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HUMAN RIGHTS IN U.S. FOREIGN RELATIONS:
SIX KEY QUESTIONS IN THE CONTINUING POLICY DEBATE

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ABSTRACT

This report provides background information and a general overview of the role of human rights in U.S. foreign policy. It includes a discussion of some traditional arguments about how international human rights concerns might be integrated with other foreign policy factors. It also includes a discussion of the definition of human rights, of U.S. international obligations to promote human rights, and the apparatus and procedures available to the U.S. Government for implementing human rights policy. Particular attention is paid to congressional actions, not only in debating and holding hearings on human rights issues, but especially in enacting laws to assure that U.S. foreign policy formulation and practice include consideration of the status of human rights in other countries.

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INTRODUCTION

U.S. foreign policy has traditionally included concern for the life, liberty, and welfare of the individual citizens of other nations. Especially since the United States became a world leader during the 1940's, it has emphasized the fundamental rights of all human beings and has attempted to improve the observation of these rights throughout the world. The United States was instrumental in incorporating human rights provisions into the U.N. Charter and in the drafting and adoption in 1948 of the Universal Declaration of Human Rights which established a common standard of achievement of fundamental rights for all peoples and all nations. While U.S. policies and programs have varied considerably through the years, America's dedication to human dignity and rights has remained a constant tenet.

During the 1950's and 1960's the United States pursued these objectives by helping countries deter or repel Communist aggression, which was viewed as the greatest threat to the fundamental freedom of both individuals and states, and by assisting in the economic development of strategic countries. The pursuit of U.S. national security and the protection of basic human rights were viewed for the most part as being the same. The methods used to achieve these goals included mutual security and cooperation agreements, provision of economic and military assistance, use of U.S. combat forces in Korea and Vietnam, diplomatic initiatives with other nations and international organizations, various covert

operations, public information programs, visitor and exchange programs, Peace Corps, and police training programs.

During the 1970's, the perceived threat of Communist expansion decreased, at least in areas such as Latin America and the Philippines. Greater U.S. attention was drawn to the internally repressive actions of governments that the United States was assisting. Critics increasingly challenged U.S. support of authoritarian regimes. They argued that the U.S. policy of containing communist expansion did not justify the repressive practices of allied dictators.

During and after the U.S. involvement in Vietnam, Americans began to question the real effect of U.S. economic and military assistance, and especially of public safety (police training) programs. Did such U.S. programs contribute to the freedom of the people they were intended to help or did they instead facilitate the repressive actions of unpopular regimes? Were U.S. security and international human rights interests always compatible or were their ends and means of fulfillment separate or even contradictory at times? If they were distinct should U.S. security interests be served even at the expense of the human rights of individuals in other countries -- at the price of aiding repressive governments in maintaining themselves in power? Were U.S. security interests ultimately served by giving U.S. support to violators of basic human rights?

These and related issues were the focus of much congressional debate and legislative action during the 1970's. The result was enactment of legislation to assure that the human rights practices of other governments were considered in U.S. foreign policy decisions, especially foreign assistance decisions. In addition Congress passed legislation establishing the position of Assistant Secretary of State for Human Rights and Humanitarian Affairs, appointed with

the advice and consent of the Senate. Congress wrote human rights provisions into bilateral economic and security assistance laws, including requirements for annual reports on the status of human rights in all other members of the United Nations. Congress also limited or cut off assistance to a number of countries on human rights grounds.

Building upon the wave of congressional and public interest of the mid 1970's, President Jimmy Carter unquestionably drew greater attention to the human rights practices of other governments than had his predecessors. Carter's actions also, however, raised doubts about the wisdom of the U.S. Government vigorously and publicly promoting human rights. He was, moreover, criticized for inconsistent or harmful policy application. The outspokenness of Carter officials about violations of human rights in particular countries -- especially allied or friendly countries -- was viewed by critics as detrimental to U.S. national security, economic, political, and other interests. While many accept the promotion of human rights as a serious moral concern, there is considerable disagreement as to the priority such concerns should be given in U.S. foreign policy. In the view of critics of a vigorous and open human rights policy, U.S. strategic interests were not served by intervening in the domestic affairs of friends and allies.

At the start, President Ronald Reagan's Administration made clear that human rights would receive much lower priority in foreign policy considerations than they did under the Carter Administration, and that human rights policy would be implemented through quiet diplomacy rather than through official public actions. In a speech to the Trilateral Commission in Washington on March 31, 1981, Secretary of State Haig stressed the need to distinguish between totalitarian and authoritarian regimes in U.S. human rights policy. He outlined the imperatives of Reagan human rights policy in the following terms:

The first imperative is to strengthen the U.S., its allies and friends, the main safeguard against the spread of totalitarian aggression.

Second, we must improve our own example as a society dedicated to justice.

Third, we should adopt a sense of proportion in dealing with violators -- the authoritarian versus the totalitarian regime.

Fourth and finally, it is imperative that we examine the credentials and program of the opposition as well as the government -- we must see clearly what change portends for human rights in the future.

The approach to human rights policy thus far enunciated by the Reagan Administration appears to mesh U.S. security and human rights concerns as was done in the 1950's and 1960's -- focusing on security assistance as a positive means for maintaining the security and freedom of other peoples from the threat of totalitarian oppression. In the words of Under Secretary of State for Political Affairs, Walter Stoessel, Jr., "our objective is to make our security interests and our human rights concerns mutually reinforcing so that they can be pursued in tandem." 1/

Since the vociferous public reaction and Senate Foreign Relations Committee rejection of President Reagan's nomination of Ernest Lefever to be Assistant Secretary of State for Human Rights and Humanitarian Affairs, the Administration appears to be modifying its public statements on human rights policy. In announcing the nomination of Elliott Abrams for the position on October 30, 1981, President Reagan acknowledged that "the promotion of liberty has always been a central element of our Nation's foreign policy. In my administration, human rights considerations are important in all aspects of our foreign policy."

1/ Statement before the Subcommittee on Human Rights and International Organizations of the House Committee on Foreign Affairs on July 14, 1981.

Excerpts from an internal State Department memorandum 2/ published in the New York Times on November 5, 1981, indicate that public and congressional dissatisfaction with past Reagan human rights policy may have induced the Administration to enunciate a stronger human rights stand:

congressional belief that we have no consistent human rights policy threatens to disrupt important foreign policy initiatives. Human rights has been one of the main avenues for domestic attack on the Administration's foreign policy.

While the public human rights statements and some approaches of the Reagan Administration may differ from those of its predecessor, the underlying issue is still whether the internal conditions of other countries should influence U.S. policy toward those countries. Clearly this basic foreign policy issue will continue to be a prominent and contentious issue during the 1980's. The Administration's implementation of its human rights policy statements and existing U.S. human rights laws will continue to be important congressional concerns. As the process of action and reaction to human rights initiatives by the executive and legislative branches develops during the Reagan Administration, the continuing debate revolves around six key questions:

1. Should the U.S. Government attempt to change the behavior of foreign governments toward their own citizens?
2. What definition of "human rights" should U.S. policy-makers employ?
3. How should the U.S. Government implement its human rights policy?
4. What apparatus and procedures should the executive branch use to promote international human rights?

2/ According to the New York Times account, the memorandum was prepared by Deputy Secretary of State William Clark and Under Secretary of State for Management Richard Kennedy, and approved by Secretary of State Alexander Haig, Jr.

