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The United States and the World: Changing Approaches to Human Rights Diplomacy under the Bush Administration

By
L. Kathleen Roberts*

I. PREFACE

This article focuses on the Bush administration's attempts to promote human rights in other countries over the first two years of its term.¹ According to the State Department Bureau for Democracy, Human Rights, and Labor's [DRL] statement of its principles, core priorities with respect to human rights have not changed significantly between administrations. However, because human rights as a policy priority itself is nearly always tied in with other foreign policy priorities such as security, environment, trade, oil, and drugs, the DRL's priorities do not necessarily reflect the policies of the administration under which it operates. This article offers snapshots of some pertinent actions and developments that reflect the ways in which the Bush administration, including but not limited to the DRL, has taken up or discarded inherited policy options and mechanisms for human rights diplomacy. It further explores to what extent human rights objectives, promotion methods, and enforcement mechanisms have changed.

A review of the government's actions under the Bush administration will show that the United States has compromised human rights priorities in favor of the war on terror. The Bush administration accords a reduced weight to the

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1. See Natasha Fain, *Human Rights Within the United States: The Erosion of Confidence*, 21 BERKELEY J. INT'L L. 607 (2003) and K. Elizabeth Dahlstrom, *The Executive Policy Toward Detention and Trial of Foreign Citizens at Guantanamo Bay*, 21 BERKELEY J. INT'L L. 662 (2003). Both articles look at whether and to what extent the current U.S. government is abiding by international human rights law.

multilateral goal of human rights when it deals with allies in this war. In key contexts, it reserves human rights language for countries where its primary interest is regime change. Where the Bush administration continues to pursue human rights objectives apart from regime change, it relies mostly on unilateral reporting and bilateral economic incentives, together with traditional diplomacy, an approach that also characterized the Clinton administration. Unsurprisingly, perceived threats to U.S. national security drive Bush's human rights policies much more so than they did Clinton's. In fact, some elements in the Bush administration appear to be moving away from using human rights language in foreign policy altogether, favoring terms like "human dignity" and "freedom" that have uncertain international legal force.

II. BACKGROUND

Human rights language is inherently multilateral. International law sets human rights standards and goals through multilateral agreement among states. These agreements may be reached explicitly through treaty or implicitly through customary international law, which is to say through common state practice and belief that the practice is legally required (*opinio juris*). Such agreements may be regional, or they may aspire to universality. Some human rights norms, such as the prohibition on genocide, are absolute, having achieved the status of *jus cogens*, or peremptory norms of international law.

Although the United States has had an explicit agenda of promoting human rights abroad since the signing of the Universal Declaration of Human Rights in 1948, U.S. priorities, objectives, and methods for engaging in human rights diplomacy have changed with the geopolitical landscape. After World War II, the world community's focus was on genocide and humanitarian law, and the United States played a prominent role not only in the development of human rights norms in the Universal Declaration of Human Rights but also in bringing state actors from Germany and Japan to trial for war crimes at multilateral tribunals.² During the Cold War, the United States shifted its concern "from mass murder to the plight of individual dissidents and prisoners of conscience."³ It, along with other Western countries, provided military and economic assistance to governments that resisted communism, sometimes at the expense of human rights,⁴ and it imposed economic sanctions and harsh external criticism on totali-

2. Thomas Buergenthal, *International Human Rights Law and Institutions: Accomplishments and Prospects*, 63 WASH. L. REV. 1, 2-6 (1998); James Blount Griffin, *A Predictive Framework for the Effectiveness of International Criminal Tribunals* (Note), 34 VAND. J. TRANSNAT'L L. 408-09 (2001). The four Allied Powers created the Nuremberg Tribunal, but General MacArthur created and controlled the Tokyo Tribunal. *Id.* Nonetheless, the Tokyo Tribunal was multilateral both in the sense that "the judges sitting on the Tribunal represented the eleven nations of the Far Eastern Commission" and in the sense that they enforced the multilateral norms of human rights. *Id.*

3. Harold Koh, *A United States Human Rights Policy for the 21st Century*, 46 ST. LOUIS U.L.J. 293, 301 (2002).

4. See Mary H. Kaldor, *The Ideas of 1989: The Origins of the Concept of Global Civil Society*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 475, 477 (1999) (describing human rights language as

tarian governments it did not perceive as allies.⁵ After the Cold War, the George H.W. Bush and Clinton administrations maintained these human rights priorities, including freedom of speech and religion, the right to property, and freedom from genocide and torture.⁶ However, U.S. methods for promoting and protecting human rights became more contextually sensitive in this post Cold War world where “[i]ncreasingly, individuals owe multiple loyalties, not just to the governments that rule their geographic area, but also to sub-national ethnic groups and broader global religious, ethnic, cultural and issue-based movements.”⁷

III.

INHERITED MECHANISMS FOR HUMAN RIGHTS DIPLOMACY

The Bush administration inherited a number of policy options and mechanisms left in place by both the previous administration and Congress. These included unilateral mechanisms for investigation and publicity of human rights violations (State Department country reports). They included support for unilateral and multilateral accountability mechanisms aimed at both state and non-state actors (International Criminal Tribunals, the Alien Tort Claims and Torture Victim Protection Acts, and humanitarian intervention). Further, they included both unilateral and bilateral strategic diplomatic and economic engagement with states and non-state actors that violate human rights (using economic incentives and sanctions, exerting internal and external diplomatic pressure, and promoting voluntary initiatives for multinational corporations).

A. *Unilateral Investigation and Publicity: State Department Reports*

Harold Koh, Assistant Secretary of State for Democracy, Human Rights, and Labor under the Clinton administration, described “tell[ing] the truth about human rights conditions around the globe, however painful or unwelcome that truth might be” as the most important human rights policy obligation.⁸ This duty may also be approaching customary international law.⁹ It is primarily accomplished by the State Department’s annual country reports.¹⁰

discredited during this period because Western nations ignored human rights violations committed by anti-communist governments in countries such as Pakistan and Chile).

5. See Adam Smith, *A High Price to Pay: The Costs of the U.S. Economic Sanctions Policy and the Need for Process Oriented Reform*, 4 UCLA J. INT’L L. & FOREIGN AFF. 325, 332 (1999). For example, in the early 1980s, the U.S. imposed a grain embargo on the Soviet Union to protest its invasion of Afghanistan. *Id.* at n.27.

6. These do not by any means exhaust the list of human rights internationally recognized. One might think of rights against race and gender-based discrimination, social cultural and economic rights, rights against juvenile death penalty, rights to health care and equal pay for equal work, etcetera.

7. Koh, *supra* note 3, at 303.

8. Koh, *supra* note 3, at 307.

9. Ruth Teitel, *The Future of Human Rights Discourse*, 46 ST. LOUIS U.L.J. 449, 450 (2002); See Fain, *supra* note 1.

10. Koh, *supra* note 3, at 306.

The State Department's country reports are unilateral mechanisms that became part of U.S. foreign policy under the Nixon administration through an amendment to the Foreign Assistance Act in 1973.¹¹ The reports not only function to point fingers—embarrassing countries confronted with their failures to live up to human rights standards—but also to provide a basis for many of the U.S. government's foreign policy decisions, including determinations about foreign aid.¹² The public and governmental support for tying foreign aid to internationally recognized human rights standards was largely the result of non-governmental activism.¹³ The first mandate was simply to report on the eighty-three countries receiving U.S. economic and military assistance, but it has since expanded to include "all other foreign countries which are members of the United Nations."¹⁴

U.S. embassies prepare the initial drafts of these reports using such sources as government officials, non-governmental activists, and members of the armed forces.¹⁵ Several arms of the State Department, including the DRL, then edit the reports before they are released.¹⁶ Thus, the reports are prepared by people trained in diplomacy, not necessarily human rights advocacy.¹⁷ Governments singled out for strong criticism often respond by decrying the United States own human rights failings, particularly with regard to economic and social rights.¹⁸ Other critics sometimes describe these reports as "colonial" or "presumptuous."¹⁹

Under the Clinton administration, these reports were noticeably more honest than those issued by previous administrations, providing uncomfortable information about countries where the United States had strong economic and political interests.²⁰ Nonetheless, U.S. economic and political interests contin-

11. Michael E. Parmly, Acting Assistant Secretary of State, Bureau of Democracy, Human Rights, and Labor, *Introduction: IV. History of the Human Rights Reports*, U.S. Department of State Human Rights Report for 2000, at <http://www.state.gov/g/drl/rls/hrrpt/2000/648pf.htm> (last visited Nov. 1, 2002); 22 U.S.C. § 2151n (1994).

