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Enforcement by States Against Violator States

Chapter 12 offered the promise or ideal. States will take the necessary measures to assure internal compliance with international human rights. In many states their own constitutions, whether predating or instituted during the human rights movement, will achieve broad compliance. In other contexts, states will internalize the international norms so that their courts apply those norms directly.

Our concern of course is with states that fall short of this ideal, sometimes far short. We have seen principally in Chapter 8, but also in the regional systems of Chapter 10, the efforts of intergovernmental institutions and their organs to secure compliance by violator states. Such modes of enforcement can be understood as *vertical*, in the sense that pressures are exerted and perhaps sanctions applied by international organs 'above' the state. Such organs apply international law. From the perspective of that law, those international bodies exercise authority over all member states in accordance with the terms of the treaties creating them.

Of course international organizations' decision-making about what action, if any, to take is not divorced from the decisions of their member states. To the contrary, the international bodies attempting to ensure, or at least to heighten the probability of, compliance are often 'intergovernmental' in two sense. First, the treaties creating them were ratified by their member states. Second, within the UN Charter system (apart from the International Court of Justice), the decision-making bodies for compliance and enforcement measures are composed of representatives of such states. Their decisions are not then 'divorced' from these states' separate decisions, for each member of a given body must decide how to vote—say, within the UN Commission on Human Rights or General Assembly or Security Council. Nonetheless, the organ's vote (say, to pass a resolution, make an investigation, authorize or order sanctions or intervention, or to refuse to take any of these actions) is a collective vote, an organizational decision, which may in the end impose obligations on many states individually. The organization, however influenced in its decision it may be by a few member states, is in a formal and vital sense the acting party.

Here, in Chapter 13, we consider entirely *horizontal* modes of implementing and enforcing human rights. Although there may be coordination with international bodies, the action or policy here at issue is rooted in the state. Acting singly or as part of a consortium, states may apply a range of pressures against a violator state. Their possible action includes exhortations and threats of future

encouragement/incentives and sanctions, carrots and sticks. They may rely importantly on damaging the reputation of the state involved, on 'shaming', to use a term commonly invoked as one of a range of strategies. They may impose boycotts or embargoes, suspend trading or investment relationships. They may impose conditions on bilateral or multilateral security assistance, development aid, trade advantages such as a most-favored-nation clause—conditions that require the recipient or trading state to comply with stated human rights norms. Within such a 'horizontal' (state-to-state) application of sanctions and pressures, the state imposing human rights conditions—so-called 'conditionality'—as part of its foreign policy becomes part of a multi-layered system of enforcement of international human rights.

The debate within the United States about the relevance of human rights to foreign policy—excluding in this chapter internal US debate about policies of the UN bearing on human rights—has been active and contentious for decades. It has ranged from security assistance and development aid to trade and foreign investment. The contexts in which these issues have been argued include the central crises of American foreign policy since the early 1970s—for example, US security or economic aid to, investment in, or trade with regimes in El Salvador, Nicaragua, Chile, South Africa, Nigeria, Burma, China and other states. The economic importance of aid and trade has involved major sectors of the US economy—defense industries anxious to export their products, manufacturing and service-oriented firms fearful of losing foreign markets in retaliation for elimination by the United States of other states' advantages in trade, consumer groups fearful of losing cheaper imported products, and so on. Such strong consequences raise the stakes for a politics of conditionality.

The chapter starts with a general discussion of the 'national interest' in relation to human rights enforcement, continues with illustrations of US policy toward violator states and its experience in aid conditionality, gives particular attention to United States-China trade relations, and concludes with descriptions of analogous policies in the European Union.

A. NATIONAL INTEREST AND HUMAN RIGHTS

The clash of positions in the debate over conditionality evokes similar clashes throughout US history about the actual or necessary or desired character of foreign policy. The clash can be defined in various ways, including such broad notions as: idealism versus realism, altruism versus self-interest, moral ideals versus national interest, principles versus power.