5. What human rights role should Congress play?
6. What international obligations should the United States assume?

This report presents central elements in the debates surrounding these questions and shows how recent administrations have responded to some of these issues in policy statements and foreign policy decisions. 3/

SHOULD THE U.S. GOVERNMENT ACTIVELY ATTEMPT TO CHANGE THE BEHAVIOR OF FOREIGN GOVERNMENTS TOWARD THEIR OWN CITIZENS?

Views of U.S. decision-makers on human rights policy cover a wide spectrum, ranging from advocacy of complete non-intervention in the internal affairs of other countries to the other extreme of belief in the strictest sanctions against governments that violate the rights of their citizens. Those advocating the latter position believe that betterment of the human condition is a fundamental concern of governments and a basis for U.S. international activity. They support the use of all possible means to implement human rights policy including withholding of diplomatic relations, economic and military assistance, trade, and all forms of international cooperation with the offending government.

At the other extreme are those who place promotion of foreign human rights near the bottom of the list of U.S. foreign policy concerns. In this view the primary and proper concern of U.S. foreign policy is the security, freedom and wellbeing of the United States. Supporters of this position feel that the United States should not concern itself with how a government treats its own

3/ This report supplements the issue brief, IB81125, which focuses on current issues and tracks recent legislative and executive branch activity relating to this subject.

people (unless such actions directly threaten this nation) but rather with that government's conduct toward the United States and U.S. international interests. In this view the United States has no business interfering in the internal concerns of another government and could well be charged with arrogance and even "imperialism" in its human rights ventures.

An Active U.S. Human Rights Policy -- Arguments in Favor

Those who support an active U.S. human rights policy stress the importance of the protection of human rights as a foundation for a peaceful and stable international system. In this view it is imprudent to ignore extreme violations of human rights in other countries, both for the effect in that country and as a means of safeguarding the entire international system against excesses which may reach beyond the state in question. In an age of mass communications, the United States must be concerned about the rights of people everywhere. The rights of U.S. citizens may ultimately depend on concern for the rights of other peoples.

An active international human rights policy makes the United States credible and consistent with its own traditions and practices. Defense of human rights adds extra dimensions of leadership distinguishing the United States from the Soviet Union.

Those who advocate a firm human rights policy argue that U.S. support for friendly but internally repressive regimes, though appealing in the short term is likely to be seriously counterproductive in the longer term. Military aid adds to the power and prestige of recipient governments, but seldom improves the lives of the people of that state. Such regimes have often not been

durable. Through its support the United States has been identified with those regimes and their abuses. Opposition forces that subsequently come to power consequently are often antagonistic to the United States. Moreover, the United States loses respect among democratic forces abroad and faces disillusionment among its own public.

Some advocates of an active U.S. human rights policy feel that the United States too often in the past has aided developing country regimes that oppressed their poor and crushed dissent because there seemed to be no other way to help the poor of such countries. Such U.S. policies, they feel, waste limited foreign aid money. Since the United States has limited amounts of aid to dispense, it should make certain that U.S. funds do not contribute to deprivation of human rights elsewhere -- that economic assistance is used for constructive development purposes. Proponents of active use of U.S. assistance programs to further human rights feel that cutting off assistance or trade to human rights violators could be accompanied by increased trade or aid to countries with good human rights records. Thus the U.S. economy would not be hurt. In this view, an active human rights policy, moreover, would not necessarily involve intervening or telling other countries how to run their affairs, but telling the world that the United States insists on certain standards if it is to assist these countries or do business with them.

Supporters of a forceful U.S. human rights program point out that pursuit of such a policy has raised world consciousness on human rights, making it a topic of concern and discussion in other countries. Consequently, some governments have begun to assess the costs of repression, some Western democracies have also given human rights greater priority, and the U.S. image as a defender of human rights certainly did improve. In this view, the improvements pointed

to by Reagan Administration officials in 1981, especially in Latin American countries where U.S. human rights policy was especially active in previous years, may well be, in part, the result of that earlier U.S. activism.

Proponents of such activism point to improvements in conditions in some countries, such as: release of political prisoners, decreases in the numbers of "disappearances", lifting of martial law, agreements to international inspections of various kinds, and more open political trials. Clearly some of these changes are merely cosmetic, perhaps to lessen external pressures or to retain foreign assistance funding, but they may also be the beginning of positive change, and they certainly are marked improvements in the condition of the individuals who may have been released from prison, for example.

An Active U.S. Human Rights Policy -- Arguments Against

On the other hand, many question whether the U.S. human rights policy of the late 1970's has actually had a positive effect on human rights conditions in other countries. Some argue that U.S. pressures on international violators may have had the opposite effect of what was intended. They point to developments in Nicaragua and Iran as evidence of the destabilizing role that U.S. human rights policy may have played in allegedly encouraging dissidents to challenge the existing regime and create domestic chaos.

Some feel that public U.S. human rights activities have needlessly exacerbated relations with other countries. In this view public U.S. Government statements on behalf of a few dissident intellectuals do little to advance the rights of the dissidents, but may do much to damage relations with the government involved. Governments subjected to public U.S. pressure to change domestic policies may view such actions as blackmail and be unwilling, and possibly be politically unable to comply. The greater the public pressure, in

this view, the more indignantly foreign leaders may feel that they have to reject such pressure.

The shaky state of the domestic and international economy should in the view of some opponents of an active human rights policy, lead the United States to weigh carefully the consequences of using economic power to affect the internal affairs of other states. Restrictions on arms sales to human rights violators may clash with U.S. interests in an improved balance of trade, affect domestic employment or force governments to buy from other countries. It is likely that domestic considerations, especially the fear of loss of American business and jobs, were important in 1978 in turning back the efforts of some human rights advocates to include U.S. trade along with foreign aid as a major tool to be used to influence human rights conditions in other countries.

A widely perceived problem with enacted human rights legislation is that it was not designed directly to further specific U.S. interests, but rather to pressure other governments to make changes in their domestic policies. Thus, the measure of its success is in the improvement of human rights conditions in other countries. Such a result might at times be achieved at a cost to specific U.S. interests.

Moreover, some opponents of an active U.S. human rights policy fear that withdrawing all assistance to avoid identification of the United States with and expenditure of U.S. resources on a repressive regime may be counterproductive in achieving improvement in human rights. In this view continued assistance may serve as a lever not only to promote human rights but also to protect other U.S. interests such as oil supplies or strategic bases in that country. Reduction or elimination of economic assistance in order to pressure a government to change human rights policies may also have adverse effects on the economic and social conditions of the citizens of that country.

Many in the U.S. public and in Congress associate international human rights with traditional U.S. civil and political liberties and not with the wide-ranging scope of rights outlined in the U.N. Universal Declaration of Human Rights. In order to support the promotion of economic and social needs/ rights (which some see as important U.S. human rights concerns) probably greater U.S. outlays would be required in the form of increased spending on foreign aid programs. While many U.S. citizens favor public statements and some actions supporting international human rights, few would probably favor a human rights policy which required increased taxes.

The above discussion outlined some of the controversy about an active U.S. policy to change the behavior of a foreign government toward its own citizens. While some advocate complete non-intervention in the internal affairs of other states and others advocate vigorous U.S. actions to end serious human rights violations, most views seem to be between these two extremes -- acknowledging the importance of human rights considerations, but also acknowledging important security and economic interests. The problem with this middle-ground approach lies in its specific implementation. Some feel that U.S. human rights advocacy during the Carter Administration was too selective; that rightist governments friendly to the United States often received a disproportionate share of criticism, while human rights violations in Communist countries were hardly mentioned. In this view U.S. human rights policy was preoccupied with relatively minor abridgements of certain rights in authoritarian states while overlooking massive violations in Communist states.