12. *Overview and Acknowledgements*, U.S. Department of State Country Reports on Human Rights Practices for 2001, at <http://www.state.gov/g/drl/rls/hrrpt/2001/8149pf.htm> (last visited Nov. 1, 2002).

13. *Id.*

14. *Id.*

15. *Overview and Acknowledgements*, *supra* note 12.

16. *Id.*

17. Phillip R. Trimble, *Human Rights and Foreign Policy*, 46 ST. LOUIS U.L.J. 465, 466 (2002).

18. See Fain, *supra* note 1.

19. Rami G. Khouri, *Human Rights—in Mafrq as in Milwaukee? Amman Columnist Says US Human Rights Report Deserves 'Honest Response'*, WORLD NEWS CONNECTION, Mar. 14, 2001.

20. See David Sloss, *Hard-Nosed Idealism and U.S. Human Rights Policy*, 46 ST. LOUIS U.L.J. 431, 432 (2002); *Id.* at n.6 (citing the Lawyers' Committee for Human Rights' Director Elisa Massimino as saying that in "the earliest years of the Country Reports, the tendency to shield strategic allies . . . from plain-spoken criticism was quite strong, even when the record of their violations was clear"); see also *id.* at n.10 (describing the 1999 State Department Country Report of Turkey as "highly critical of ongoing human rights abuses in Turkey" and noting that "Turkey continues to cooperate with the United States on a variety of important national security and foreign policy issues"); *id.* at n.9 (referring to the Lawyers' Committee for Human Rights decision to discontinue criticizing the reports since, under Koh's stewardship, they were accurate).

ued to play a role in the reports' preparation.²¹ Most notably, while federal statutes prohibit development and military assistance to any country with a "consistent pattern of gross violations" of human rights, "the human rights country reports produced under Koh's stewardship never identified a friendly government" as fitting this category, "despite the fact that . . . that label could easily be applied."²² For example, the United States maintains strong economic and military ties with Saudia Arabia despite its abysmal human rights record.²³ Thus, while the Clinton administration invoked the unilateral mechanism of human rights reporting as one tool for promoting human rights in other countries, it did not allow this mechanism to overshadow other important foreign policy goals.

B. Unilateral and Multilateral Accountability Mechanisms

The Clinton administration also supported several multilateral and unilateral mechanisms for holding human rights abusers accountable, particularly in the area of humanitarian law. That administration worked with the United Nations Security Council to hold individual human rights violators accountable for war crimes in Rwanda and the former Yugoslavia. It also participated in establishing a hybrid domestic-international accountability mechanism in Sierra Leone.²⁴ Most notably, the Clinton administration played an active role in negotiating for peace in the former Yugoslavia, in leading the controversial NATO intervention in the human rights crisis there, and in setting up the ad hoc International Criminal Tribunal for the former Yugoslavia. Koh describes the goal of these accountability mechanisms as "political delegitimation of those who have ruled by human rights abuse."²⁵

The Clinton administration supported use of the U.S. judiciary to hold foreign human rights abusers accountable in U.S. courts. When President Clinton came into office, U.S. federal courts had already asserted such jurisdiction under the Alien Tort Claims Act, which by their interpretation allowed individual alien plaintiffs to sue human rights abusers, at least torturers, for crimes committed in other countries.²⁶ Congress had recently enacted the Torture Victim Protection Act in support of that assertion of universal jurisdiction.²⁷ Although this mechanism of adjudicating claims of human rights violations perpetrated by foreign

21. *Id.* at 432 (citing 22 U.S.C. § 2151n(a) (1994) and 22 U.S.C. § 2304(a)(2) (1994)). See generally Sarah H. Cleveland, *Norm Internationalization and U.S. Economic Sanctions*, 26 YALE J. INT'L L. 1 (2001).

22. Sloss, *supra* note 20, at 433.

23. REIN MÜLLERSON, HUMAN RIGHTS DIPLOMACY 125; Stephen Collinson, *China, Iraq, Israel Censured in US List of Rights Violators*, AGENCY FRANCE-PRESSE, Feb. 27, 2001, available at LEXIS, News Library; *Allies Abuse Human Rights; By Working With Such Countries, the United States May Create Even More Anti-American Feeling*, GRAND RAPIDS PRESS, Oct. 5, 2001, at A6.

24. See Koh, *supra* note 3, at 312 (describing the court system that uses domestic and foreign judges). See also Res. 1315, U.N. SCOR, 4186th mtg., U.N. Doc. S/Res.1315 (2000), available at <http://www.un.org/Docs/scres/2000/res1315e.pdf> (Aug. 14, 2000).

25. Koh, *supra* note 3, at 312.

26. *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980); 28 U.S.C. § 1350 (2003). This decision was controversial, since § 1350 does not expressly refer to human rights, and its enactment predates that language as a part of international law.

27. 28 U.S.C. 1350 (2003).

actors against foreign victims in foreign lands apparently operates independently of any particular administration's foreign policy objectives, in fact, the State Department's intervention or lack thereof may weigh heavily on whether such cases are heard. Under President Clinton, the State Department and the Solicitor General supported extending universal jurisdiction in *Kadic v. Karadzic*, a case involving war crimes committed in Bosnia.²⁸

However, the Clinton administration, like those before it, extended accountability for human rights violations no farther than politically feasible. The Clinton administration cooperated only reluctantly and incompletely with the on-going investigations of Pinochet when he was charged in a Spanish court for the same kinds of crimes condemned in U.S. courts under the Alien Tort Statute.²⁹ It also resisted treaties that would bar anti-personnel land mines³⁰ or the use of child soldiers,³¹ and President Clinton only reluctantly signed the Rome Statute³² that would inaugurate an international criminal court.³³

C. *Bilateral and Multilateral Strategic Diplomatic and Economic Engagement*

The Clinton administration emphasized strategic economic and diplomatic engagement as a major tool to promote human rights.³⁴ Consider, for example, its treatment of China. The Clinton administration detached the People's Republic of China's Most Favored Nation (MFN) trade status from its human rights record in 1994, and by 1998, "internal human rights conditions in China deteriorated markedly."³⁵ The government of China cracked down on members of the Falun Gong religion, arrested democracy activists, increased repression in Tibet, and continued other human rights abuses such as forced family planning and forced labor.³⁶ The Clinton administration responded with a multi-pronged strategy of diplomatic and economic engagement. It conducted a human rights

28. *Kadic v. Karadzic*, 70 F.3d 232 (2d. Cir. 1995); Koh, *supra* note 3, at 315.

29. *America's Duty in the Pinochet Case*, N.Y. TIMES, Dec. 5, 1998, at A12; Philip Shenon, *U.S. Releases Files on Abuses in Pinochet Era*, N.Y. TIMES, July 1, 1999, at A12.

30. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction, opened for signature Dec. 3, 1997, 36 I.L.M. 1507 (entry into force Mar. 1, 1999), available at <http://www.unog.ch/frames/disarm/distreat/ottawa.htm>; Steven Myers, *Clinton Says Ban on Mines Would Put U.S. Troops at Risk*, N.Y. TIMES, Sept. 18, 1997, at A8.

31. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, GA res. 54/263, U.N. Doc. A/54/49 (2000), opened for signature May 25, 2000 (entered into force February 12, 2002), available at <http://www1.umn.edu/humanrts/crc/crc-page.html>; Steven Lee Myers, *Agreement Bars Using Children as Soldiers*, N.Y. TIMES, Jan. 22, 2000, at A8.

32. *Revisiting the World Criminal Court*, N.Y. TIMES, Dec. 13, 2000, at A34. See Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, available at <http://www.un.org/law/icc/statute/rome.htm> (last visited Nov. 23, 2002).

33. Barbara Crossette, *U.S. Finding Alliances On Rights Are Tangled*, N.Y. TIMES, Apr. 8, 2001, at 19; See Jean Galbraith, *The Bush Administration's Response to the International Criminal Court*, 23 BERKELEY J. INT'L L. 683 (2003).

34. Koh describes this as an "inside/outside" approach, since it "combines techniques of internal persuasion with techniques of external pressure." Koh, *supra* note 3, at 316-17.

35. *Id.* at 318.

