr. Yakovlev:

Q: How does the United States explain the failure of the Illegal Immigration and Immigrant Responsibility Act of 1996 to identify fear of torture as a ground for not returning a person to his country of origin in light of this requirement under the Convention?

A: This is not a gap in United States law. Immediately upon the entry into force for the United States of the Convention, and prior to the adoption of formal regulations by the Immigration and Naturalization Service (INS), the INS adopted a comprehensive interim administrative process to assess the applicability of Article 3 to individual cases of aliens subject to removal. Under this process, if there were reason to believe that an alien would be tortured in a particular country after all removal proceedings had been completed and before a final order of removal was executed, the INS would consider whether Article 3 prohibited the alien's removal to that country. The INS took an

inclusive approach to identifying cases to be examined under Article 3, allowing aliens to raise this issue at any point in the removal process. If an alien or his attorney or representative requested protection under Article 3 or expressed a fear of torture at any time before removal, the INS assessed the case under Article 3. In addition, the INS worked with the United Nations High Commissioner for Refugees to develop an informal process under which that agency could bring to the government's attention cases which it believed raised issues under Article 3.

On October 21, 1998, President Clinton signed into law a bill which required "[n]ot later than 120 days after the date of enactment of this Act, the heads of appropriate agencies [to] prescribe regulations to implement the obligations of the United States under Article 3 of the United Nations Convention Against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention." Accordingly, the INS promulgated regulations to implement Article 3, consistent with U.S. reservations, understanding and declarations.

On February 19, 1999 the Department of Justice published an interim rule prescribing regulations that implement formally, as directed by the Congress, U.S. obligations under the Convention Against Torture. The interim rule became effective on March 22, 1999. (A full text of the rule is at Annex IV of the US Report.)

Q: Is it not true that the Anti-Terrorism and Effective Death Penalty Act improperly curtails the power of the federal courts to remedy erroneous decisions of the state courts?

A: As the Supreme Court has recently demonstrated in Williams v. Taylor, the Anti-Terrorism and Effective Death Penalty Act does not limit the ability of federal courts to address errors by state courts that are of constitutional dimension. Rather, it requires that such cases be brought within one year of any one of a series of triggering events and that there not be more than one habeas challenge brought in the same case.

However, as an exception to those procedural rules, the state defendant may still maintain a federal habeas corpus action if he or she can establish that there is a new rule of constitutional law which the Supreme Court has held to apply retroactively or that the factual predicate for the action could not have been discovered earlier through the exercise of due diligence and that the facts underlying the claim provide clear and convincing evidence of actual innocence or that the lower court did not give adequate consideration to the initial petition for habeas corpus.

We now turn to the remaining unanswered question posed by Mr. Rasmussen:

Q: Is special medical training provided for doctors who work in prisons?

A: Yes. In order for a doctor to practice in a prison facility, he or she must be licensed to practice medicine in the state in which the facility is located. In addition, all Federal Bureau of Prison staff receive training upon hiring and annually thereafter regarding recognition of victims of sexual assault and abuse. Physicians receive additional training and have national policies and procedures regarding the diagnosis, evaluation and treatment of victims of abuse.

Physicians and other health care providers are also required to have training every six months in suicide prevention. Suicidal tendencies can be one indication that an inmate is being abused.

A comprehensive orientation program has been developed for physicians and is scheduled to be implemented immediately. This program consists of a set of learning objectives which will be reviewed and discussed, one on one, between a new physician and an experienced BOP physician, over approximately five days. Pertinent topics to this question include: restraints and seclusion; suicide prevention; management of hunger strikes; body cavity searches for contraband; and medical experimentation.

Procedurally, when any staff member identifies an inmate who appears to be injured, an investigation into the cause of the injury is initiated by correctional staff. All of these inmates are seen by a health care provider and a standard injury assessment form is completed. Specific training is provided to all health care staff, during their initial period of employment, regarding these examinations. Specific attention is paid to subtle abrasions, contusions, and condition of hands and fingernails. Determinations of drug or alcohol intoxication are often appropriate during these evaluations. Often the physician is asked to render an opinion as to the nature of the injury (e.g., is it consistent with fisticuffs, blunt object trauma, accident?) The training for this type of evaluation is a combination of medical experience gained prior to prison employment, plus a heightened sensitivity to the types of injuries seen among inmates.