Others are troubled that U.S. concern for human rights in particular countries recently appears most vociferous toward "adversary" countries with which U.S. relations are tenuous and over whose internal policies the United States

has virtually no influence or leverage. Thus, in this view, it is easy to express concern for the human rights of individual dissidents and of Jewish and other minorities in such a traditional "enemy" state as the Soviet Union, while little public concern is expressed about human rights situations in friendly, client or allied states. Critics of this approach view it as nothing but a cover for close ties to repressive right-wing governments. How, they ask, are U.S. protests over Soviet violations of human rights to be credible if the administration is silent about violations of rights in countries such as Argentina or the Philippines? Will outspokenness about only Communist violations not be seen as cold war rhetoric rather than concern about human rights?

WHAT DEFINITION OF "HUMAN RIGHTS" SHOULD U.S. POLICY-MAKERS EMPLOY?

Societies differ substantially in their understandings of the basic rights to be accorded all persons. In order to formulate and implement an effective human rights policy it is, therefore, necessary to decide which rights are to be the focus of U.S. Government concern. While Congress has not offered a specific definition of human rights, it has provided a framework for consideration of human rights issues. In legislation Congress has repeatedly referred to "internationally recognized human rights," and tied U.S. foreign activity to the standards and criteria established by the international community.

Using language often found in U.N. human rights resolutions, Congress has stated that "gross violations of internationally recognized human rights" include "torture or cruel, inhuman treatment or punishment, prolonged detention without trial, and other flagrant denial of the right to life, liberty, or the security of person." These specific words have been repeated in almost all legislation relating to human rights. Section 701 of the International

Security and Development Cooperation Act of 1980 (P.L. 96-533) broadened the list of rights specifically enumerated to include "causing the disappearance of persons by the abduction and clandestine detention of those persons."

Legislation prohibiting various forms of economic assistance to countries violating human rights is not binding if "such assistance will directly benefit the needy people in the recipient country." Thus Congress has acknowledged that to deny assistance to the world's very poor might in itself contribute to a denial of their right to fulfillment of the most vital of human needs--food, shelter, health care and education.

Recent laws emphasize three elements of the term "internationally recognized human rights": civil and political rights, basic human needs, and integrity of the person. These same elements were also employed by the Carter Administration as a basis for activity in the human rights area. Secretary Vance on April 30, 1977, identified human rights in the following terms:

First, there is the right to be free from governmental violation of the integrity of the person. Such violations include torture; cruel, inhumane or degrading treatment or punishment; and arbitrary arrest or imprisonment. And they include denial of fair public trial, and invasion of the home.

Second, there is the right to the fulfillment of such vital needs as food, shelter, health care and education. We recognize that the fulfillment of this right will depend, in part, upon the stage of a nation's economic development. But we also know that this right can be violated by a government's action or inaction--for example, through corrupt official processes which divert resources to an elite at the expense of the needy, or through indifference to the plight of the poor.

Third, there is the right to enjoy civil and political liberties--freedom of thought; of religion; of assembly; freedom of speech; freedom of the press; freedom of movement both within and outside one's own country; freedom to take part in government.

Vance said it was U.S. policy to "promote all these rights," but recognized that fulfillment of basic human needs depends partly upon the stage of a nation's economic development. The State Department's most recent "Country Reports on

Human Rights Practices," provided to Congress in 1981, gives law makers basic information about human rights observance in all three categories. The Reagan Administration has emphasized individual rights and civil and political rights, while expressing caution about economic rights.

In his July 14, 1981 testimony. Under Secretary of State Walter Stoessel, Jr., stated that "torture and physical abuse are especially abhorrent. We also attach particular importance to promotion of political rights." Assistant Secretary of State for Human Rights and Humanitarian Affairs Elliott Abrams during his confirmation hearing on November 17, 1981, distinguished between civil and political "rights" and economic and social "aspirations." He felt that civil and political rights were freedoms from the state which were realizable immediately. Economic and social rights, on the other hand, could only be guaranteed by the state and would not be attainable in many states for a long time.

To date, it appears that both Congress and the Executive have taken action primarily against violators of the integrity of the individual and political rights. Reluctance to move against violators of economic and social rights may stem, in part, from: repeated international criticism of the United States' own record on observation of certain economic and social rights; lack of consensus in U.S. society that economic, social and cultural rights are legally enforceable rights on an equal footing with civil and political rights; and reservations about the ability of some nations, especially very poor ones, adequately to address such needs in the near or even long term. In many situations it is within the power of a government to stop arresting political opponents, to stop using torture, to hold elections, or to allow labor unions to organize. It may not always be possible, however, for a government in a short time to substantially improve the economic and social conditions of its people.

Most active concern in international forums has been directed toward torture, arbitrary imprisonment, and murder of political opponents which form a core of issues on the integrity of the person on which broad international agreement can be reached. Probably few governments would argue that they have a right systematically to abuse their citizens in the above ways. Rather, governments plead special, sometimes temporary, circumstances which necessitate certain human rights restrictions. Among the circumstances often cited are: that the rights of the individual are subordinate to the duties of the individual as part of the community, that the country is threatened by internal or external aggression or subversion, or that the needs of economic and social development supercede all other considerations.

HOW SHOULD THE U.S. GOVERNMENT IMPLEMENT ITS HUMAN RIGHTS POLICY?

Once a decision is made that the U.S. Government should take some form of action on a human rights issue, the question arises of how to go about doing so. The methods available for official U.S. responses to serious human rights violations are many. The difficulty is in selecting the approaches that are most likely to achieve the desired end at the least possible cost. Different countries, different cultures, different priorities, and different U.S. interests may require different U.S. responses. Some traditional options exercised in various situations in the past have included: "quiet diplomacy," public statements or denunciations, requests for international organizations to take action, as well as increasing or limiting or cutting off aid, trade, or military sales, and even severing or limiting U.S. diplomatic representation.

Until the 1970's various U.S. programs including international military education and training (IMET), AID police training, ICA (formerly USIA)

informational and exchange programs as well as a vast array of economic and military assistance programs were used to support the security and freedom of people threatened by communist aggression -- usually viewed as an external threat or internal subversion fomented by outside forces. During the late 1970's some members of Congress began to question the effectiveness of these programs in furthering the freedom of other peoples. During the late 1970's many congressional and executive human rights initiatives focused on protection of the human rights of individuals in many cases against actions by their own governments. Efforts were made during that period to dissociate U.S. funded programs from the actions of repressive governments. Attention was paid to the possible misuse of U.S. assistance for repression rather than for attainment of security from external threats. The possible negative effects of U.S. assistance on the internal situations in recipient countries was the focus of much attention. The Reagan Administration approach appears again to focus on use of U.S. assistance programs -- especially security assistance -- as a positive means for maintaining the security and independence of friendly countries from Communist inroads.

The following discussion will outline some of the ways in which U.S. human rights policy has been implemented in recent years.

Use of Quiet Diplomacy

Reagan Administration officials have declared that quiet diplomacy will be the preferred means of implementing U.S. human rights policy. Quiet diplomacy may be an especially effective means of assisting individual victims of repression. In some situations it may be the best way to persuade a government to cease a persistent violation or to improve human rights behavior generally.

Quiet diplomacy allows a sovereign government to respond to intercessions without appearing to cave in to outside pressure. A disadvantage to this approach is that the government bringing the outside pressure can not take credit for success without destroying the "quiet" nature of the approach.