36. *Id.*

dialogue through diplomatic channels.³⁷ It publicized human rights conditions both publicly and directly to Chinese citizens through personal encounters, internet, and Radio Free Asia.³⁸ Finally, despite its support for moving China toward MFN status, it “designated China for sanctions under the International Religious Freedom Act.”³⁹

Here, the tension between politics and law in human rights diplomacy is most apparent. Under a domestic legal system that recognizes citizens as equals, one would not expect to find smaller, less powerful individuals treated more harshly than their more powerful counterparts, at least not as a matter of principle. However, such unequal treatment is the rule in foreign policy: international reaction to human rights abuses “depends, more often than not, on the strength and importance of the violator-state than on what it deserves.”⁴⁰ Under Clinton, the United States maintained trade relations with Nigeria,⁴¹ established diplomatic relations with Vietnam,⁴² and continued relatively tamer policies towards both China⁴³ and Saudi Arabia,⁴⁴ all of which had terrible human rights records according to State Department reports. Yet, the Clinton administration maintained its inherited embargos on Cuba and Iraq, and in the case of Cuba Congress added even stricter legislation regarding Cuba during his term.⁴⁵

In response to pressure from non-governmental activists and their criticisms of the impact of trade liberalization on human rights, particularly in developing countries where multinational corporations may have significantly more power than domestic governments, the Clinton administration collaborated on two voluntary initiatives for corporate accountability: one in the extractive and energy sectors and one in the garment industry. The garment industry initiative was the product of collaboration with industry, labor, and human rights groups. It resulted in the founding of the White House Apparel Industry Partnership (AIP), though many prominent trade unions and non-governmental organizations (NGOs) dropped out of discussion in protest against what they perceived as the weakness of the document.⁴⁶ Membership in the AIP’s Fair Labor Asso-

37. *Id.*

38. *Id.*

39. *Id.*

40. Müllerson, *supra* note 23, at 121.

41. *Nigeria Arrests More Activists*, WASH. POST, Nov. 17, 1995, at A38.

42. *Clinton Administration Defends Easing of Ties with Hanoi*, AGENCE FRANCE-PRESSE, July 20, 1993, available at LEXIS, News Library.

43. *A History of U.S.—China Relations*, PORTLAND OREGONIAN, May 11, 1999, at A6; Daniel Williams, *China Finds Comprehensive Engagement Hard to Grasp*, WASH. POST, Feb. 13, 1995, at A17.

44. R. Jeffrey Smith, *Rights Group Assails U.S. Arms Sales Policy*, WASH. POST, June 23, 1994, at A22; J. Robinson West, *A Menacing Alliance In the Gulf*, WASH. POST, Oct. 27, 1994, at A23.

45. Müllerson, *supra* note 23, at 13: “In March 1996 the US Congress passed a new piece of anti-Cuban legislation. The Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 aims to ‘bring democratic institutions to Cuba through the pressure of general economic embargo at a time when the Castro regime has proven to be vulnerable to international economic pressure.’”

46. Statement from the Interfaith Center on Corporate Responsibility, Religious Investor Coalition Declines to Endorse Apparel Industry Partnership Agreement (Nov. 5, 1998), available at <http://www.sweatshopwatch.org/swatch/headlines/1998/FLA.html>; Jay Mazur (UNITE) and John J.

ciation (FLA) requires transnational garment manufacturers based in the United States to submit to a code of conduct.⁴⁷ Although the FLA Workplace Code of Conduct does not explicitly refer to international standards, it does incorporate many of the principles of international human rights and labor law.⁴⁸ The Voluntary Principles on Security and Human Rights for the extractive and energy industry involved collaboration with the government of the United Kingdom as well as with industry and non-governmental representatives.⁴⁹ This code refers specifically to the Universal Declaration of Human Rights and the International Labor Organization's Fundamental Rights at Work.⁵⁰ It is worth noting that while these initiatives are essentially unilateral or bilateral in the sense that they only involve one or two countries, they use a type of multilateral structure that involves sub-national and transnational entities as formal co-authors and bound parties. Whether these initiatives will prove to be a successful tool for human rights promotion rather than merely for consumer relations has yet to be shown conclusively. Either way, such initiatives may serve as groundwork for multilateral action in the future.

D. Clinton's Legacy

In sum, when President Bush took office, mechanisms for human rights diplomacy were already in motion. The U.S. government was engaged in a multi-pronged strategy of multilateral, bilateral, and unilateral engagement with a variety of state and non-state actors to promote human rights goals. In its multilateral acts, it prioritized universally recognized, egregious human rights violations such as genocide. In its bilateral and unilateral actions, it took pragmatic account of military and economic contexts, particularly the importance of trade for the United States. This sensitivity to context produced several apparent inconsistencies in the government's overall human rights foreign policy, inconsistencies the new administration found troubling.

IV.

JANUARY 20, 2001–JANUARY 20, 2003

The Bush campaign claimed that his administration would "maintain a disciplined and consistent foreign policy"; it would not support heavy involvement in international affairs where there was no clear national interest.⁵¹ "Multilat-

Sweeney (AFL-CIO), *Joint statement on the Apparel Industry Partnership* (Nov. 4, 1998), available at <http://www.sweatshopwatch.org/swatch/headlines/1998/FLA.html>.

47. Welcome to the Fair Labor Association, at <http://www.fairlabor.org>, (last visited Feb. 20, 2003).

48. Adelle Blackett, *Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct*, 8 IND. J. GLOBAL LEGAL STUD. 401, 414 n.38 (2001).

49. *Voluntary Principles on Security and Human Rights, Fact Sheet Released by the Bureau of Democracy, Human Rights, and Labor*, U.S. Department of State, Dec. 20, 2000.

50. *Id.*

51. Condoleezza Rice, *Promoting the National Interest*, FOREIGN AFF., Jan.-Feb 2000, at 46 (describing the previous administration as confusing general humanitarian interests with the national interest).

eral agreements and institutions should not be ends in themselves.”⁵² The administration’s first actions in multilateral human rights fora reflected a narrow understanding of U.S. national interest, leaving the U.S. delegations largely isolated.⁵³ Although the idea that the United States has very few interests outside its borders did not survive the bombing of the World Trade Center and the Pentagon on September 11, 2001, the “go it alone” attitude has persisted.⁵⁴

A. *Early Months of the Bush Administration:
 January 20, 2000–September 11, 2001*

In the early months of the Bush administration, bilateral and unilateral mechanisms the previous administration left in place provided a backdrop for human rights diplomacy. According to the DRL, initially led by Michael Parmly and currently led by Lorne Craner, its mission is to “learn the truth and state the facts” about the human rights situations in other countries, to take “consistent positions” about human rights abuses, including promoting accountability and to use an “inside-outside” approach including external denunciation of violations and support for internal reform.⁵⁵ The DRL also claims to “forge[] and maintain[] partnerships” with other governments, organizations, and multilateral institutions.⁵⁶ Though apparently staying the course of previous human rights policies, the distinct priorities of the new administration emerged rather quickly.

Early in his term, President Bush cut funding to “international groups that use other sources of money for abortion services”⁵⁷ and “proclaimed a harsher line toward China [regarding its human rights record] than [his] immediate predecessors.”⁵⁸ President Bush appointed a former chair of the U.S. Commission on International Religious Freedom as human rights advisor to the National Security Council, leading many to speculate that religious liberty would be at the top of his administration’s human rights priorities.⁵⁹

1. *Unilateral Investigation and Publicity: State Department Reports*

The State Department released its first Country Reports on Human Rights Practices under this administration on February 26, 2001.⁶⁰ Most of those reports had been prepared under the direction of President Clinton’s Secretary of

52. *Id.* at 47.

53. See discussions of the Human Rights Commission and the Durban Conference Against Racism, *infra* text accompanying note 109.

54. See *Going It Alone*, BULLETIN OF THE ATOMIC SCIENTISTS, July-Aug. 2002, at 36.

55. *Human Rights*, U.S. Department of State, Bureau of Human Rights, Democracy and Labor, available at <http://www.state.gov/g/drl/hr/> (last visited Feb. 28, 2003).

56. *Id.*

57. Colum Lynch and Juliet Eilperin, *Family Planning Funds Withheld; Administration Decides Not to Contribute to U.N. Effort*, WASH. POST, July 20, 2002, at A4.

58. Jane Perlez, *The World: Play the Japan Card?; Facing Down China Without Riling it up*, WASH. TIMES, Aug. 5, 2001, available at LEXIS, News Library.