The first term (in a human rights context, the more 'interventionist') in each of these pairs could be characterized in most instances as favoring conditionality in US aid and trade legislation. The second term could be understood as tending to oppose human rights conditions, for they frustrate aid or trade policies that are believed to be in the national interest. Often the debate has had a more ambiguous

and contextual character, in which the dominant questions have been instrumental ones like the effectiveness of aid-trade sanctions as compared with alternative paths to achieve human rights goals.

Why indeed should a country like the United States take human rights considerations into account in its bilateral relations with other states? If it is in the 'national interest' to provide a given country with security (military) assistance or with development aid, does not making such aid dependent on the recipient's compliance with human rights norms impair that 'interest'? Is not the United States (or any other country following similar policies) surrendering its practical and ideological concerns in order to act as a global policeman, to enforce human rights norms at a cost to its own interests? Is not a purpose of the human rights movement to lift the problem of enforcement from the level of states to that of international organizations in which many states participate?

Such are the issues debated in the following readings.

HANS MORGENTHAU, HUMAN RIGHTS AND FOREIGN POLICY

reprinted in Kenneth Thompson (ed.), *Moral Dimensions of American Foreign Policy* (1984), at 344

[Morgenthau was a leading realist among political scientists in the decades following the Second World War, when this article originally appeared.]

... [The preceding discussion] brings me to the popular issue with which the problem of morality in foreign policy presents us today, and that is the issue of what is now called human rights. That is to say, to what extent is a nation entitled and obligated to impose its moral principles upon other nations? To what extent is it both morally just and intellectually tenable to apply principles we hold dear to other nations that, for a number of reasons, are impervious to them? It is obvious that the attempt to impose so-called human rights upon others or to punish others for not observing human rights assumes that human rights are of universal validity—that, in other words, all nations or all peoples living in different nations would embrace human rights if they knew they existed and that in any event they are as inalienable in their character as the Declaration of Independence declares them to be.

I'm not here entering into a discussion of the theological or strictly philosophic nature of human rights. I only want to make the point that whatever one's conception of that theological or philosophical nature, those human rights are filtered through the intermediary of historic and social circumstances, which will lead to different results in different times and under different circumstances. One need only look at the unique character of the American polity and at these very special, nowhere-else-to-be-found characteristics of our protection of human rights within the confines of America. You have only to look at the complete lack of respect for

human rights in many nations . . . to realize how daring . . . an attempt it is to impose upon the rest of the world the respect for human rights or in particular to punish other nations for not showing respect for human rights. . . .

It is quite wrong to assume that this has been the American tradition. . . . I think it was John Quincy Adams who made the point forcefully that it was not for the United States to impose its own principles of government upon the rest of mankind, but, rather, to attract the rest of mankind through the example of the United States. And this has indeed been the persisting principle the United States has followed. . . . This has been the great difference between the early conception of America and its relations to the rest of the world on the one hand and what you might call the Wilsonian conception on the other.

For Wilson wanted to make the world safe for democracy. He wanted to transform the world through the will of the United States. The Founding Fathers wanted to present to the nations of the world an example of what man can do and called upon them to do it. So there is here a fundamental difference. . . . [T]he dedication to human rights as an example to be offered to other nations . . . is, I think, a better example of the American tradition than the Wilsonian one.

There are two other objections that must be made against the Wilsonian conception. One is the impossibility of enforcing the universal application of human rights. We can tell the Soviet Union, and we should from time to time tell the Soviet Union, that its treatment of minorities is incompatible with our conception of human rights. But once we have said this we will find that there is very little we can do to put this statement into practice. . . . There are other examples where private pressure—for example, the shaming of public high officials in the Soviet Union by private pressure—has had an obvious result. But it is inconceivable . . . to expect that the Soviet Union will yield to public pressure . . . and will thereby admit its own weakness in this particular field . . .

There is a second weakness of this approach, which is that the United States is a great power with manifold interests throughout the world, of which human rights is only one and not the most important one, and the United States is incapable of consistently following the path of the defense of human rights without maneuvering itself into a Quixotic position. This is obvious already in our discriminating treatment of, let me say, South Korea on the one hand and the Soviet Union on the other. Or you could mention mainland China on the one hand and the Soviet Union on the other. We dare to criticize and affront the Soviet Union because our relations, in spite of being called *détente*, are not particularly friendly. We have a great interest in continuing the normalization of our relations with mainland China, and for this reason we are not going to hurt her feelings. On the other hand South Korea is an ally of the United States, it is attributed a considerable military importance, and so we are not going to do anything to harm those relations.