Also, many criticize this approach as ineffective unless it is made very clear that other approaches will be used if quiet diplomacy fails. Moreover, since such actions are taken in private by diplomats interested in maintaining working relationships with their counterparts from an "offending nation," quiet diplomacy often generates skepticism as to whether U.S. objections to human rights violations are conveyed forcefully.

Use of Security Assistance

In matters concerning human rights, "security assistance" is defined as including aid to foreign governments under any of the following programs: (1) Military Assistance Program (MAP), which is grant aid; (2) Economic Support Fund (ESF), formerly Security Supporting Assistance; (3) International Military Education and Training (IMET); (4) peacekeeping operations; (5) Foreign Military Sales (FMS) for cash, credit, or guaranteed funds; and (6) commercial arms sales, or the issuance of any license for the private export of defense articles or services (section 502B (d)(2) of the Foreign Assistance Act of 1961, as amended).

Limiting assistance or military sales for human rights reasons usually also involves many other important issues in bilateral relations. The primary leverage that may be achieved by restricting U.S. arms transfers to a country is likely to come from the expression of U.S. displeasure and the threat of worsening political, security, and economic relations rather than from the

deprivation of specific military material, which often can be obtained elsewhere. Reductions in security assistance can be effective in symbolically dissociating the United States from regimes it has been "supporting."

For most observers, the United States becomes far more "identified" with and (on occasion) complicit in the actions of a foreign state by providing arms, police equipment, or military training to that state than by trading with it or sending it food or development assistance. Despite official restrictions, U.S.-supplied weaponry can be directly utilized to suppress the human rights of a recipient's citizens. Vital human needs may also be adversely affected if a foreign government spends a disproportionate amount of the national wealth on such weapons. On the other hand, American arms may serve the cause of human rights in certain instances. Even when a government has a poor human rights record, the argument can be made that withdrawing U.S. security assistance may weaken that country to the point where it is made vulnerable to attack or insurrection -- conditions which could worsen the human rights situation. Such an aid withdrawal, may in addition, strain relations to the point where U.S. human rights admonitions are totally ignored. By continuing a military supplier relationship, it is argued, U.S. officials are at least afforded continuing opportunities to discuss human rights issues with foreign leaders and policy makers.

There appears to be wide agreement that, at best, a carrot-and-stick application of security assistance to human rights issues has a marginal impact on human rights observance. Program reduction or termination has been threatened and at times exercised; but many government officials believe that more attention should be paid to using security assistance programs in a positive way.

Use of Economic AssistanceBilateral Assistance

Congress has declared that a principal objective of U.S. foreign policy is the "encouragement and sustained support of the people of developing countries" in building "economic, political, and social institutions which will improve the quality of their lives." Section 116 of the Foreign Assistance Act stipulates that no development assistance may be provided to the government of any country which grossly violates its citizens' human rights, "unless such assistance will directly benefit the needy people in such country." Congress has at times lamented the lack of sufficiently rigorous examination of the benefits for needy people of certain assistance programs.

The dilemmas inherent in denying economic assistance to governments violating the rights of their citizens have concerned Congressmen and policymakers for several years. Can the United States hope to promote respect for human rights in a country by withholding aid from the country's government? Or will the U.S. prohibition further weaken the foreign nation's ability to ensure human rights? Will offending governments cease their violations in the belief that U.S. assistance may later resume? Or will resentment at the American action be so great as to lead to a deterioration in relations and no improvement in human rights? Can the United States dissociate itself from a violating government and still channel assistance to its needy citizens? Or must any use of the "needy people loophole" inevitably redound to the benefit of the repressive government?

In actual practice, Section 116 of the Foreign Assistance Act has never been directly applied to cut off U.S. assistance. This is because the

sanctions come into play only if a country is officially stated to have demonstrated a "consistent pattern of gross violations of internationally recognized human rights." The reports prepared by the State Department have carefully avoided citing any country as a gross violator. In the only case in which Congress has described a country -- Uganda in 1978 -- as exhibiting a "consistent pattern of gross violations of internationally recognized human rights," no automatic termination of aid followed, since no aid had been authorized. Congress did impose a total trade ban (excluding cereal grains) on Uganda by adding a section to the Bretton Woods Agreement Act, Amendments, (P.L. 95-435).

The Executive, wishing to signal its displeasure with a country's human rights practices or anticipating a similar desire on the part of the Congress, has occasionally requested reduced development aid. Congress for its part has never followed the cumbersome aid termination procedures in section 116 and 502B (for security assistance) of the Foreign Assistance Act. Instead Congress has short-circuited these provisions by adding country-specific legislation to aid authorization and appropriation measures. Congress has mandated a patchwork of country-specific aid limitations, rather than a careful, comprehensive policy or program to enhance the observation of human rights.

Congressional attempts to use economic leverage against human rights violators also extend to the Export Import Bank and the Overseas Private Investment Corporation (OPIC). In 1977 Congress amended the Export-Import Bank Act of 1945 to require Ex-Im Bank's Board of Directors to "take into account, in consultation with the Secretary of State, the observance and respect for human rights in the country to receive the exports supported by a loan or financial guarantee and the effect such exports may have on human rights in such country." Attempts to add more stringent human rights language were defeated

the following year. Opponents argued that the Bank was concerned with trade and not aid, and that to place restrictions on an institution whose purpose was to stimulate American exports would jeopardize efforts to reduce unemployment and the balance of payments deficit. Section 4 of the Export-Import Bank Act of 1978 deleted the human rights provision added by the 1977 legislation, and provided instead that the Export-Import Bank should deny credit for nonfinancial and noncommercial considerations "only in cases where the President determines that such action would be in the national interest where such action would clearly and importantly advance United States policy" in areas such as human rights and international terrorism.

Multilateral Assistance

The United States presently channels a substantial portion of its economic assistance through international financial institutions (IFIs) -- the World Bank (IBRD), International Finance Corporation (IFC), International Development Association (IDA), Inter-American Development Bank (IDB), Asian Development Bank (ADB), and the African Development Fund (ADF). Neither Congress nor the Executive has, however, been able to find an appropriate mechanism to control or influence foreign assistance through these multilateral channels. U.S. attempts during the late 1970's to force the international banks to take human rights considerations into account in making loan decisions run counter to the U.S. policy of keeping international banks and various U.N. specialized agencies free from politics. The United States withdrew from the International Labor Organization in November 1977 precisely because it believed the organization had yielded to political pressure.

Whether human rights concerns should play a significant role in the operations of the IFIs is an issue of vital importance for U.S. policy and for the institutions themselves. Some Congressmen have advocated attaching conditions to U.S. contributions to various financial institutions to demonstrate the concerns of U.S. human rights policy. The IFIs, of course, cannot accept such restricted contributions without changes in their charters.

At present no IFI makes human rights observance a formal criterion for assistance eligibility. Indeed, officials of these institutions, fearing politicization of major lending activities, have warned repeatedly against the United States injecting a human rights standard as a condition of participation. Some have also argued that the United States unnecessarily antagonizes countries without improving human rights conditions when it opposes loans which are eventually approved. The United States cannot veto loans from the banks, except for concessional loans from the Inter-American Development Bank. Thus without support from other member nations, its negative votes only place the United States on record without affecting the approval of the IFI aid.