59. Larry Witham, *Rights Advocates See Hope in Bush Policy on Sudan is Litmus Test*, WASH. TIMES, June 26, 2001, at A4.

60. Collinson, *supra* note 23.

State Madeline Albright. The reports noted strides in democracy in Nigeria, Mexico, and the former Yugoslavia.⁶¹ The reports criticized Israel for using excessive force in its treatment of Palestinians and Palestinian security forces for killing Israeli soldiers and civilians.⁶² The report on China criticized it for suppressing Christians and Falun Gong practitioners and for repression aimed at organized dissent.⁶³ It further noted that "some minority groups, particularly Tibetan Buddhists and Muslim Uighurs, came under increasing pressure as the Government clamped down on dissent and 'separatist' activities."⁶⁴

The country report on Myanmar (Burma) charged it with suppression of political dissent, systematic torture and rape, and clamping down on other individual human rights.⁶⁵ It described the military government of Myanmar as continuing "its severe repression, holding [political dissidents],⁶⁶ imprisoning many religious believers, and coercing numerous persons, including children, into forced labor."⁶⁷ The State Department recognized "Myanmar's tentative dialogue" with democracy activists, but it maintained its critique of the military regime's human rights abuses.⁶⁸ At this time, the United States maintained its leadership of "an informal international coalition which has imposed sanctions and investment restrictions on Myanmar."⁶⁹

The State Department laid a number of strong charges at the feet of Middle Eastern and Central Asian governments. The report decried the Iraqi government for arbitrary arrests and detentions, disappearances, and "numerous political and other extrajudicial killings," including mass killings of political detainees.⁷⁰ The report further charged Iraqi security forces with routine and systematic torture, including raping and beating perceived political opponents.⁷¹

61. Michael E. Parmly, Acting Assistant Secretary of State, Bureau of Democracy, Human Rights, and Labor, *Introduction, Country Reports on Human Rights Practices for 2000*, Released by the Bureau of Democracy, Human Rights and Labor Feb. 2001, available at <http://www.state.gov/g/drl/rls/hrrpt/2000/648pf.htm> (last visited Feb. 28, 2002).

62. *Id.*; see also Collinson, *supra* note 23.

63. China, *Country Reports on Human Rights Practices for 2000*, Released by the Bureau of Democracy, Human Rights and Labor Feb. 2001, available at <http://www.state.gov/g/drl/rls/hrrpt/2000/eap/684.htm> (last visited Nov. 17, 2002).

64. *Id.*

65. Collinson, *supra* note 23; *US Officials Meet Aung San Suu Kyi and Myanmar Junta*, AGENCE FRANCE-PRESSE, Feb. 27, 2001, available at LEXIS, News Library.

66. Prisoners included "48 members of parliament elect and 1,000 [elected government party] supporters in detention," *US Torches Myanmar Junta Over Rights*, AGENCE FRANCE-PRESSE, Feb. 26, 2001, available at LEXIS, News Library.

67. Michael E. Parmly, Acting Assistant Secretary of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices for 2000*, Released by the Bureau of Democracy, Human Rights and Labor Feb. 2001, available at <http://www.state.gov/g/drl/rls/hrrpt/2000/648pf.htm> (last visited Nov. 1, 2002).

68. *US Applauds Myanmar's Dialogue With Pro-Democracy Activist Aung San Suu Kyi*, AGENCE FRANCE-PRESSE, Mar. 1, 2001, available at LEXIS, News Library.

69. *US Torches Myanmar Junta Over Rights*, *supra* note 66.

70. Iraq, *Country Reports on Human Rights Practices for 2000*, Released by the Bureau of Democracy, Human Rights and Labor Feb. 2001, available at <http://www.state.gov/g/drl/rls/hrrpt/2000/nea/787.htm> (last visited Nov. 17, 2002).

71. *Id.* see also Collinson, (quoting the report) *supra* note 23; *Iraq Says US Human Rights Report Aimed at "Terrorising" Nations*, AGENCE FRANCE-PRESSE, Mar. 1, 2001, available at LEXIS, News Library.

The Country Report on Iran accused government security forces and paramilitary forces of "numerous, serious human rights abuses" including torture, rape, extrajudicial killing, and arbitrary detention.⁷² The report also criticized Iran for restricting freedom of speech and religion.⁷³ Iran's foreign ministry spokesman responded to the State Department's report as "baseless and unilateral . . . an interference in Iran's internal affairs."⁷⁴

The State Department described the human rights situation in Kazakhstan as "poor" and its democratic and judicial institutions as weak and inadequate for protecting human rights.⁷⁵ The Country Report on Russia expressed concern that the human rights situation remained poor in Chechnya.⁷⁶

The State Department blamed war, poverty, and "a lack of political pluralism" for the egregious human rights situation in Africa.⁷⁷ In particular, it pointed to ethnic violence, tribal warfare, and election irregularities in several African states.⁷⁸

In July 2001, the State Department released its first annual "Trafficking in Persons Report," which Congress had mandated in the Victims of Trafficking and Violence Protection Act of 2000.⁷⁹ In that report it criticized 23 countries, including allies such as Saudi Arabia, Israel, Greece, and South Korea, for not doing enough to stop the slave trade.⁸⁰

Because these reports were largely prepared under the Clinton administration, it is not easy to discern whether they were effective in achieving the Bush administration's objectives for human rights. At the very least, they offered a

72. Iran, *Country Reports on Human Rights Practices for 2000*, Released by the Bureau of Democracy, Human Rights and Labor February 2001, available at <http://www.state.gov/g/drl/rls/hrrpt/2000/nea/786.htm> (last visited Nov. 17, 2002).

73. *Id.*

74. Iran Rejects US Human Rights Report as "Baseless and Unilateral," AGENCE FRANCE-PRESSE, Feb. 27, 2001, available at LEXIS, News Library.

75. Kazakhstan, *Country Reports on Human Rights Practices for 2000*, Released by the Bureau of Democracy, Human Rights and Labor Feb. 2001, available at <http://www.state.gov/g/drl/rls/hrrpt/2000/eur/798.htm> (last visited Nov. 17, 2002).

76. Russia, *Country Reports on Human Rights Practices for 2000*, Released by the Bureau of Democracy, Human Rights and Labor Feb. 2001, available at <http://www.state.gov/g/drl/rls/hrrpt/2000/eur/877.htm> (last visited Nov. 17, 2002).

77. Francis Temman, *US Paints Grim Africa Human Rights Picture*, AGENCE FRANCE-PRESSE, Feb. 26, 2001, available at LEXIS, News Library.

78. *Id.* The State Department accused the Democratic Republic of the Congo as well as Sierra Leone and Uganda of allowing armed rebels to coerce children into joining the fighting. Sierra Leone, Burundi, and Cameroon were marked by "serious abuses," including extrajudicial and summary executions, rapes, and beatings. *Id.* The State Department accused Sudan of deliberately bombing its own civilians and supporting the slave trade. Collinson, *supra* note 23. The State Department's reports also criticized Angola, Eritrea, Ethiopia, Guinea, Nigeria, and Uganda for arbitrary arrests, detentions, and torture. Temman, *supra* note 77. "The plight of women remain[ed] an acute problem in many countries," including female genital mutilation in Benin, Ethiopia, Mali and other nations. *Id.*

79. *2002 Trafficking in Persons Report*, U.S. Department of State, available at <http://www.state.gov/g/tip/rls/rm/2001/4071.htm> (last visited Feb. 12, 2002).

80. *U.S. Criticizes Major Allies for Inaction in Slave Trade*, WASH. TIMES, July 13, 2001, available at LEXIS, News Library. The report did not include the United States within its scope, though it described the U.S. several times as a destination for many of the trafficked victims. See *2001 Trafficking in Persons Report*, *supra* note 77.

common base of facts for Congressional and Executive decisions regarding human rights foreign policy.

2. *Multilateral Diplomatic Engagement: the United Nations Commission on Human Rights*

Early in Bush's tenure as president, the new administration determined that it would address human rights abuses in Cuba and China at the Human Rights Commission meeting. Both at the Commission and in the time leading up to it, however, the Bush administration found itself increasingly isolated from world opinion regarding human rights. As a result, its ability to participate in multilateral institutions to reach human rights objectives was seriously tested.