In other words, the principle of the defense of human rights cannot be consistently applied in foreign policy because it can and it must come in conflict with other interests that may be more important than the defense of human rights in a particular instance. And to say . . . that the defense of human rights must be woven into the fabric of American foreign policy is, of course, an attempt to conceal the actual impossibility of consistently pursuing the defense of human rights. And

once you fail to defend human rights in a particular instance, you have given up the defense of human rights and you have accepted another principle to guide your actions. And this is indeed what has happened and is bound to happen. You are not a Don Quixote who foolishly but consistently follows a disastrous path of action.

SAMUEL HUNTINGTON, AMERICAN IDEALS VERSUS AMERICAN INSTITUTIONS

in G. Ikenberry (ed.), *American Foreign Policy* (1989), at 239

In the eyes of most Americans not only should their foreign-policy institutions be structured and function so as to reflect liberal values, but American foreign policy should also be substantively directed to the promotion of those values in the external environment. This gives a distinctive cast to the American role in the world. In a famous phrase Viscount Palmerston once said that Britain did not have permanent friends or enemies, it only had permanent interests. Like Britain and other countries, the United States also has interests, defined in terms of power, wealth, and security, some of which are sufficiently enduring as to be thought of as permanent. As a founded society, however, the United States also has distinctive political principles and values that define its national identity. These principles provide a second set of goals and a second set of standards—in addition to those of national interest—by which to shape the goals and judge the success of American foreign policy.

This heritage, this transposition of the ideals-versus-institutions gap into foreign policy, again distinguishes the United States from other societies. Western European states clearly do not reject the relevance of morality and political ideology to the conduct of foreign policy. They do, however, see the goal of foreign policy as the advancement of the major and continuing security and economic interests of their state. Political principles provide limits and parameters to foreign policy but not to its goals. . . .

The effort to use American foreign policy to promote American values abroad raises a central issue. There is a clear difference between political action to make American political practices conform to American political values and political action to make *foreign* political practices conform to American values. Americans can legitimately attempt to reduce the gap between American institutions and American values, but can they legitimately attempt to reduce the gap between other people's institutions and American values? The answer is not self-evident.

The argument for a negative response to this question can be made on at least four grounds. First, it is morally wrong for the United States to attempt to shape the institutions of other societies. Those institutions should reflect the values and behavior of the people in those societies. To intrude from outside is either imperialism or colonialism, each of which also violates American values. Second, it is

difficult practically and in most cases impossible for the United States to influence significantly the institutional development of other societies. The task is simply beyond American knowledge, skill, and resources. To attempt to do so will often be counterproductive. Third, any effort to shape the domestic institutions of other societies needlessly irritates and antagonizes other governments and hence will complicate and often endanger the achievement of other more important foreign-policy goals, particularly in the areas of national security and economic well-being. Fourth, to influence the political development of other societies would require an enormous expansion of the military power and economic resources of the American government. This in turn would pose dangers to the operation of democratic government within the United States.

A yes answer to this question can, on the other hand, also be justified on four grounds. First, if other people's institutions pose direct threats to the viability of American institutions and values in the United States, an American effort to change those institutions would be justifiable in terms of self-defense. . . .

Second, the direct-threat argument can be generalized to the proposition that authoritarian regimes in any form and on any continent pose a potential threat to the viability of liberal institutions and values in the United States. A liberal democratic system, it can be argued, can only be secure in a world system of similarly constituted states. In the past this argument did not play a central role because of the extent to which the United States was geographically isolated from differently constituted states. The world is, however, becoming smaller. Given the increasing interactions among societies and the emergence of transnational institutions operating in many societies, the pressures toward convergence among political systems are likely to become more intense. . . .