Limitations on Private Business Activities

Many observers feel that American banks and corporations should adopt responsible policies which promote human rights observance or at least policies which are compatible with the human rights policies established by the U.S. Government. Formulation of precise rules for American corporate investments and overseas operations is, however, a difficult task. U.S. businesses are governed by the customs and laws of the host country. Furthermore, it is sometimes impossible to determine whether a firm's investments either directly or indirectly relate to human rights conditions. Nonetheless, there have been

suggestions that Congress should consider legislation penalizing those private interests which support and profit from gross and consistent violations of human rights abroad. Congress has been particularly wary of placing blanket restrictions on private trade, but has imposed prohibitions in special cases (such as the 1978 Uganda trade embargo). Many experts agree the private trading arrangements should be restricted for human rights reasons only if the recipient is an egregious violator and only after all other available tools have been tried, including cuts in bilateral government aid.

Legislative Efforts to Establish Programs to Promote Human Rights

Aid prohibitions may be the most dramatic and immediately visible ways in which the United States can express serious concern about major human rights violations in aid recipient countries. However, aid termination in the long run, may be counterproductive. Many have argued that reducing and cutting off aid -- or even threatening to do so -- has more negative impact on U.S. relations and perhaps also on respect for human rights in other countries than formulation of positive programs to promote human rights. General provisions calling for aid-restructuring or a reappraisal of U.S. aid programs and their impact on advancement of international human rights are included in a number of human rights measures. Thus, section 502B(a)(3) of the Foreign Assistance Act orders the President to structure security assistance programs so as to further human rights:

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.

While section 116 does not contain a similar provision regarding formulation of economic assistance programs, the required annual reports on countries receiving economic assistance are to describe "the steps the [AID] Administrator has taken to alter United States programs under this part in any country because of human rights considerations."

Section 116(e) authorizes and encourages the President to use certain foreign assistance funds for studies to identify and openly carry out programs and activities to promote the civil and political rights set forth in the Universal Declaration of Human Rights. Some activities which have been funded under this provision in the past included grants to the Inter-American Legal Services Association to assist local legal aid and law reform work; to the Asia Foundation to help poor rural residents learn about and make use of their legal rights; to the Paraguayan League for Women's Rights to inform rural women of their rights and provide legal services; and to the Human Rights Internet to collect, publish and disseminate data on human rights organizations in developing countries. Financing has also been provided for a survey of African support for and concern about civil and political rights, and for a seminar sponsored by the Inter-American Bar Association to review regional arrangements for the protection of human rights.

The legislation on international financial institutions directs the U.S. representatives to these institutions to seek to channel assistance toward countries other than those whose governments engage in consistent human rights violations. It also directs the Secretaries of State and Treasury to initiate a wide consultation in order to develop a viable standard for meeting basic human needs and protecting human rights, and a mechanism for acting together to insure that the rewards of international economic cooperation are especially

available to those countries subscribing to such standards. Congress has required OPIC to consider the effects its programs will have on human rights and fundamental freedoms in recipient countries.

Human rights legislation seems to acknowledge that foreign assistance programs themselves may have negative human rights impact, that economic aid may result in greater economic inequality and political repression, and that U.S. military training and weapons may be used for political repression. Congress has particularly scrutinized the supplying of weapons and training to the police, domestic intelligence or similar law enforcement forces. The International Security Assistance Act of 1978 prohibited the provision of security assistance to such law enforcement forces or issuance of licenses for the export of crime control and detection instruments and equipment to a country violating human rights. Legislation prohibits assistance for international military education and training programs for such countries. In addition, one of the purposes of international military education and training should be "to increase the awareness of nationals of foreign countries participating in such activities of basic issues involving internationally recognized human rights." Thus, Congress appears to be attempting to assure not only that torture, for example, is not being aided, but also that positive human rights education is being provided by U.S. security assistance programs.

Use of Multilateral Approaches

A unilateral effort to improve respect for human rights in other countries can carry overtones of moral arrogance. While unilateral action gives the U.S. Government greater discretion than reliance on international organizations to take action, it also carries greater risks of damaging U.S. bilateral relations

with such countries. The United States has at times sought to avoid disruption of important bilateral ties by encouraging regional and international organizations to carry more of the human rights burden. This has meant working on human rights problems primarily through established multilateral organizations such as the U.N. Human Rights Commission and the Inter-American Human Rights Commission.

The United States has been an active force in recent sessions of the United Nations Commission on Human Rights, working with Western and non-aligned members to broaden the Commission's scope of concern and to strengthen its machinery. Some Congressmen have suggested that American effectiveness could be increased by designating the U.S. representative as an ambassador, a status enjoyed by many other Commission delegates. Others have called for better policy coordination between the U.S. delegation in Geneva, the State Department, and other interested executive departments.

A major problem for American diplomats at the United Nations and the Organization of American States whenever human rights issues are addressed has been the fact that the United States is not a party to major international human rights agreements (see discussion on international obligations). The charge often leveled at U.S. diplomats at international meetings, especially by Soviet representatives is: How can the United States lecture others about human rights practices when it will not subject itself to international scrutiny by becoming a party to major human rights treaties?

Failure to ratify the International Covenant on Civil and Political Rights has prevented the United States from participating in and shaping the direction of the five-year-old Human Rights Committee. This body of private experts established by the Covenant monitors state compliance with the provisions of

the treaty. The Committee also reviews complaints by citizens of those parties which have ratified an Optional Protocol to the Covenant.

The failure of the United States to ratify the American Convention on Human Rights has, however, not prohibited American participation in the Inter-American human rights system. Americans presently serve, in their private capacities, on both the Inter-American Human Rights Commission and Court. 4/

The United States is actively participating in the 1980-81 meeting in Madrid to review compliance with the human rights (and other) provisions of the Helsinki Final Act of the Conference on Security and Cooperation in Europe (CSCE). Human rights questions are as controversial at Madrid as they were at the first review meeting in Belgrade in 1977-78. As it did at the Belgrade meeting, the U.S. Congress is playing a direct role at Madrid, through the Commission on Security and Cooperation in Europe, a joint congressional-executive branch organization. The chairman of the Commission, Representative Dante Fascell, is deputy head of the U.S. delegation to the Madrid meeting. Congressional interest in the CSCE review process has been traditionally concentrated on human rights issues. 5/

WHAT APPARATUS AND PROCEDURES SHOULD THE EXECUTIVE BRANCH USE TO PROMOTE INTERNATIONAL HUMAN RIGHTS?

Congress and the Executive have struggled for a number of years to establish a framework within which human rights concerns can be adequately treated.

4/ See committee print, Human Rights in the International Community and in U.S. Foreign Policy, 1945-76, for further discussion of multilateral approaches.

5/ For further information on the Madrid meeting see issue brief 80092, The Madrid Conference on Security and Cooperation in Europe.

Congress unquestionably was the driving force behind requirements now in place for annual human rights reports, for a Bureau of Human Rights and Humanitarian Affairs headed by an Assistant Secretary of State, for placement of human rights officers in all geographic bureaus of the State Department and all American embassies, and for various prohibitions against assistance to human rights violators.

State Department

Since 1974 Congress has been recommending and legislating institutional changes in the State Department to ensure that serious attention is given to human rights as a factor in foreign policy considerations. In the spring of 1974 the Subcommittee on International Organizations and Movements of the House International Relations Committee issued a committee print presenting policy recommendations which included the following measures to strengthen the State Department's organization in the human rights field:

Creation of an Office for Human Rights within the Bureau of International Organization Affairs, with an appropriate increase of staff for these functions;

Assignment of an Officer for Human Rights Affairs in each regional bureau of the Department with responsibility for making policy recommendations and comments based on observation and analysis of human rights practices in the countries of the region and their significance in U.S. foreign policy relations with these countries; and

Appointment of an Assistant Legal Adviser on Human Rights in the Legal Adviser's Office.