Several months before the meeting, Washington was already at odds with traditional allies. In January 2001, President Bush had announced he would suspend the Title III lawsuit provisions of the Cuban Liberty and Democratic Solidarity Act,⁸¹ also known as the Helms-Burton law of 1995. Those provisions had allowed U.S. nationals to sue aliens who had trafficked in these nationals' property confiscated by the Cuban government.⁸² Despite this, in March, several European countries renewed objections to other provisions of this law that imposed sanctions on "foreign companies that trade with Cuba."⁸³ Among them, Slovakia announced that it would probably support the Czech-sponsored U.N. resolution criticizing Cuba's human rights records rather than that proposed by the United States.⁸⁴ Slovakia condemned the U.S. attempt to attach sanctions through its resolution.⁸⁵ The Human Rights Commission ultimately adopted the Czech resolution.⁸⁶

In early February 2001, during a meeting with the Chinese Ambassador to the United States, Secretary of State Colin Powell stressed the importance to the new administration of human rights in that country.⁸⁷ On the day the State Department released its report on China's worsening human rights record, the Bush administration announced that it would sponsor "a resolution critical of China at the U.N. Human Rights Commission,"⁸⁸ as the Clinton administration had done almost every year.⁸⁹ On March 1, though the State Department lauded China's decision to ratify the International Covenant on Economic, Social and

81. Alan P. Larson, *Suspension of Title III Lawsuit Provisions of the Cuban Liberty and Democratic Solidarity Act*, M2 PRESSWIRE, Jan. 22, 2001.

82. Saturnino E. Lucio, II, *The Cuban Liberty and Democratic Solidarity (Libertad) Act of 1995: An Initial Analysis*, 27 U. MIAMI INTER-AM. L. REV. 325, 328-329 (1995-1996).

83. *Bratislava Likely to Back Prague Against US on Cuban Resolution Issue*, WORLD NEWS CONNECTION, Mar. 14, 2001.

84. *Id.*

85. *Id.*

86. David Weissbrodt, Keynote Address for Midwest Immigrant and Human Rights Center 2, n.6 (June 5, 2001) (transcript on file with author).

87. *US Says it Will Continue to Back Human Rights in China, Help Taiwan Defend Itself*, AGENCE FRANCE-PRESSE, Feb. 4, 2001, available at LEXIS, News Library.

88. *US to Sponsor China Rights Resolution in Geneva*, AGENCE FRANCE-PRESSE, Feb. 26, 2001, available at LEXIS, News Library.

89. *Beijing says "Anti-China" UN Motions Not the Way to Help Human Rights*, AGENCE FRANCE-PRESSE, Feb. 15, 2001, available at LEXIS, News Library.

Cultural Rights and expressed hope that Beijing would also consider ratifying the International Covenant on Civil and Political Rights, it did not back down on sponsoring its resolution at the Commission.⁹⁰

The U.S. Delegation to the United Nations Human Rights Commission also supported adoption of resolutions expressing concern about human rights practices in "Afghanistan, Burma, Cambodia, Chechnya, Cuba, Iran, Iraq, Sierra Leone, Sudan, and the former Yugoslavia."⁹¹ Although the Bush administration did not significantly depart from the previous administration's policies regarding specific countries at the Commission, it did isolate itself on several "substantive resolutions and decisions."⁹² For example, it declared that the United States "no longer believes in a rights-based approach to economic and social matters," apparently overturning the Clinton policy of recognizing such rights.⁹³ Thus, the delegation ended up "voting alone or nearly alone" on virtually every resolution pertaining to such rights.⁹⁴ By midway through that body's annual review of human rights, the U.S. was "finding it harder to count on the support of traditional European allies."⁹⁵ Some European nations were reluctant to support the U.S. resolution to censure China; this was during the confrontation over the return of a U.S. spy plane and its crew in China's control.⁹⁶ A Human Rights Watch representative suggested this was because the Europeans "feel that it's part of a return to cold war politics, in which human rights are really an instrument of something else."⁹⁷ With support from Russia and major Asian, African and Arab nations, China succeeded in striking the U.S. resolution from the agenda.⁹⁸

On May 3, 2001, for the first time since 1947, the United States was not elected to the U.N. Human Rights Commission.⁹⁹ Some administration officials were surprised since they had received enough written assurances of support to guarantee the election, though Colin Powell noted that vote-swapping is a regular part of the United Nations.¹⁰⁰ Thus, some who voted against the United States may also have been surprised.¹⁰¹ Although the Economic and Social

90. *Washington Salutes Beijing's Ratification of Economic, Social Rights Treaty*, AGENCE FRANCE-PRESSE, Mar. 2, 2001, available at LEXIS, News Library.

91. Weissbrodt, *supra* note 86, at 2.

92. *Id.*, at 3.

93. *Id.*

94. *Id.*, at 4.

95. Crossette, *supra* note 33, at 19 (attributing this opinion to an unnamed leader of the American delegation).

96. *Id.*

97. *Id.* Human Rights Watch is a prominent non-governmental organization that advocates for human rights.

98. Barbara Crossette, *China Maneuvers to Avoid Debate on Its Rights Record in U.N.*, N.Y. TIMES, Apr. 19, 2001, at A6. "The Commission has never been able to express international concern about China since the killings in Tiananmen Square in early June 1989." Weissbrodt, *supra* note 86, at 2.

99. Christopher Marquis, *Washington Angry Over Losing Rights Seat*, N.Y. TIMES, May 4, 2001, at A13.

100. Marc Lacey, *U.S. Attacks Rights Group for Ousting It as a Member*, N.Y. TIMES, May 5, 2001, at A4.

101. *Id.*

Council, which elects and oversees the Human Rights Commission, uses secret ballots, some speculated that European nations had to have joined in the vote against the United States.¹⁰² The *New York Times* noted growing international resentment against the new administration, though it also speculated that the failure of U.S. diplomats to prevent this outcome may have been partly due to “the absence of a new American ambassador to the U.N.”¹⁰³

The United States Independent Expert to the Sub-Commission for the Promotion and Protection of Human Rights David Weissbrodt noted that whenever there is a change in administration, it takes time to confirm officials.¹⁰⁴ Thus, it may not be the Bush administration’s fault either that there was no new ambassador or that the career lawyers and State Department officials who composed the U.S. delegation “overdid it” in “trying to anticipate Bush policies.”¹⁰⁵ Weissbrodt suggested, however, that other Bush administration actions may have contributed to the loss of the seat, including a Security Council veto of a resolution that would have placed a U.N. observer force in Israel and the Occupied Palestinian Territories (OPT).

[I]f you add up the votes, the U.S. had alienated the (1) Europeans in regard to climate change, national missile defense, and the death penalty; (2) it had lost the votes of developing countries in rejecting economic rights and the right to development; (3) it alienated Russia, China, and their allies by national missile defense and reviving Cold War animosities; and [4] Middle Eastern countries were upset with the U.S. veto in the Security Council.¹⁰⁶

The most reasonable explanation of the U.S. loss of its seat is that it was a product of its unilateralism and isolation both at the Commission and in other fora leading up to it.

3. *Multilateral Diplomatic Engagement: the World Conference Against Racism*

In early August, the Bush administration threatened to boycott the World Conference Against Racism if anti-Israeli references were not removed from the draft document prepared for discussion at the Conference scheduled at the end of that month.¹⁰⁷ The administration also objected to language that legitimized “reparations for the descendents of African slaves.”¹⁰⁸ These objections did not

102. Marquis, *supra* note 99, at A13.

103. *Revolt at the U.N.*, N.Y. TIMES, May 5, 2001, at A12.

104. Weissbrodt, *supra* note 86, at 4. The Sub-Commission is a non-governmental body subsidiary to the Human Rights Commission.

105. *Id.* at 5.

106. *Id.* at 6; See Greg Kahn, *The Fate of the Kyoto Protocol Under the Bush Administration*, 21 BERKELEY J. INT’L L. 548 (2003); Patricia Hewitson, *Nonproliferation and Reduction of Nuclear Weapons: Risks of Weakening the Multilateral Nuclear Nonproliferation Norm*, 21 BERKELEY J. INT’L L. 405 (2003); and Fain, *supra* note 1.

107. *U.N. Racism Panel is Deadlocked on Israel*, N. Y. TIMES, Aug. 9, 2001, at A4.