Third, American efforts to make other people's institutions conform to American values would be justified to the extent that the other people supported those values. Such support has historically been much more prevalent in Western Europe and Latin America than it has in Asia and Africa. . . . Americans could well feel justified in supporting and helping those individuals, groups, and institutions in other societies who share their belief in these values. At the same time it would also be appropriate for them to be aware that those values could be realized in other societies through institutions significantly different from those that exist in the United States.

Fourth, American efforts to make other people's institutions conform to American values could be justified on the grounds that those values are universally valid and universally applicable, whether or not most people in other societies believe in them. For Americans not to believe in the universal validity of American values could indeed lead to a moral relativism: liberty and democracy are not inherently better than any other political values; they just happen to be those that for historical and cultural reasons prevail in the United States. This relativistic position runs counter to the strong elements of moral absolutism and messianism that are part of American history and culture, and hence the argument for moral relativism may not wash in the United States for relativistic reasons. In addition the argument can be made that some element of belief in the universal validity of a set of political ideals is necessary to arouse the energy, support, and

passion to defend those ideals and the institutions modeled on them in American society.

Historically Americans have generally believed in the universal validity of those values. At the end of World War II, when Americans forced Germany and Japan to be free, they did not stop to ask if liberty and democracy were what the German and Japanese people wanted. Americans implicitly assumed that their values were valid and applicable and that they would at the very least be morally negligible if those values were not adopted. They did not insist that Germany and Japan adopt political institutions reflecting those values. Belief in the universal validity of those values obviously reinforced and reflects those hypocritical elements of the American tradition that stress the United States's role as a redeemer nation and lead it to attempt to impose its values and often its institutions on other societies. . . .

NOTE

Consider the following observations of Owen Harries, 'Virtue by Other Means', *New York Times*, October 26, 1997, p. WK 15:

... Many, perhaps most, Americans of all political persuasions believe profoundly that it is their nation's right and duty—indeed its destiny—to promote freedom, justice and democracy in the world. . . . It is a noble and powerful impulse, one not casually to be ridiculed or dismissed. But acting on it—if one is concerned to be effective and not merely to feel virtuous—is more complicated and difficult than many human rights activists will allow.

Typically, the proponents of human rights see things in straightforward terms. They regard those rights as absolute, and demand consistency in their application, denouncing anything less as hypocrisy and cynicism. These denunciations are given some plausibility by the failure of administrations to live up to inflated official rhetoric on the subject. But the truth is that while individuals and special-interest groups are free to give human rights absolute and unqualified priority, governments are not.

For the activist, human rights are a cause. But when they are incorporated into a government's foreign policy, they become an interest, one among many. Their claims have to be balanced against those other interests, many of which—apart from having a compelling practical importance—have moral content and moral claims of their own (for example, peace, security, order, prosperity). The place that human rights will occupy in the hierarchy of interests will necessarily vary from occasion to occasion.

Sometimes, as when the violation of rights is horrendous and no other vital interest is at risk, they will rank very high; sometimes they will have to give way to other compelling interests. America's wartime alliance with Stalin's Soviet Union is a striking example of such a subordination. It would be convenient if all one's interests always pointed in the same direction, but they don't. . . .

The other factor that complicates the application of human rights policy—what makes it not a simple matter of consistency but a complicated one of judgment and discrimination—is the variability and particularity of circumstance. 'The circumstances', insisted Edmund Burke, 'are what render every civil and political scheme beneficial or noxious to mankind'. What makes good sense

in one set of circumstances may well be futile in another—and positively disastrous in a third. . . .

QUESTIONS

The article by Morgenthau was written before the growth of the human rights movement. What changes in these excerpts would the half century of that movement require?

What criticism could you make of Huntington's discussion of 'American values'—values that are 'universally valid and universally applicable', as applied to notions of democracy and individual rights?

Harries states that human rights, when 'incorporated into a government's foreign policy', become an interest, one among many. Do you agree? Do constitutionally important rights in a country like the United States, as they become relevant to matters of the highest importance for government internal policy, become an 'interest' like any other, to be 'balanced against those other interests'? If not in domestic policy, why is US foreign policy different?

In what respects does the argument about human rights and interests and national interests change when the policies and actions under discussion are those of international organizations in which a state is a member, rather than those directly of that state?