By the end of 1974 the Department of State had appointed an Assistant Legal Adviser on Human Rights and had designated human rights officers in all Department geographic bureaus.

A further recommendation to insure the consideration of human rights factors at the policy making level was implemented in mid-1975 by creation of an

Office of Humanitarian Affairs under a new special assistant on human rights within the Office of the Deputy Secretary of State.

Subsequently Congress went further. The International Security Assistance and Arms Export Control Act of 1976 established in the Department of State a Coordinator for Human Rights and Humanitarian Affairs, to be appointed by the President with the advice and consent of the Senate. Among other tasks the Coordinator was to maintain continuous observation and review of all matters relating to human rights including: gathering detailed information on observance of and respect for internationally recognized human rights in countries receiving economic and security assistance, preparing required statements and reports to Congress, and making recommendations to the Secretary of State and Administrator of AID about compliance with the human rights provisions of the Foreign Assistance Act.

During 1977 Congress upgraded the rank of Coordinator for Human Rights and Humanitarian Affairs to that of Assistant Secretary of State for Human Rights and Humanitarian Affairs. Consistent with the upgrading of the status of the Human Rights Coordinator and with the encouragement of Congress, an independent Bureau of Human Rights and Humanitarian Affairs was established. The Bureau coordinates human rights policy for the Department and makes recommendations for the Secretary designed to ensure that human rights are an element of U.S. foreign policy.

Interagency Group on Human Rights and Foreign Assistance

A major Carter Administration contribution to enlarging the human rights component in policy making was the creation of the Interagency Group on Human Rights and Foreign Assistance. The Group which was established by a National

Security Council (NSC) directive on April 1, 1977, was chaired by a representative of the Secretary of State. During the Carter Administration this task was given to Deputy Secretary Warren Christopher, and the Group came to be known as the "Christopher Group." Other members included representatives from Treasury, Defense, the National Security Council, and AID and at times included representatives of other executive agencies involved with U.S. bilateral and multilateral assistance to developing nations (e.g., Departments of Agriculture or Labor, or the U.S. representatives to international financial institutions). The NSC directive mandated the Group to examine U.S. bilateral and multilateral foreign assistance decisions as they relate to human rights, to provide guidance regarding specific decisions on bilateral and multilateral assistance, and, in general, to coordinate the Carter Administration's position in the area. During the first ten months of the Reagan Administration, the Interagency Group has continued to function, meeting, however, only at the working not at the policy level.

There has been some controversy about making the Interagency Group a permanent executive branch institution. Opponents of such legislation fall into two broad categories: those who oppose the overall human rights emphasis and those who desire greater flexibility in implementing a human rights policy. Proponents see the Group as additional insurance that human rights will be injected into foreign policy considerations even in an administration unsympathetic to human rights.

Since 1977, a representative of the Bureau of Human Rights and Humanitarian Affairs has sat on the interagency Arms Export Control Board where many security assistance issues are discussed. Security assistance cases have also been taken up by the Interagency Group on Human Rights on rare occasions and

suggestions that this become a regular practice were incorporated into sec. 710 of The International Security and Development Cooperation Act (P.L. 96-533). This provision expressed the sense of Congress that (1) the Group has been "an effective mechanism for coordinating and implementing United States human rights policies;" (2) the President should consider establishing the Group on a more permanent basis; (3) the Group should also examine proposals for security assistance and required that (4) the President report his recommendations for strengthening the Group to Congress by July 1, 1981. The Reagan Administration notified Congress of a delay in filing this report, until it concludes a thorough review of this and other human rights matters.

Human Rights Reports

The issue of human rights reporting has been controversial since 1974 when the Foreign Assistance Act was amended by the addition of section 502B. The provision expressed the sense of Congress that the President should substantially reduce or terminate security assistance to any government engaging in a consistent pattern of gross violations. Whenever assistance was proposed or furnished despite human rights violations, the President was to advise Congress of the extraordinary circumstances necessitating the assistance. The State Department provided an unsigned summary report stating that "no adequately objective" way could be found to "make distinctions of degree between nations." Therefore, "neither the U.S. security interest nor the human rights cause would be properly served by the public obloquy and impaired relations with security recipient countries that would follow the making of inherently subjective U.S. Government determinations that 'gross' violations do or do not exist or that a 'consistent pattern' of such violations does or does not exist in such countries."

The report concluded that "quiet but forceful diplomacy" continued to be the most effective way to promote human rights in other countries. This seeming evasion of a congressional directive provoked Congress into strengthening its reporting requirement. Today, Congress requires that the State Department submit "full and complete" reports on the status of internationally recognized human rights in not only those countries receiving U.S. assistance, but all other members of the United Nations as well. The 1981 report covered 156 countries (all other U.N. members as well as North and South Korea, Taiwan, and Switzerland), and described the situation in three broad categories of rights: respect for integrity of the person; government policies relating to fulfillment of vital human needs as food, shelter, health care, and education; and respect for civil and political liberties. The report includes for each country tables giving U.S. bilateral assistance and multilateral development assistance provided for 1978, 1979, and 1980.

While the breadth of coverage of these reports has markedly expanded since the 1977 and 1978 reports, criticisms are still voiced. Those favoring strong public U.S. human rights action find the State Department reports too cautious; those favoring less public U.S. actions are appalled that the State Department should be writing "report cards" on countries with which that same Department is trying to maintain good relations.

It is said that the United States appears officious and unnecessarily antagonistic when its reports on human rights conditions in countries not receiving aid. Nations are highly sensitive about the Department's reports, often regardless of consequence. Defenders of the new universal requirement argue that it: 1) reduces the feeling among recipients of American aid that they are being singled out for criticism; 2) prevents recipient nations from

ducking human rights observance by refusing U.S. aid; and 3) provides a valuable information resource for guiding the conduct of U.S. foreign policy in areas other than foreign assistance.

Because the final report has been subjected to considerable editing and bureaucratic compromise, there have been calls for an independent reporting mechanism. Some argue that the requirement for global coverage has created too much work and problems for the Human Rights Bureau. Some believe giving the Human Rights Bureau a totally autonomous reporting mandate would improve the accuracy and objectivity of the reports. But the official who oversaw their preparation, under the Carter Administration, Assistant Secretary of State Patricia Derian, felt that there is great value in seeing the cable traffic of other State Department bureaus and having daily access to officials in other departments of government. Without this balance, she argued reporting on human rights might become a sterile exercise.

Congress considered creation of an Institute for Human Rights in 1978, but failed to approve the concept because of budgetary considerations and uncertainty as to the Institute's relationship to the Human Rights Bureau and existing non-governmental organizations. Many still believe that an independent human rights information consortium could be a valuable addition.

There is still disagreement on: 1) whether the human rights reports are a help or a hindrance to American foreign policy interests; and 2) whether they contribute to public and government awareness of human rights problems. One effect of the reporting requirement has been to insure that the State Department reviews its human rights policy on a country-by country basis, requiring embassy participation in this process. Even some proponents of a quieter diplomatic style concede that the report requirement has imposed discipline on

the State Department's human rights information collection and assessment process. And, as is the case with the Interagency Group, the reports are widely viewed as insurance against the day when an administration comes to power that might wish to ignore human rights. Advocates of quiet diplomacy have never liked the reports, and point to numerous disruptions in smooth bilateral relations caused by their untimely release. Even many who see value in the reports wish to avoid damaging bilateral relations by restricting dissemination of the reports.