With respect to Mr. Mavrommatis, I answered above his only question, namely, regarding the delay in the filing of our report.

We turn to the questions of Mr. Yu. At the close of yesterday's session, I orally answered his question regarding the reasons why the United States does not, as part of its annually mandated country reports, file annually a country report on its own human rights practices. The remainder of his questions have been answered earlier this afternoon's presentation.

Conclusion:

Mr. Chairman, Mr. Vice-Rapporteur, and Honorable Members of the Committee, this concludes our answers to the questions raised yesterday. Let me assure you that we have done our utmost to be forthright and complete in our answers. Thank you all again for

your close and thoughtful attention to our report. Mr. Yeomans and I now stand ready to clarify any of these answers or to answer any additional questions you may have.

INTERAGENCY WORKING GROUP ON HUMAN RIGHTS TREATIES

Agenda

May 18, 2000

2:15 -- OEOB 208

1. INS draft bill on human rights abusers
2. Report from delegation to prepcom for U.N. World Conference on Racism
3. Report from delegation to Committee Against Torture
4. Review of Summary of Conclusions from last regular meeting
5. Next regular meeting – **June 15, 2:00, OEOB 208**

Summary of Conclusions
Human Rights Treaty IWG
April 6, 2000

It was agreed that:

- State/L will hold off on preparing a proposal for formalizing the referral process for human rights complaints that arise in international fora. While Justice/CRT agreed to review complaints from international organizations, State/L would like to wait a few months before drafting its proposal in the hope that an actual case might arise, which would assist in formalizing the process.
- State/DRL and Justice agreed to meet to discuss ideas for training Assistant U.S. Attorneys on international human rights obligations and report on their plans at the next meeting.
- NSC will convene a meeting to discuss State concerns with the Justice/INS legislative proposal on human rights abusers. The objective is to work quickly to finalize the bill so that INS can transmit it to the Hill before the next IWG meeting.
- Agencies will meet on April 12 to discuss broader policy and process issues regarding visits to the U.S. by human rights abusers.
- NSC will work with State to set up a meeting to discuss the second periodic report under the ICCPR.
- State, Justice, COS, and NSC will complete their ongoing reviews of the draft CERD report and be prepared to circulate the final draft to agencies for clearance by the end of May.
- Justice and State will work together to provide substantive support to the delegations to the global prepcom for the UN World Conference on Racism (May 1-5) and the US presentation to the Torture Committee (May 10-12).
- State/L will report at the next meeting on what additional information it needs from Justice in order to be able to make a recommendation regarding signing the InterAmerican Convention on Violence Against Women.

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Alex Wohl/Francisco Garcia, Education	401-3130
Irene Bueno, Domestic Policy Council	6-5581
Caroline Krass, NSC Legal	6-9110
Reynaldo Valencia, COS	6-1121

Date: 5/17/00

REMINDER: Human Rights IWG meeting scheduled for TOMORROW, May 18, 2:15-3:30, OEOB 208 (NOTE START TIME). Please call Mary at 456-9141 with clearance information. Agenda and summary of conclusions from April meeting are attached.

HWG on Human Rights - 5/18/80

Human Rights Bill

DOJ
Some - DOJ - identified legal obstacles - did some administrative stuff
 - Sen. Leahy - upset. drafted legislation but did not go far enough
 - Leahy moved his bill at the end of last session in Senate
 - House considering Leahy bill - testified will send up a bill but have not.

only threat to turn
 + strong
 no control
 transfer to OSI
 (Nazi)
 under

State - no State view
 Jim - technical & legal problems w/ proposals
 Broad, Mandatory - concern
 Texture fine but problem moving beyond that is a problem
 Drews - 21st has passed.
 21st foreign policy is
 consensus - clear now
 give DOJ discretion
 don't want to be ambig.

Mandatory - applicable
 C. O. - what questions
 Look out system - OO - 1 list - visa office if OO - refer back to Dept. not long.