108. *The Racism Walkout: The Overview; U.S. and Israelis Quit Racism Talks Over Denunciation*, N.Y. TIMES, Sept. 4, 2001, at A1.

represent a sharp departure from the Clinton administration, which had dragged its feet throughout the process leading up to the conference.¹⁰⁹

Secretary Powell's plan was to "make clear that U.S. participation at Durban would depend on removal of the text attacking Israel" and to use diplomatic efforts to isolate hard-line OIC states.¹¹⁰ In preparation for the conference, U.S. representatives, including Secretary Powell and U.S. Delegate Congressman Tom Lantos, tried to get the High Commissioner and allied states to agree that the final document should not single out any particular country. High Commissioner Robinson did not agree, and European ambassadors were also reluctant to help. When they were approached, these allies alluded to U.S. positions on "climate change, the ABM treaty, small arms, and a host of other issues."¹¹¹

On September 3, the U.S. and Israeli delegations walked out of the Durban conference because of language in the draft declaration that they read to equate Zionism with racism.¹¹² Secretary of State Colin Powell announced this decision from Washington after a failed effort by Norway to bring U.S. and officials from Arab nations and Palestine into agreement on a compromise document.¹¹³ The European Union delegation stayed with the intention of drafting an entirely new document.¹¹⁴ The Conference ultimately adopted a document authored by South Africa which made specific reference to the plight of Palestinians.¹¹⁵

109. Gay McDougall, *The Durban Racism Conference Revisited: The World Conference Against Racism*, 26 FLETCHER F. WORLD AFF. 135, 145 (2002).

110. Tom Lantos, *The Durban Debacle: An Insider's View of the UN World Conference Against Racism*, 26 FLETCHER F. WORLD AFF. 31, 39 (2002). Congressman Tom Lantos, U.S. Delegate to the World Conference Against Racism, Holocaust survivor and firm supporter of Israel, described the conference "as a missed opportunity to advance a noble agenda and as a serious breakdown in United Nations diplomacy." *Id.* at 32. By his account, "[a] number of Islamic states conducted a well-orchestrated effort to hijack the event, and they succeeded in swaying America's erstwhile partners and forcing the United States delegation to withdraw." *Id.* at 31-32. While Lantos laid some blame at the feet of Mary Robinson, the U.N. High Commissioner for Human Rights, and at those of the Bush administration's "six months of unilateralist foreign policies," he laid the bulk of responsibility on the Organization of the Islamic Conference (OIC). *Id.* at 32-35. That organization had been largely responsible for the tenor of a regional UN meeting on racism in Iran: a country that would not allow Israeli citizens or Jewish, Bahai, or Kurdish NGOs to enter the country. *Id.* at 35. Australia and New Zealand were also excluded from this meeting, despite their belonging to the Asian regional group. *Id.* The United States objected to language in the document that emerged from this regional conference, for example, referring to the "ethnic cleansing of the Arab population in historic Palestine" and "the Zionist movement, which is based on race superiority" and to additions and changes the OIC pushed for in other regional documents at the final preparatory meeting in Geneva, for example, changing "Holocaust" to "holocausts." *Id.* at 36-37. The United States also objected to any explicit apology for the slave trade or "any language creating new legal liabilities" such as reparations. *Id.* at 37-38. Lantos noted that several non-governmental organizations were spreading anti-Semitic literature and engaging in anti-Semitic hate speech at the Conference. He chided NGOs for supporting or failing to prevent the NGO Forum document that itself contained anti-Semitic language. *Id.* at 46-47.

111. *Id.* at 40; see also Kahn, *supra* note 106; Hewitson, *supra* note 106; and Jeremy Ostrander, *Changing Direction on Non-Nuclear Arms Control? American Exceptionalism, Power, and Constancy*, 21 BERKELEY J. INT'L L. 495 (2003).

112. Lantos, *supra* note 110, at 40.

113. *Id.* at 44-45.

114. Steven Erlanger, *The Racism Walkout: The Europeans; America's Close Allies Decide to Stick it Out in Durban to Save the Meeting*, N. Y. TIMES, Sept. 4, 2001, at A8.

115. Lantos, *supra* note 110, at 48.

Lantos described the United States walkout as a success “in preventing the most virulent anti-Israel language from surviving in the conference text.”¹¹⁶

An American on the U.N. body responsible for overseeing compliance with the International Convention on the Elimination of all forms of Discrimination, Gay McDougall, criticized Lantos and the U.S. delegation for seeing “issues of racism only through the lens of the Israeli/Palestinian conflict, miss[ing] the proverbial forest for the trees.”¹¹⁷ She further remarked,

What is puzzling is that since decision-making was solely by consensus, the United States could prevent any language from inclusion in the final conference text merely by not agreeing to it. The U.S. actions, then, seem more like an objection to even having the debate, rather than being outcome oriented. The U.S. walkout was an abdication of global leadership and a shortsighted snub of the multilateral process.¹¹⁸

Shortsighted or not, the United States opted not to maintain its position as a human rights leader at this important multilateral forum just days before an attack that would radically reorient the U.S. perspective on its need for the support of other nations.

B. September 11, 2001: A Turning Point?

The events of September 11 dramatically changed many of the priorities and objectives of the United States government.¹¹⁹ Nations with poor human rights records including Uzbekistan, Egypt, Pakistan, and Saudi Arabia became important allies in the war on terror, and concern with human rights took a back seat in diplomatic relations.¹²⁰ The President’s first trip abroad after September 11 was to a meeting with Jiang Zemin in China.¹²¹ In a joint news conference, his only reference to human rights concerns was an allusion to the treatment of dissidents.¹²²

116. *Id.* at 31.

117. McDougall, *supra* note 109, at 135. McDougall applauded the Conference as addressing the “deep historical roots” of racism for the first time in an international governmental forum. *Id.* Among the accomplishments she counted were the historic discussion itself, a consensus statement about the shape of 21st century racism, and re-affirming equality and non-discrimination as “some of humanity’s most profound legal principles.” *Id.* at 137. While she agreed with Lantos that some of the non-governmental activists were spreading anti-Semitic literature and engaging in hate speech (*id.* at 136), and that the NGO forum statement contained anti-Semitic language (*id.* at 146), she also pointed out that many NGOs spoke out against these and that High Commissioner Mary Robinson refused to endorse that statement for this reason (*id.*). Nonetheless, McDougall urged, “We must distinguish between a discourse that is critical of Israeli government policy and the articulation of views that are anti-Semitic.” *Id.* at 144.

118. *Id.* at 145.

119. Some priorities remained unchanged: in July 2002, the State Department, in coordination with the White House, decided to withhold funding for U.N. administered family planning programs, citing “a provision routinely included in the foreign affairs spending bill that forbids funding of groups that allow” forced sterilization or abortion. Colum Lynch and Juliet Eilperin, *Family Planning Funds Withheld; Administration Decides Not to Contribute to U.N. Effort*, WASH. POST, July 20, 2002, at A4.

120. See *Allies Abuse Human Rights; By Working With Such Countries, the United States May Create Even More Anti-American Feeling*, GRAND RAPIDS PRESS, Oct. 5, 2001, at A6.

121. David E. Sanger, *Presidential Trip: Bush Meets Jiang*, N.Y. TIMES, Oct. 20, 2001, at A1.

122. *Id.*

While the unilateral State Department reports remained central to the United States' human rights agenda, the multilateral forum of the United Nations Commission on Human Rights remained a low priority. The most significant change in methods was an increased emphasis on bilateral strategic diplomatic and economic engagement that was reminiscent of the Clinton era in form, using economic incentives and sanctions, if not in substance, demonstrating a willingness to dispense with human rights objectives in favor of other policy concerns.

1. *Unilateral Investigation and Publicity: State Department Reports*

On March 4, 2002, the State Department released 6,000 pages of Country Reports on Human Rights that were highly critical of many governments "vital to the U.S. war on terrorism."¹²³ For example, the State Department accused Saudi Arabia of committing such human rights abuses as torture, forced confessions, prolonged detention, arbitrary arrests, denied access to legal counsel, and widespread intimidation.¹²⁴ Nonetheless, many human rights groups and members of Congress criticized the reports for softening language regarding the same countries.¹²⁵ For instance, a spokesperson for Amnesty International said past reports highlighted "Pakistan's practice of holding families hostage in order to pressure suspected extremists into turning themselves in," but this year's report overlooked this continuing practice.¹²⁶ While the 2001 report described rebels in Chechnya as "separatists," the 2002 report described them as "fighters."¹²⁷ While in 2001, the report described detainees in Uzbekistan as "pious Muslims," in 2002, they were described as Muslims "suspected of extremist sympathies."¹²⁸ Although the report indicates numerous human rights violations by Israel against Palestinians, it presented these actions consistently as responses to Palestinian violence, unlike previous reports.¹²⁹ This shift suggests that the State Department's country reports truth-telling function has once again been compromised to shield U.S. allies.