WHAT HUMAN RIGHTS ROLE SHOULD CONGRESS PLAY?

Congress during the past eight years has enacted legislation to assure that the U.S. Government pay greater attention to human rights violations in other countries and to the role of human rights in U.S. foreign policy considerations. Congressional initiatives originated in an adversary situation with the Executive during the last days of the Nixon Administration. During the Nixon and Ford Administrations, the foreign policy-makers viewed human rights as essentially an internal matter for foreign governments, and one in which the United States had no business meddling publicly, though they thought some progress might be achieved through quiet diplomacy and indirect pressure. Congressional power over economic and military assistance budgets and programs was one of the few areas in which the legislative branch could demonstrate its position on such policies.

Since 1973, human rights provisions have been incorporated into almost every major piece of legislation relating to foreign affairs. The general exposition of congressional human rights policy can be found in sections 116 and 502B of the Foreign Assistance Act of 1961, as amended. These sections

have undergone many changes and additions since their initial appearances in the mid 1970's. Currently section 116, known as the Harkin Amendment (for its principal House sponsor, Rep. Tom Harkin), prohibits provision of economic assistance to any country engaging in a consistent pattern of gross violations of internationally recognized human rights, unless such assistance will directly benefit the needy people in such country.

Section 502B (a)(1) of the Foreign Assistance Act sets forth an overall directive for the conduct of U.S. foreign policy:

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.

This general policy statement directs the United States to promote respect for human rights "by all countries," not simply recipients of U.S. assistance. Section 502B also prohibits provision of security assistance (broadly defined) to any country engaging in a consistent pattern of gross violations of internationally recognized human rights, unless the President certifies that extraordinary circumstances warrant provision of assistance or issuance of export licenses.

In addition to these measures, Congress established a position of Assistant Secretary of State for Human Rights and Humanitarian Affairs, and enacted numerous other human rights provisions relating to agricultural trade, international financial institutions, the Overseas Private Investment Corporation

(OPIC) and the Export-Import Bank, international military education and training, emigration, as well as various reporting requirements. 5/

The congressional coalition that enacted wide-ranging human rights provisions during the 1970's was a very disparate group made up of Members with conflicting perceptions and goals. Some were interested in cutting back on what they saw as excessive and unproductive foreign aid programs. Others were concerned primarily about the condition of human rights in left-wing or Communist countries. Still others wanted to end U.S. association with and aid for right-wing repressive regimes. During the 1980's these various and contradictory goals may exert increasingly divisive pressures within Congress as to when and how human rights considerations ought to be brought into U.S. foreign policy formulation and practice.

There is disagreement as well on how much leeway the executive branch should be allowed in implementing the human rights policy legislated by Congress. Some Members feel that Congress should give the Executive no option in implementing its intentions by requiring, for example, a mandatory "no" vote in the international financial institutions (IFIs) on loans to countries deemed human rights violators. Other feel that the executive branch should be given substantial discretion in implementing human rights policy.

Congress presently requires that U.S. representatives to the IFIs consider human rights conditions in voting for or against multilateral loans. A key issue has emerged: whether Congress should dictate a negative vote on loans to

5/ A synopsis of enacted human rights legislation through 1980 can be found in Archived Issue Brief, IB77056. A chart and text of human rights laws currently in force can be found in CRS report, U.S. Legislation Relating Human Rights to U.S. Foreign Policy. Legislation of the 97th Congress can be found in Issue Brief, IB81125.

certain countries or allow the executive branch flexibility in handling specific cases. The Carter Administration repeatedly urged Congress to avoid naming violating countries and to give American representatives sufficient flexibility in voting loans. In 1977, President Carter opposed House-passed legislation that would have prohibited IFIs from using U.S. funds for assistance to Uganda, Vietnam, Cambodia, Laos, Mozambique, Angola, and Cuba. Only after he wrote a letter to Clarence Long, Chairman of the Foreign Operations Subcommittee of the House Appropriations Committee, in which he promised to instruct the U.S. representatives to oppose and vote against any loans to the seven named countries, was the mandatory provision dropped.

The House, Senate, and Carter Administration also clashed in 1977 over the question of voting instructions. A compromise was finally reached requiring the United States to use "its voice and vote" to advance respect for human rights in IFIs and to "oppose" all assistance to countries engaging in a consistent pattern of gross violations of human rights unless such assistance directly served the human needs of the citizens of such countries. A mandatory "no" vote provision was dropped.

Current U.S. law (P.L.95-118, as amended by P.L. 96-259) also requires the Secretary of the Treasury to consult frequently with the chairmen and ranking members of the House Banking, Finance and Urban Affairs and Senate Foreign Relations Committees to inform them regarding any prospective changes in policy direction toward countries which have or recently have had poor human rights records.

On July 1, 1981, the Reagan Administration notified Congress of its intent to change U.S. voting policy on multilateral development bank loans to Argentina, Chile, Paraguay, and Uruguay. The Carter Administration because of

human rights concerns had been abstaining or voting against non-basic human needs loans to these countries. The Reagan Administration notice explained that existing human rights legislation did not require U.S. opposition to IFI loans to these countries and, therefore, it intended to instruct U.S. representatives to support loans to these countries.

The notice was sent during a congressional recess only days before the loans were to be considered in the IFIs with no previous congressional consultation. It aroused fury among some members of Congress who viewed this action as a violation of the spirit, if not the letter, of the IFI legislation. Especially disturbing to the Congress was the total disregard of the legislative requirement for frequent and timely congressional consultation before implementing changes in policy direction toward countries with recently poor human rights records. Subsequently, during hearings on this matter in July 1981, Administration spokesmen assured a concerned Congress that in the future, the Administration would make every effort to have timely consultation with Congress.

Section 502B of the Foreign Assistance Act prohibits the United States from providing security assistance and crime control and detection equipment to gross human rights violators unless the President certifies that "extraordinary circumstances" exist warranting provision of such assistance. Congress may reduce or end security assistance to violators by adopting a joint resolution. (A joint resolution requires Presidential signature, or in the case of a veto, a two-thirds vote of both houses to override the veto.)

Some observers feel that the executive branch can too easily circumvent the basic arms denial principle on national security or national interest grounds. The burden, they argue, should be on the Executive to justify invoking the

exception. Some have suggested establishment of a congressional oversight committee, with non-governmental consultation, to review the criteria used and the decisions made by the Department of State on specific arms aid recommendations. Other contend that the President, as Commander-in-Chief, must be allowed great flexibility in this area lest Congress disrupt a carefully constructed foreign policy because of temporary displeasure with the human rights practices of a particular regime.

Much of the congressional involvement in human rights matters has been tied to the legislative leverage of Congress over such programs as bilateral and multilateral economic assistance, P.L. 480 food aid, security assistance, and arms sales. These programs were subsequently important instruments in executive branch human rights initiatives and their implementation is an ongoing congressional concern. In addition, during the past 8 years the holding of hearings to gather information on human rights situations in various countries and to scrutinize U.S. assistance and other policies toward such countries has been an often used investigatory mechanism of congressional committees--most notably of the Subcommittee on Human Rights and International Organizations of the House Foreign Affairs Committee. This panel under the chairmanship of Congressman Donald Fraser, held extensive hearings in the fall of 1973 which first brought into full focus the inadequacies of American leadership in the human rights field. Many of its recommendations were later incorporated into U.S. law and practice. In subsequent years, this subcommittee conducted scores of hearings on human rights conditions throughout the world -- hearings which often have major impact on U.S. Government attitudes and actions. Today, under Chairman Don Bonker the subcommittee continues to hold hearings on a variety of human rights topics. The wide-ranging hearings of this and other congressional

committees have afforded an opportunity for wide dissemination of evidence concerning human rights abuses and for discussion of U.S. policy.