Harold

Consensus {
 - Need to support
 - mandatory exclusion is best - no much prior to C. O.
 - should be done in discretionary process
 - How should this discretionary process work
 - want normally drafted + only discretionary.
 Tough cases - Israelis, middle eastern, Gerny, Adams.

Be
 look out system - just a alarm system - does not help if no authority.
 this is the diff. from other kinds of indicators

Can't keep foreigners out.

Discretionary - Visa issuance -

(2)

* [State - discretionary - inadmissible
DOJ - mandatory - " " " " - don't have enough grounds

Scott - Sec. 8 State ^{delegated in consultation with DOJ} make certain ~~categories~~ @ individuals - inadmissible
for human rights
- INS makes a mandatory decision

- Foreign Policy removals - Sec of State only use it as a last resort

Jim - old statute if Sec of State or AG will decide
jurisdictional power

Judge - 16 BIA.

Next Steps

EMCS - we would not oppose Lecky - default
- challenge - can we accommodate State Dept - discretion

weedy ~~State~~ & DOJ give separate directions ~~re: not to be a~~

- Develop draft language - State + DOJ

- Avoid taking up the chair - Domestic military
NSC - discretion

INTERAGENCY WORKING GROUP ON HUMAN RIGHTS TREATIES

Agenda

May 3, 2000

10:00 -- OEOB 208

1. Visits to the U.S. by human rights abusers
 - laws governing prosecution or civil action against those who have committed serious human rights abuses
 - INS and State authorities to bar entry and secure removal in such cases
 - diplomatic immunity issues: does the Torture Convention trump diplomatic immunity, does the INA's genocide provision apply to diplomatic visas, does diplomatic immunity extend to prior acts committed outside of the US?
 - policy considerations that have governed agency actions in such cases
 - what processes are in effect, if any, to handle these situations
 - sharing of information and intelligence regarding human rights violators

2. Next regular meeting -- **May 18, 2:00, OEOB 208**

Suggested inter-agency procedures:

- ALDAC has gone out requiring embassies to contact State about all sensitive visa questions involving human rights abusers who want to come to the US—good first step.
- Send a follow-up cable requiring all such responses from embassies to be slugged to designated contact point within DOJ, NSC, and FBI.
- If necessary—if there is any substantial disagreement, for example, any one agency should be able to convene an emergency inter-agency meeting.
- The appropriate inter-agency forum should be the human rights IWG (or a subcommittee of the IWG), which already has a mandate to address this issue.
- State and DOJ should collaborate on compiling an informal watch list and share it with the interagency group (DRL can take the lead on this within State).
- If INS encounters such a person at the border, DOJ should notify appropriate points of contact within State and at the NSC (and appropriate points of contact within State include DRL, as well as L and CA).
- Similarly, if any agency learns of such persons within the US, that agency should notify appropriate points of contact within State and NSC (and appropriate points of contact within State include DRL, as well as L and CA).

Human Rights Mtg. 5/3

Sierra Leone Problem

Human Rights
Bill

INS promised to get bill to the Hill

§ 4 - allow the AG to provide ~~excludes~~ for people part of a process require time
~~no claim asylum b/c~~
loops in the laws.

- Denying visa -

- Departing - need to show on individual basis

State - objective ~~association~~ based association-based... prefer fact-based on the individual.

- Can broaden if spokesperson -

- Groups in Court Law
- Inadmissible + ~~known~~ - Spouse, religious, etc, criminals
 - Problem in 16 not INS discretion
 - Discretion only in original intent of status
 - No discretion - rather # withholding of deportation
 - GMC - ~~not~~ little discretion
 - 212(f) - ~~not~~ Pres. proclamation - denying certain people (but don't mention asylum).

State's position + proposal - 5/12

Visit to the (see hand-out) 106 or not... need a standard mechanism - want agreement to have SOPs
& buy human - Look-out (OO) - sometimes there is 1st day pass require ~~the~~ ^{working} ^{approval}
state abroad - 212(f) helps

Issue - what happens after the indiv gets in.

But why proven? for other cases?