B. INTERNATIONAL HUMAN RIGHTS POLICIES IN U.S. FOREIGN POLICY

LOUIS HENKIN, *THE AGE OF RIGHTS*

(1990), at 77

Ch. 5. Human Rights and United States Foreign Policy

... For the most part, however, Congress did not attend seriously to the condition of human rights in other countries during the first twenty-five years of the postwar era and generally acquiesced in what the executive branch did. Congress had little occasion for formal involvement in the development of United States human rights policy. . . . The Senate, whose advice and consent is constitutionally required to human rights treaties as to others, had few occasions to consider agreements that aimed at the condition of rights in other countries. . . .

An independent Congressional initiative to shape United States human rights policy developed in the early 1970s. Under influence of concerned liberal members

of the House of Representatives, and responding to inadequacies in United Nations and other multilateral responses to human rights violations, Congress enacted a series of statutes declaring the promotion of respect for human rights to be a principal goal of United States foreign policy, and denying foreign aid, military assistance, and the sale of agricultural commodities to states guilty of gross violations of internationally recognized human rights. In addition, United States representatives were directed to act in international financial institutions so as to prevent or discourage loans to governments guilty of such violations. Congress also established a human rights bureau in the Department of State, and directed the department to report annually on the condition of human rights in every country in the world.

The Congressional program, it should be clear, was directed not at deviations from democratic governance as practiced by the United States (and by its European allies) but against 'consistent patterns of gross violations of internationally recognized human rights', those that nations publicly decried and that none claimed the right to do or admitted doing. Congress specified clearly the violations at which it aimed—'torture or cruel, inhuman or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction and clandestine detention of those persons, or other flagrant denial of the right to life, liberty or the security of person'. Also, it should be clear, this general legislation was not aimed at Communism and the Communist states since they received neither arms nor aid from the United States, but at the non-Communist Third World. In addition, Congress addressed human rights in particular countries, e.g., denying various aid to Chile, Argentina, South Africa, Uganda and others, when the condition of human rights in those countries was particularly egregious. Later, Congress imposed various human rights conditions on assistance to particular countries in Central America. In 1986, Congress enacted the Comprehensive Anti-Apartheid Act.

The Congressional program was never popular with the executive branch (regardless of political party), particularly with those who reflected the dominant, traditional attitudes in the Department of State. That program limited executive autonomy in the conduct of foreign policy. It required embassies to collect information often critical of the countries in which they 'lived'; it required the Department of State to publish information often critical of countries with which the United States had friendly relations. It injected into foreign policy elements that foreign governments, and many in the State Department, thought not to be United States business. It sometimes disturbed alliances and alignments, base agreements or trade arrangements, and friendly relations generally.

Congress made some concessions to executive branch resistance. It gave the Aid Administrator authority to disregard the statutory limitation when assistance 'will directly benefit the needy people in such country'. It authorized security assistance to a country guilty of gross violations if the President certified that 'extraordinary circumstances exist warranting provision of such assistance', or if the President finds that 'such a significant improvement in its human rights record has occurred as to warrant lifting the prohibition on furnishing such assistance in the national interest of the United States'.

In the main, the tension between Congress and the executive branch reflected not partisan or political differences, but the different positions and perspectives of the two branches. Congress was closer to popular sentiment in the United States, which was responsive to the human condition in other countries, and wished to do something about it or at least to dissociate the United States from repressive regimes in general or in particular countries. The executive branch, more removed from constituent influence in the United States, was closer to official sentiment in other countries with which it had to deal; it was not indifferent to, but less swayed by moral concerns, more attuned to international political and diplomatic needs and mores. . . .

I have described tensions within the executive branch and differences between the two branches. There have also been differences between Presidents and between presidential administrations, reflecting some partisan or ideological differences and some personal differences.

In sum, human rights legislation in the United States does not govern as other law does. Although gross violations of human rights are rampant in many countries, including some that are important beneficiaries of United States aid and arms trade, there have been virtually no cases in which military assistance or foreign aid was in fact cut off on human rights grounds. But the law is hardly a dead letter and Congress is not a toothless tiger. The existence of the law, the constitutional posture of Congress and President, establish a political context and generate a process that have important human rights consequences. Sometimes they deter Presidents from asking for aid for blatant violators, as in Guatemala. Sometimes they compel the President to press would-be beneficiary governments to act to improve the human rights condition in these countries, so that the President could certify to Congress at least significant improvement. . . .