Some observers feel, however, that Congress could devote more time and staff to human rights concerns. There is presently no formal monitoring by Congress of executive branch compliance with human rights laws. Nor does Congress undertake thorough analysis of the State Department's annual human rights reports. Congressional review of these reports would be a time-consuming process requiring additional staff or a reallocation of resources, and proponents of oversight concede that only one area of rights or one group of countries could be reviewed each year.

WHAT INTERNATIONAL HUMAN RIGHTS OBLIGATIONS SHOULD THE UNITED STATES ASSUME?

The United States has treaty obligations to promote the protection of human rights. Articles 55 and 56 of the U.N. Charter require U.N. member states to promote human rights and take joint affirmative action on human rights issues. Thus section 502B (a)(1) of the Foreign Assistance Act of 1961, as amended states:

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.

The section clearly affirms U.S. obligations under the U.N. Charter to promote and encourage respect for human rights and fundamental freedoms. 6/ It also ties U.S. human rights activity to the standards and criteria established by the international community, that is to "internationally recognized human rights."

The role of the international community in the protection of human rights is a relatively recent phenomenon and, indeed, is not universally recognized. Moreover, while the Charter obligates U.N. members to promote respect for human rights and declares as a primary purpose of the Organization the promotion of human rights and fundamental freedoms for all, it also recognizes the doctrine of non-intervention. Thus, article 2, paragraph 7, of the U.N. Charter states that nothing in the Charter authorizes the "United Nations to interfere in matters which are essentially within the domestic jurisdiction of any state." States accused of human rights violations often cite this provision in response to criticisms by other states (or international organizations) about human rights conditions within their borders.

At the same time there is substantial justification for state responsibility for the protection of the human rights of individuals and for some level of "interference" by the international community on behalf of those whose rights have been infringed. Activity for the protection of human rights has been constantly subjected to tension between state sovereignty as protected by the doctrine of non-interference and state obligations to protect individual human rights and fundamental freedoms. Whatever the validity of the international legal principles involved,

6/ In fact, the words "promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" are found in article 1 (purpose and principles) of the U.N. Charter.

a state's sensitivity to what it views as a violation of its sovereignty must be taken into consideration in pursuing an international human rights policy.

The Universal Declaration of Human Rights which was adopted unanimously by a resolution of the U.N. General Assembly on December 10, 1948, is perhaps the most widely accepted statement identifying human rights. Since it is neither a treaty nor an international agreement, the declaration does not place binding obligations on states. Rather it was proclaimed by the General Assembly:

as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the people of Member States themselves and among the peoples of territories under their jurisdiction.

The Declaration is of special significance both because of its general international recognition and because Congress and the Executive have emphasized the obligations of the United States to protect and promote human rights as identified in international documents. The Declaration was conceived as the initial part of an international bill of rights in which the human rights covenants or treaties would form the binding portion. Two covenants--one on civil and political rights and the other on economic, social, and cultural rights--were adopted in 1966 and came into force in 1976. The United States, however, is not a party to either one of these major human rights treaties.

As part of an effort to restore American leadership in the international human rights field, President Carter signed the American Convention on Human Rights, the Covenant on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights in 1977. He submitted these, together with the previously signed U.N. Convention on the Elimination of All Forms of Racial Discrimination, to the Senate on February 23, 1978, for its advice and

consent to ratification. Included in the President's submission were recommendations for several reservations, understandings, statements, and declarations. Hearings were held on the four treaties in November 1979, but there has been no follow-up action. On November 12, 1980, President Carter also submitted the U.N. Convention on the Elimination of All Forms of Discrimination Against Women to the Senate for its advice and consent to ratification. The transmittal document did not contain specific proposals for reservations, understandings, or declarations which might be necessary for U.S. ratification, but a detailed memorandum identified problem areas.

While the United States deserves much of the credit for bringing about the inclusion of human rights provisions in the U.N. Charter and adoption of the Universal Declaration of Human Rights, and while there are not many nations whose domestic systems for the protection of human rights are as well developed as those of the United States, the United States only has ratified a small number of international human rights instruments: five U.N. human rights treaties and five OAS treaties. There are at least 30 human rights treaties which the United States has not ratified. Moreover, none of those which the United States has ratified is considered among the major international human rights instruments.

Constitutional objections continue to be raised against these treaties by opponents who argue that the treaty power may be used only to regulate matters of international concern and that human rights are not properly matters of international concern. Proponents argue that ratification of the human rights treaties would strengthen the international legal basis for U.S. international activity and would increase the credibility and effectiveness of U.S. human rights efforts.

The following chart lists international human rights conventions and U.S. action on their ratification (as of September 1, 1981):

<u>CONVENTION</u>	<u>U.S. ACTION</u>
UNITED NATIONS CONVENTIONS:	
International Covenant on Economic, Social and Cultural Rights	Signed, submitted to Senate
International Covenant on Civil and Political Rights	Signed submitted to Senate
Optional Protocol to the International Covenant on Civil and Political Rights	None
International Convention on the Elimination of All Forms of Racial Discrimination	Signed, submitted to Senate
International Convention on Suppression and Punishment of the Crime of Apartheid	None
Convention on the Prevention and Punishment of Genocide	Signed, pending before the Senate
Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity	None
Slavery Convention (League of Nations)	Acceded
Protocol Amending the Slavery Convention Signed at Geneva on 25 September 1926	Ratified
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	Acceded
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	None
Convention on the Nationality of Married Women	None
Convention on the Reduction of Statelessness	None

Convention Relating to the Status of Stateless Persons	None
Convention Relating to the Status of Refugees	None
Protocol Relating to the Status of Refugees	Acceded
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages	Signed, but not submitted to Senate
Convention on the International Right of Correction	None
Convention on the Political Rights of Women	Acceded
Convention on the Elimination of All Forms of Discrimination Against Women	Signed submitted to Senate

INTERNATIONAL LABOR ORGANIZATION CONVENTIONS:

Convention Concerning Freedom of Association and Protection of the Right to Organize	Pending in U.S. Senate
Convention Concerning Abolition of Forced Labor	Pending in U.S. Senate
Convention Concerning Employment Policy	Pending in U.S. Senate
Right to Organize and Collective Bargaining Convention	None
Equal Remuneration Convention	None
Discrimination (Employment and Occupation) Convention	None

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO) CONVENTIONS:

Convention against Discrimination in Education	None
Protocol Instituting a Conciliation and Good Offices Commission to be Responsible for Seeking a Settlement of any Dispute which May Arise between States Parties to the Convention against Discrimination in Education	None

INTER-AMERICAN CONVENTIONS:

Convention Establishing the Status of Naturalized Citizens Who Again Take up their Residence in the Country of their Origin	Ratified
Convention between the American Republics Regarding the Status of Aliens in their Respective Territories	Ratified, with the exception of articles 3 and 4
Convention on the Nationality of Women	Ratified
Convention on Extradition	Ratified, subject to reservations
Inter-American Convention on the Granting of Political Rights to Women	Ratified
Convention on Asylum	None
Convention Relative to the Rights of Aliens	None
Convention on Nationality	None
Convention on Political Asylum	None
Inter-American Convention on the Granting of Civil Rights to Woman	None
Convention on Diplomatic Asylum	None
Convention on Territorial Asylum	None
American Convention on Human Rights	Signed, submitted to Senate