Executive Order 13107

[Federal Register: December 15, 1998 (Volume 63, Number 240)]
[Presidential Documents]
[Page 68991-68993]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr15de98-110]

Executive Order 13107 of December 10, 1998

Implementation of Human Rights Treaties

By the authority vested in me as President by the Constitution and the laws of the United States of America, and bearing in mind the obligations of the United States pursuant to 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 to which the United States is now or may become a party in the future, it is hereby ordered as follows:

Section 1. Implementation of Human Rights Obligations.

(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 ICCPR, the CAT, and the CERD.

(b) It shall also be the policy and practice of the Government of the United States to promote respect for international human rights, both in our relationships with all other countries and by working with and strengthening the various international mechanisms for the promotion of human rights, including, inter alia, those of the United Nations, the International Labor Organization, and the Organization of American States.

Sec. 2. Responsibility of Executive Departments and Agencies.

(a) All executive departments and agencies (as defined in 5 U.S.C. 101-105, including boards and commissions, and hereinafter referred to collectively as "agency" or "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. Under this order, all such agencies shall retain their established institutional roles in the implementation, interpretation, and enforcement of

Federal law and policy.

(b) The heads of agencies shall have lead responsibility, in coordination with other appropriate agencies, for questions concerning implementation of human rights obligations that fall within their respective operating and program responsibilities and authorities or, to the extent that matters do not fall within the operating and program responsibilities and authorities of any agency, that most closely relate to their general areas of concern.

Sec. 3. Human Rights Inquiries and Complaints.

Each agency shall take lead responsibility, in coordination with other appropriate agencies, for responding to inquiries, requests for information, and complaints about violations of human rights obligations that fall within its areas of responsibility or, if the matter does not fall within its areas of responsibility, referring it to the appropriate agency for response.

Sec. 4. Interagency Working Group on Human Rights Treaties.

(a) There is hereby established an Interagency Working Group on 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.

(b) The designee of the Assistant to the President for National Security Affairs shall chair the Interagency Working Group, which shall consist of appropriate policy and legal representatives at the Assistant Secretary level from the Department of State, the Department of Justice, the Department of Labor, the Department of Defense, the Joint Chiefs of Staff, and other agencies as the chair deems appropriate. The principal members may designate alternates to attend meetings in their stead.

(c) The principal functions of the Interagency Working Group shall include:

(i) coordinating the interagency review of any significant issues concerning the implementation of this order and analysis and recommendations in connection with pursuing the ratification of human rights treaties, as such questions may from time to time arise;

(ii) coordinating the preparation of reports that are to be submitted by the United States in fulfillment of treaty obligations;

(iii) coordinating the responses of the United States Government to complaints against it concerning alleged human rights violations submitted to the United Nations, the Organization of American States, and other international organizations;

APPENDIX A

(iv) developing effective mechanisms to ensure that legislation proposed by the Administration is reviewed for conformity with international human rights obligations and that these obligations are taken into account in reviewing legislation under consideration by the Congress as well;

(v) developing recommended proposals and mechanisms for improving the monitoring of the actions by the various States, Commonwealths, and territories of the United States and, where appropriate, of Native Americans and Federally recognized Indian tribes, 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;

(vi) developing plans for public outreach and education concerning the provisions of the ICCPR, CAT, CERD, and other relevant treaties, and human rights-related provisions of domestic law;

(vii) coordinating and directing an annual review of United States reservations, declarations, and understandings to human rights treaties, and matters as to which there have been nontrivial complaints or allegations of inconsistency with or breach of international human rights obligations, in order to determine whether there should be consideration of any modification of relevant reservations, declarations, and understandings to human rights treaties, or United States practices or laws. The results and recommendations of this review shall be reviewed by the head of each participating agency;

(viii) making such other recommendations as it shall deem appropriate to the President, through the Assistant to the President for National Security Affairs, concerning United States adherence to or implementation of human rights treaties and related matters; and

(ix) coordinating such other significant tasks in connection with human rights treaties or international human rights institutions, including the Inter-American Commission on Human Rights and the Special Rapporteurs and complaints procedures established by the United Nations Human Rights Commission.

(d) The work of the Interagency Working Group shall not supplant the work of other interagency entities, including the President's Committee on the International Labor Organization, that address international human rights issues.