Prospect

The human rights policy of the United States is part of a larger foreign policy in the national interest broadly conceived. National interest is not a simple, single concern, and United States foreign policy has often struggled with competing national interests. But the ambiguities, ambivalences, and contradictions of United States human rights policy have been particularly glaring. . . .

No one in the United States suggests that the United States should end human rights violations in other countries by war and conquest; that would be a violation of international law and would bring more human suffering than it would cure. Some favor economic sanctions such as boycotts but most knowledgeable Americans recognize that such measures are generally ineffective and might damage other United States interests, though it may sometimes be necessary to make a political-moral statement as Congress did in enacting the Comprehensive Anti-Apartheid Act of 1986. But human rights advocates insist that the United States is fully entitled to withhold its foreign aid and deny arms to regimes that are guilty of

consistent patterns of gross violations of human rights, as it has denied them in Communist countries. . . .

US DEPARTMENT OF STATE, 1999 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES

2000, http://www.state.gov/www/global/human_rights/99hrp_index.html

This report is submitted to the Congress by the Department of State in compliance with sections 116(d) and 502(b) of the Foreign Assistance Act of 1961 (FAA), as amended, and section 504 of the Trade Act of 1974, as amended. The law provides that the Secretary of State shall transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate, by February 28, a full and complete report regarding the status of internationally recognized human rights, within the meaning of subsection (A) in countries that receive assistance under this part, and (B) in all other foreign countries which are members of the United Nations and which are not otherwise the subject of a human rights report under this Act. We have also included reports on several countries that do not fall into the categories established by these statutes and that thus are not covered by the congressional requirement.

. . . The first reports, in 1977, covered only countries receiving U.S. aid, numbering 82; this year 194 reports are submitted.

In August 1993, the Secretary of State moved to strengthen further the human rights efforts of our embassies. All sections in each embassy were asked to contribute information and to corroborate reports of human rights violations, and new efforts were made to link mission programming to the advancement of human rights and democracy. In 1994 the Bureau of Human Rights and Humanitarian Affairs was reorganized and renamed as the Bureau of Democracy, Human Rights, and Labor, reflecting both a broader sweep and a more focused approach to the interlocking issues of human rights, worker rights, and democracy. The 1999 human rights reports reflect a year of dedicated effort by hundreds of State Department, Foreign Service, and other U.S. Government employees.

Our embassies, which prepared the initial drafts of the reports, gathered information throughout the year from a variety of sources across the political spectrum, including government officials, jurists, military sources, journalists, human rights monitors, academics, and labor activists. . . .

After the embassies completed their drafts, the texts were sent to Washington for careful review by the Bureau of Democracy, Human Rights, and Labor, in cooperation with other State Department offices. . . . Department officers drew on their own sources of information. These included reports provided by U.S. and other human rights groups, foreign government officials, representatives from the United Nations and other international and regional organizations and institutions, and experts from academia and the media. Officers also consulted with experts on worker rights issues, refugee issues, military and police matters,

though's issues, and legal matters. The guiding principle was to ensure that relevant information was assessed as objectively, thoroughly, and fairly as possible.

The reports in this volume will be used as a resource for shaping policy, conducting diplomacy, and making assistance, training, and other resource allocations. They also will serve as a basis for the U.S. Government's cooperation with private groups to promote the observance of internationally recognized human rights.

The Country Reports on Human Rights Practices cover internationally recognized individual, civil, political, and worker rights, as set forth in the Universal Declaration of Human Rights. . . .

US LEGISLATION ON MILITARY AID: HUMAN RIGHTS PROVISIONS

Human Rights and Security Assistance

Sec. 502B of the Foreign Assistance Act of 1961, as amended, 22 U.S.C.A. 2304

(a) *Observance of human rights as principal goal of foreign policy; implementation requirements*

(1) The United States shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.