123. Robin Wright, *The World in Rights Report, U.S. Criticizes Nations Vital to War on Terror Policy: Annual Study Cites Violations of Freedoms in Countries such as Pakistan, Russia, Saudi Arabia and Israel*, L.A. TIMES, March 5, 2002, at A7.

124. Saudi Arabia, *Country Reports on Human Rights Practices for 2001*, Released by the Bureau of Democracy, Human Rights and Labor March 2002, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/nea/8296.htm> (last visited November 23, 2002).

125. Wright, *supra* note 123, at A7.

126. *Id.* (paraphrasing Alex Arriaga, Amnesty International's director of government relations in Washington).

127. *Id.*

128. *Id.* (quoting Sharon Burke, advocacy director of Amnesty International).

129. *Id.* (paraphrasing Sharon Burke, advocacy director of Amnesty International).

2. *Multilateral Diplomatic Engagement: The United Nations Commission on Human Rights*

The Human Rights Commission began its 58th session in March, 2002, without a U.S. member delegate.¹³⁰ The meeting largely focused on Israel and the Occupied Palestinian Territories (OPT).¹³¹ U.N. High Commissioner Mary Robinson called for an international monitoring presence in the occupied territories and for an immediate fact-finding mission to be sent by the Commission.¹³² Most members supported sending such a mission, though Australia and Canada were opposed. "Furthermore, the delegation of the United States, despite having observer status at this year's session, was working aggressively behind the scenes to block any such fact-finding initiatives."¹³³ Although the Commission approved the mission at a special session on April 5, Israel never gave them permission to visit.¹³⁴ At the same meeting, the Commission adopted a resolution on human rights violations in the OPT that was "one of the strongest statements issued by the Commission in some years."¹³⁵ Among other elements, it "affirmed the legitimate right of the Palestinian people to resist the Israeli occupation."¹³⁶ The Bush administration's willingness to shield Israel from human rights scrutiny continued to be at odds with the rest of the international community.

The U.S. delegation opposed Mexico's resolution "stress[ing] the importance of fighting terrorism consistently with human rights."¹³⁷ On this point, it was not alone but joined by Saudi Arabia, Pakistan, India, and Algeria. The United States succeeded in getting the resolution withdrawn.¹³⁸

The United States came under criticism at the Commission for the Bush administration's counterterrorism policies, including the President's arrogation unto himself of power to "direct the trial of non-citizens before military commissions established in such a way as to seriously undermine human rights and the rule of law."¹³⁹ The Special Rapporteur on the right to food also singled out the United States for supporting the interests of "transcontinental financial capital" over the interests of the majority of the earth's people, for its opposition in principle and practice to the right to food, and for its continuing economic embargo against Cuba.¹⁴⁰

130. Elizabeth Olson, *U.N. to Open Rights Review with U.S. on Sidelines*, N. Y. TIMES, Mar. 17, 2002, at I25.

131. Bret Thiele and Mayra Gómez, *A Review of the 58th Session of the United Nations Commission on Human Rights 2*, (forthcoming) (on file with author).

132. *Id.* at 4-5.

133. *Id.* at 5.

134. *Id.*

135. *Id.* at 8.

136. *Id.*

137. *Introduction to HUMAN RIGHTS WATCH WORLD REPORT 2003* at xix, Jan. 14, 2002, available at <http://hrw.org/wr2k3/introduction.html> (last visited Feb. 28, 2003).

138. *Id.*

139. Thiele and Gomez, *supra* note 131, at 10-11 (quoting the Special Representative of the Secretary General).

140. *Id.* at 35.

Because the United States had not been elected to the Commission the previous year, it could not bring a resolution to censure China, and no other state did so.¹⁴¹ At the end of April, the United States regained its seat on the Commission.¹⁴²

3. *United Nations General Assembly*

In May, at the U.N. General Assembly Special Session on Children, the U.S. delegation statement indicated the U.S. commitment to "improve the lives of children" though it made no reference to children's human rights.¹⁴³ According to the Human Rights Watch, it opposed "any reference to the Convention on the Rights of the Child."¹⁴⁴ After the Outcome Document was adopted, the U.S. delegation explained that it understood "children's rights . . . at all times in relation to the rights, duties and responsibilities of parents."¹⁴⁵ It further emphasized that it understood the document "in no way [to] include abortion or abortion-related services or the use of abortifacients."¹⁴⁶ Not only this, but the United States also "objected to any mention of the concrete rights of children, preferring vaguer reference to their well-being."¹⁴⁷

4. *Bilateral Strategic Diplomatic and Economic Engagement*

After September 11, the Bush administration increased use of strategic diplomatic and economic engagement to promote human rights in the world. This section will begin with a discussion of the Bush administration's general objectives and strategies, then it will turn to regional variations in implementation.

a. *Democracy Promotion*

The DRL has begun concentrating its pro-democracy funding on China and the Muslim world.¹⁴⁸ Its projects include training for democratic and trade union activists, election monitoring, and political party building.¹⁴⁹ Congress

141. *See China Human Rights Situation Will Not Be Raised at UNCHR This Year*, BBC Monitoring International Reports, Apr. 11, 2002. *See generally* Theile and Gomez, *supra* note 131, at 23-29.

142. *Americans Recover Seat on Rights Panel*, N.Y. TIMES, Apr. 29, 2002 at A10.

143. Tommy G. Thompson, United States Secretary of Health and Human Services, *Statement at the Special Session of the United Nations General Assembly on Children*, May 8, 2002 available at www.un.int/usa/02_064 (last visited Feb. 7, 2003).

144. *Introduction to HUMAN RIGHTS WATCH WORLD REPORT 2003*, *supra* note 137, at xix. Human Rights Watch further criticized the U.S. for objecting "to a proposed new Optional Protocol to the Convention Against Torture" although it is party to the Convention. The report noted that when the Optional Protocol came to a vote, the U.S. was nearly alone in voting against it, as the final vote was 127-4. *Id.*

145. Ambassador Sichan Siv, United States Representative on the U.N. Economic and Social Council, *Statement in Explanation of Position at the Special Session of the United Nations General Assembly on Children following Adoption of the Outcome Document*, May 10, 2002 available at www.un.int/usa/02_070 (last visited Feb. 7, 2003).

146. *Id.*

147. *Introduction to HUMAN RIGHTS WATCH WORLD REPORT 2003*, *supra* note 137, at xix.

148. Peter Slevin and Glenn Kessler, *U.S. to Seek Mideast Reforms; Programs Aim to Foster Democracy, Education, Markets*, WASH. POST, Aug. 21, 2002, at A1.

149. *Id.*

made a special appropriation to the State Department after September 11, 2001, in order to support voter education, financial training, and "classes in advocacy skills for workers in non-governmental organizations."¹⁵⁰ U.S. officials claimed that they would emphasize the status of women and take steps like bringing women from the Middle East to the United States to study the U.S. political system.¹⁵¹ Democracy promotion has been a strong emphasis at the DRL under Lorne Craner's direction.

b. National Security and Human Dignity

On September 17, 2002, the White House released its National Security Strategy. By including human dignity as a key element of the strategy, this document suggests a connection between terrorism and repressed human rights, at least in theory. The president's introduction can be read as making the case more directly:

[O]nly nations that share a commitment to protecting basic human rights and guaranteeing political and economic freedom will be able to unleash the potential of their people and assure their future prosperity. . . . Poverty does not make poor people into terrorists and murderers. Yet poverty, weak institutions, and corruption can make weak states vulnerable to terrorist networks and drug cartels within their borders.¹⁵²

Although the document uses many human rights concepts, it only makes fleeting use of the words "human rights": once in the president's introduction, twice with reference to building democracies, and twice with reference to China.¹⁵³ Instead of the human rights language, the document makes extensive use of words such as "human dignity" and "freedom," words that have dubious international legal force.¹⁵⁴ This "human dignity" trope had appeared earlier in the President's State of the Union Address in January, when he made no references to human rights but claimed, "America will always stand firm for the non-negotiable demands of human dignity: the rule of law; limits on the power of the state; respect for women; private property; free speech; equal justice; and religious

150. *Id.*

151. *Id.*

152. NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA (2002) at 1-2, available at <http://www.whitehouse.gov/nsc/nss.pdf> (last visited Jan. 3, 2003).

153. *Id.* at 1, 4, 22, 28.