Sec. 5. Cooperation Among Executive Departments and Agencies.

All agencies shall cooperate in carrying out the provisions of this order. The Interagency Working Group shall facilitate such cooperative measures.

Sec. 6. Judicial Review, Scope, and Administration.

APPENDIX A

(a) Nothing 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.

(b) This order does not supersede Federal statutes and does not impose any justiciable obligations on the executive branch.

(c) The term "treaty obligations" shall mean treaty obligations as approved by the Senate pursuant to Article II, section 2, clause 2 of the United States Constitution.

(d) To the maximum extent practicable and subject to the availability of appropriations, agencies shall carry out the provisions of this order.

(Presidential Sig.)

THE WHITE HOUSE,

December 10, 1998.

[FR Doc. 98-33348
Filed 12-14-98; 8:45 am]
Billing code 3195-01-P

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: Harold Koh, State/DRL	647-5283
Steve Wagonseil, State/DRL	647-4344
Andre Surena, State/L	736-7116
Nancy Rubin, State/IO	686-9058
Beverly Zweiben, State/IO	647-4628
David Killian, State/H	647-9667
Anita Botti/Durriya Ghodiali, State/G/PICW	647-5337
James Castello, DOJ/DAG	514-6897
Richard Jerome, DOJ/AAG	307-3904
Julie Fernandes, DOJ Civil Rights	616-3413
Bo Cooper, DOJ/INS	514-5491
Ilana Davidson, DoD/GC	(703) 614-9789
Jim Schear/DoD	(703) 614-0442
Mac DeShazer, DOL	693-4780
Anthony Sariti	619-6520
Elizabeth Wilcox, Treasury	622-1956
Alex Wohl/Francisco Garcia, Education	401-3130
Irene Bueno, Domestic Policy Council	6-5581
Caroline Krass, NSC Legal	6-9110

Date: November 8, 1999

No. of pages to follow: 2

RE: Attached please find a summary of conclusions from the last meeting of the Human Rights Treaty IWG.

Summary of Conclusions
Human Rights Treaty IWG
November 5, 1999

It was agreed that:

- NSC will schedule a meeting the week of November 15 with relevant NGOs to obtain their reactions to our Torture Report.
- State will confirm the date on which our Torture report will be considered by the Committee Against Torture and organize an inter-agency team to participate in the briefing.
- State and DoJ will follow-up with monitoring in the al-Sayegh case.
- Agencies will prepare their contributions to the Race Report by November 15.
- NSC will reach out to representatives from the Departments of Interior, Agriculture and Labor for purposes of preparing our Race Report.
- State/IO will cross-hatch to NSC all cables relating to the World Conference on Racism.
- DoJ will finalize in the near future its legislative proposal on human rights abusers and circulate through OMB for interagency clearance.
- DoJ will work further with Senator Leahy's staff on his legislative proposal on human rights abusers.
- White House Counsel will determine whether the Administration has previously taken a position on the juvenile death penalty.
- NSC will draft another letter from the President to the Senate on CEDAW.
- State and NSC will both make efforts to contact key Senators (Bayh and Snow or Collins) on CEDAW.
- NSC will consider including a reference to CEDAW in the next State of the Union address.

- NSC will prepare draft action plan on state and local compliance and will convene a meeting on the issue in the next two weeks.
- Pending higher level approval, NSC will arrange meeting of senior IWG members with Pierre Sane, Director General of Amnesty International, in response to his request for a meeting with the President.

**LAWYERS COMMITTEE FOR HUMAN RIGHTS/CARR CENTER FOR HUMAN
RIGHTS POLICY CONSULTATION**
IN THE NATIONAL INTEREST – A HUMAN RIGHTS POLICY AGENDA

November 2 - 3, 1999
Law Offices of Arnold & Porter
555 12th Street, NW - Washington, DC

Tuesday, November 2

1:00 – 4:00 p.m.

International Labor Rights

Policy maker: Gene Sperling, Assistant to the President for Economic Policy

Respondent: Lance Compa, Human Rights Watch & Cornell School of Industrial and Labor
Relations

Chair: Kitty Higgins, National Trust for Historic Preservation

2:00 – 5:00 p.m.