(2) Except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights. Security assistance may not be provided to the police, domestic intelligence, or similar law enforcement forces of a country . . . the government of which engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certifies in writing . . . that extraordinary circumstances exist warranting provision of such assistance. . . .

(3) In furtherance of paragraphs (1) and (2), the President is directed to formulate and conduct international security assistance programs of the United States in a manner which will promote and advance human rights and avoid identification of the United States, through such programs, with governments which deny to their people internationally recognized human rights and fundamental freedoms, in violation of international law or in contravention of the policy of the United States as expressed in this section or otherwise.

(4) In determining whether the government of a country engages in a consistent pattern of gross violations of internationally recognized human rights, the President shall give particular consideration to whether the government—

- (A) has engaged in or tolerated particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998¹; or
- (B) has failed to undertake serious and sustained efforts to combat particularly severe violations of religious freedom when such efforts reasonably have been undertaken.

(b) Report by Secretary of State on practices of proposed recipient countries; considerations

The Secretary of State shall transmit to the Congress, as part of the presentation materials for security assistance programs proposed for each fiscal year, a full and complete report, prepared with the assistance of the Assistant Secretary of State for Democracy, Human Rights, and Labor, and with the assistance of the Ambassador at Large for International Religious Freedom, with respect to practices regarding the observance of and respect for internationally recognized human rights in each country proposed as a recipient of security assistance. Wherever applicable, such report shall include information on practices regarding coercion in population control, including coerced abortion and involuntary sterilization. Such report shall also include, wherever applicable, information on violations of religious freedom, including particularly severe violations [as defined in the International Religious Freedom Act of 1998.] . . . In determining whether a government falls within the provisions of subsection (a)(3) of this section and in the preparation of any report or statement required under this section, consideration shall be given to—

- (1) the relevant findings of appropriate international organizations, including nongovernmental organizations, such as the International Committee of the Red Cross; and
- (2) the extent of cooperation by such government in permitting an unimpeded investigation by any such organization of alleged violations of internationally recognized human rights.

(c) Congressional request for information; information required; 30-day period; failure to supply information; termination or restriction of assistance

(1) Upon the request of the Senate or the House of Representatives by resolution of either such House, or upon the request of the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, the Secretary of State shall, within thirty days after receipt of such request, transmit to both such committees a statement, prepared with the assistance of the Assistant Secretary of State for Democracy, Human Rights, and Labor, with respect to the country designated in such request, setting forth—

- (A) all the available information about observance of and respect for human rights and fundamental freedom in that country, and a detailed description of practices by the recipient government with respect thereto;
- (B) the steps the United States has taken to —

¹ [Eds.] Paragraph (4) was added pursuant to the International Religious Freedom Act of 1998.

- (i) promote respect for and observance of human rights in that country and discourage any practices which are inimical to internationally recognized human rights, and
 - (ii) publicly or privately call attention to, and disassociate the United States and any security assistance provided for such country from, such practices;
- (C) whether, in the opinion of the Secretary of State, notwithstanding any such practices—
- (i) extraordinary circumstances exist which necessitate a continuation of security assistance for such country, and, if so, a description of such circumstances and the extent to which such assistance should be continued (subject to such conditions as Congress may impose under this section), and
 - (ii) on all the facts it is in the national interest of the United States to provide such assistance; and
- (D) such other information as such committee or such House may request.

(3) In the event a statement with respect to a country is requested pursuant to paragraph (1) of this subsection but is not transmitted in accordance therewith within thirty days after receipt of such request, no security assistance shall be delivered to such country except as may thereafter be specifically authorized by law from such country unless and until such statement is transmitted.

(d) Definitions

For the purposes of this section—

(1) the term 'gross violations of internationally recognized human rights' includes torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person. . . .

(e) Removal of prohibition on assistance

Notwithstanding any other provision of law, funds authorized to be appropriated under subchapter I of this chapter may be made available for the furnishing of assistance to any country with respect to which the President finds that such a significant improvement in its human rights record has occurred as to warrant lifting the prohibition on furnishing such assistance in the national interest of the United States.