Political Asylum & Expedited Removal

Policy maker: Owen (Bo) Cooper, General Counsel, U.S. Immigration & Naturalization Service

Respondent: Jeanne Butterfield, American Immigration Lawyers Association

Chair: Alex Aleinikoff, Georgetown University Law Center & Carnegie Endowment for
International Peace

Implications of New Technologies for Human Rights

Chair: Gregory Carr, Carr Center for Human Rights Policy, JFK School of Government

Wednesday, November 3

9:00 a.m. - noon

International Refugee Protection

Policy maker: Alan Kreczko, Deputy Assistant Secretary of State for Population,
Refugees & Migration

Respondent: Shep Lowman, Refugees International

Chair: Fr. Rick Ryscavage, Jesuit Refugee Service

What is the National Interest in Protecting Human Rights?

Policy makers: Morton Halperin, Director of Policy Planning, Department of State

Harold Koh, Assistant Secretary of State for Democracy, Human Rights & Labor

Chair: Doyle McManus, Washington Bureau Chief, *Los Angeles Times*

Noon – 1:15 p.m.

Luncheon discussion of the National Interest in Protecting Human Rights

Remarks by Carla Robbins, National Security Correspondent, *Wall Street Journal*

1:30 – 4:30 p.m.

International Justice and the International Criminal Court

Policy maker: Thomas Warrick, Department of State

Respondent: Michael Scharf, New England School of Law

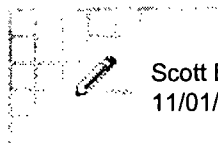
Chair: Douglas Cassel, Northwestern School of Law

U.S. Domestic Compliance with Human Rights Treaties

Policy maker: James Castello, Associate Deputy Attorney General

Respondent: Wade Henderson, Leadership Council on Civil Rights

For more information please call David Shorr at 202-547-5692 or e-mail him at shorrd@lchr.org.



Scott Busby
11/01/99 05:55:47 PM

Record Type: Record

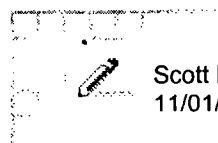
To: Irene Bueno/OPD/EOP@EOP

cc:

Subject: Shorter Lawyers Committee report

can be found at the bottom of this e-mail.

----- Forwarded by Scott Busby/NSC/EOP on 11/01/99 05:55 PM -----



Scott Busby
11/01/99 12:30:07 PM

Record Type: Record

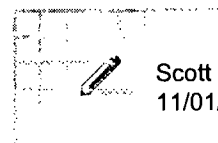
To: owen.b.cooper@doj.gov @ inet

cc:

Subject: A report on govt. participants

this should work

----- Forwarded by Scott Busby/NSC/EOP on 11/01/99 12:29 PM -----



Scott Busby
11/01/99 12:25:32 PM

Record Type: Record

To: Owen.b.cooper@doj.gov @ inet

cc:

Subject: A report on govt. participants

Bo -- The Lawyers Committee chapter on domestic implementation is attached below.

----- Forwarded by Scott Busby/NSC/EOP on 11/01/99 12:24 PM -----

Meeting - 11/3/99

Police misconduct

- need more resources
- DOJ should investigate not compliant states

Torture (Mike)

- report is being prepared - what's the process to gather info
- Nat'l Assoc of AGs - should be on their agenda
- make torture a crime (Louima example) ~~not~~ rather than using other civil rights + crim. law b/c defendant, change the dimensions, a last step. Treaty obligation has domestic ramifications.
- Int'l Law has taken it further than US const. & laws.
- recent law - only
- Torture Victim Protection Act ~~only~~ helps - int'l problem

James C - does it make sense given ~~more~~ resources

Wade H. - disconnect b/w civil rights + int'l hum. rights

- No real campaign - need a ~~plan~~ strategy.
- civil happen ~~under~~ internally.
- int'l groups need to get involved in the political process, coalition, ~~etc.~~
- current issues that have a intl + hr focus
- Example - police abuse - ongoing campaign -
 - ~~long~~ -
 - * no
 - * see end
 - * shipping Ct juvs.
 - Lack of awareness of R.H. issue
 - Appropriation for C.H. Dir

Office of Human Rights - Andre - oppose establish the office.

- human rights = civil rights in domestic policy

- Monitoring status ~~test~~ treaty obligations - not passage or. Implication of law the violate treaty.

Melissa

- Gaps in US laws
- Torture - laws passed torture treaty - prisoners Act - but Admin did not weigh in
- The Indefinite US cold identity



David Shorr <ShorrD@LCHR.ORG>

10/26/99 03:51:55 PM

Record Type: Record

To: Scott Busby/NSC/EOP

cc:

Subject: A report on govt. participants

I can tell you've been calling people, because they've been calling me. Rosetta Hillary called to say she would come, as did Andre Surena. I'm sending you this additional copy, just in case, of what we have sent out, but mostly I wanted to run down where we stand with the government invitees.

I think I mentioned that Daniel Feldman called, and that Richard Jerome RSVPed positively. Jamie Borek said no, and we haven't heard from Irene Bueno or Steve Wagensiell. I have talked to Julie Fernandes, but don't have her e-mail address, so if you have it and could send it, I'd be grateful.

Thanks for all your help.

David

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

From: Eric Carroll [mailto:carrolle@lchr.org]

Sent: Tuesday, October 26, 1999 3:03 PM

To: David Shorr

Subject: LCHR US Compliance

October 25, 1999

David Shorr

Dear :

I am writing to confirm some of the details of our upcoming consultation for the In the National Interest report on U.S. human rights policy. We are looking forward to seeing-and hearing from-so many of our respected colleagues to help us hone our findings and recommendations.

The discussion on "U.S. Domestic Compliance with Human Rights Treaties" will take place:

from 1:30 - 4:30 p.m. on Wednesday, November 3
at the law offices of Arnold & Porter

Wade - an intriguing W.G. would not necessarily identify - groups need to coordinate.

hard to organize on treaty - no consistency. Right wing has a consistency

Wade - treatment of women in prisons = example of translate treaty to Canada

Canada - Human Rights = civil rights + int'l human rights

Office of Int'l HR - (same process & outcome) - ~~not~~ to monitor compliance w/ domestic employees, can you do up in CR Div.

James = coordinator for Human Rights =

Wade = budget proposal to create - notes of proposing this if premature.

Michael - Focus on structure -

Coordinating with the states - Canada must coordinate w/ states to implement a treaty. Australia - similar to US - not signed.

Scott - Need to institutionalize the process.

Get other agency involved -

555 12th Street, NW Washington, DC (near Metro Center)
(proceed to the A&P reception desk for directions to the meeting)

James E. Castello, Associate Deputy Attorney General, will present the view of an official,
Wade Henderson, Leadership Conference on Civil Rights, has been invited to be respondent, and
Norman Dorsen, NYU School of Law and Board Chair of Lawyers Committee, will chair.

You are invited to join us for lunch prior to the meeting, and we are in the process of arranging a brief presentation by a leading foreign policy analyst to speak to our project's central theme: "What is the National Interest in Promoting Human Rights." Please let us know by Friday October 29 if you will be able to come early for lunch.

The draft chapter of the publication is attached as a file, please let us know if you have any trouble receiving it, and we will resend it as text. Please note that this is a draft and should not be viewed as the official policy of either the Lawyers Committee for Human Rights or the Carr Center for Human Rights Policy at the Kennedy School. While we may have positions on many of the issues under discussion at the consultation, for others, we are counting on the discussions to help give shape to our ideas. The consultation sessions are off the record.

We greatly appreciate your coming and offering your insight. If you still need accommodations, we have arranged for a group rate at the Phoenix Park Hotel near Union Station (800-824-5419); say that you are coming for the Lawyers Committee meeting. If you have any other questions you can reach me at 202-547-5692 or shorrd@lchr.org

Sincerely yours,

David Shorr
Project Director

 - LCHR US Compliance draft.doc

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.

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). Promulgation of this order reflects an important, and appropriate, shift in focus

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

The formal names of the latter two treaties are, respectively, the International

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

Convention on the Elimination of Racial Discrimination and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

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; *State Dept. oppose.*
- 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.