154. See Theodor Meron, *On a Hierarchy of International Human Rights*, 80 A.J.I.L. 1, 5-13, (1986) (listing terms used interchangeably with "human rights" in primary human rights instruments ("human rights," "freedoms," "fundamental human rights," "fundamental freedoms," "rights and freedoms" and, most commonly, "human rights and fundamental freedoms")) and describing the U.S. distinction between ordinary human rights and basic human rights associated with the human person and human dignity, the latter being more fundamental); see also Reem Bhadi, *Globalization of Judgment: Transjudicialism and the Five Faces of International Law in Domestic Courts*, 34 GEO. WASH. INT'L L. REV. 555 (2002) (using the term "human dignity" to denote theoretical foundations of human rights law as they emerge in United States courts). But see Barbara Stark, 'Violations of Human Dignity' and Postmodern International Law, 27 YALE J. INT'L L. 315 (2002) (using the term "human dignity" interchangeably with "human rights.").

tolerance.”¹⁵⁵ Under the rubric of human dignity, the National Security Strategy promises that this administration will “speak honestly about violations of the nonnegotiable demands of human dignity,” to “advance freedom” through international institutions, to promote democracy, and to promote freedom of religion.¹⁵⁶ The document does not detail how these priorities will be protected as other security strategies are implemented.

c. *Near East*

In June, President Bush told the Palestinian Authority that it would have to change its political leadership as a precondition to statehood.¹⁵⁷ In August, the United Nations reported that although no evidence supported Palestinian claims of civilian massacres by Israel, the Israeli military had used excessive force when it entered a refugee camp in Jenin.¹⁵⁸ The report said that combatants on both sides had endangered civilians and that Israeli soldiers prevented Palestinian civilians from getting medical treatment.¹⁵⁹ This report lends weight to the suggestion that State Department country reports issued for 2001 were written so as to shield Israel.

In response to Iranian student protests in August, President Bush broadcast on “Voice of America” that the Iranian people “want the same freedoms, human rights and opportunities as people around the world.”¹⁶⁰ This may have marked the beginning of an effort “to promote democracy in the Middle East.”¹⁶¹ That effort was to include a review of foreign aid to the Middle East with a goal of incremental progress in human rights without alienating key allies like Egypt and Saudi Arabia.¹⁶² One official of the Bush administration described the strategy as “saying more clearly than we have before that these are changes the region needs to make if it is to receive the benefits of globalization.”¹⁶³ The president has given numerous speeches about the importance of freedom and opportunity for people in Islamic countries.¹⁶⁴ The administration announced that it would insist that women have power in a post-Taliban Afghanistan.¹⁶⁵

155. *The President's State of the Union Address*, Office of the Press Secretary, Jan. 29, 2002, available at <http://www.whitehouse.gov/news/releases/2002/01/20020129-11.html> (last visited Jan. 14, 2003).

156. NATIONAL SECURITY STRATEGY, *supra* note 152, at 4.

157. *President Bush Calls for New Palestinian Leadership*, June 24, 2002, available at <http://www.whitehouse.gov/news/releases/2002/06/20020624-3.html> (last visited Nov. 23, 2002).

158. Colum Lynch, *U.N. Finds No Proof of Massacre in Jenin; Report: Palestinians Were Denied Aid*, WASH. POST, Aug. 2, 2002, at A16.

159. *Id.*

160. Jackson Diehl, *The Silence Signal; Why Bush Must Speak to Muslims*, WASH. POST, Aug. 5, 2002, at A15.

161. Peter Slevin and Glenn Kessler, *U.S. to Seek Mideast Reforms; Programs Aim to Foster Democracy, Education, Markets*, WASH. POST, Aug. 21, 2002, at A1.

162. *Id.*

163. *Id.*

164. *Id.*

165. Elisabeth Bumiller, *White House Letter: the Politics of Plight and the Gender Gap*, N.Y. TIMES, Nov. 19, 2001, at B2.

Also in August, President Bush told President Hosni Mubarak of Egypt that he opposed increases in U.S. aid to that country because of its human rights violations, including suppression of human rights campaigners and pro-democracy organizations there.¹⁶⁶ Specifically, Egyptian authorities had condemned Saad Eddin Ibrahim to seven years hard labor for “defaming Egypt and using a grant from the European Union to monitor parliamentary elections.”¹⁶⁷ This prominent democracy activist was also known for defending Egypt’s Coptic Christian minority.¹⁶⁸ Although the President’s threat had no immediate effect, a Human Rights Watch spokesperson said this move might be “the most significant step the United States has ever taken to defend human rights in the Arab world.”¹⁶⁹ Here, the administration’s human rights priorities of democracy and religious freedom won out despite the importance of Egypt to stability in the Middle East and to the war on terror.

In September 2002, a White House document entitled, “A Decade of Deception and Defiance,” sought to justify a possible war against Iraq partly by reference to its history of human rights violations.¹⁷⁰ In a September speech to the United Nations, the President promised that if the United States took military action in Iraq, it would work toward a new regime “based on respect for human rights, economic liberty and internationally supervised elections.”¹⁷¹ In October, the President compared Saddam Hussein to Stalin for “using murder as a tool of terror and control,” and asserted that “America believes that all people are entitled to hope and human rights.”¹⁷² In December, the DRL published an extensive report detailing human rights abuses under Saddam Hussein since he took power in 1979.¹⁷³ Among other abuses, the report charged the Iraqi government with suppression of dissidents, torture, use of chemical weapons on citizens, systematic rape, beheading women accused of prostitution, and kidnapping minority children to force their families to relocate.¹⁷⁴

d. South Asia and Pacific

A United Nations inquiry report in 1999 had called for an international criminal tribunal for East Timor,¹⁷⁵ but the Security Council had agreed to give Indonesia a chance to bring its own legal proceedings.¹⁷⁶ The Clinton administration severed what remained of its military ties with that country and refused

166. Slevin, *supra* note 161, at A1.

167. Michael Slackman, *The U.S. Has Signaled That It Won't Give Cairo Additional Aid*, L.A. TIMES, Aug. 16, 2002, § 1, at 5.

168. *Id.*

169. Peter Slevin, *Bush, in Shift on Egypt, Links New Aid to Rights*, WASH. POST, Aug. 15, 2002, at A1.

170. See William F. Schulz, *War and Human Rights*, WASH. POST, Sept. 20, 2002 at A28.

171. *A Postwar Plan*, WASH. POST, Oct. 17, 2002, at A20.

172. *Saddam Hussein Is a Threat to Peace*, WASH. POST, Oct. 8, 2002, at A20.

173. *Iraq: A Population Silenced*, Bureau of Democracy, Human Rights, and Labor, Dec. 2002, available at <http://www.state.gov/g/drl/rls/15996.htm> (last visited Jan. 14, 2003).

174. *Id.*

175. *Indonesia Sets Up Court for East Timor Offenders, Lawyers Urge International Tribunal*, AGENCE FRANCE-PRESSE, Jan. 31, 2002, available at LEXIS, News Library.

176. Ian Martin, *No Justice in Jakarta*, WASH. POST, Aug. 27, 2002, at A15.

to renew them until Indonesia brought offenders in East Timor to trial.¹⁷⁷ In January, 2002, Indonesia "inaugurated its first human rights court to try offenders in East Timor in 1999,"¹⁷⁸ amid a great deal of skepticism.¹⁷⁹ The State Department reported in March that Indonesian security forces "were responsible for numerous instances of, at times indiscriminate, shooting of civilians, torture, rape, beatings and other abuse, and arbitrary detention."¹⁸⁰ The report further stated that the Indonesian government was ineffective in responding to ethnic and religious violence.¹⁸¹

In August 2002, Colin Powell announced that the U.S. would begin military training in Indonesia once again "as part of a broad program of counterterrorism assistance" despite little evidence that the Indonesian military's human rights abuses had been investigated or punished.¹⁸² The administration reportedly argued that preventing Indonesia from becoming a haven for terrorists was more important than "the need for the country's fledgling democracy to prove it has taken control of the powerful armed forces."¹⁸³ Later that week, the State Department legal counsel William H. Taft IV submitted a request to a U.S. District Court to dismiss the International Labor Rights Fund's lawsuit against Exxon Mobil, in which the multinational corporation was charged with complicity in human rights abuses including rape, torture, and murder by Indonesian security forces.¹⁸⁴ The letter argued that the government of Indonesia might perceive this case as "interfering" and thus might be less disposed to cooperate with the United States in fighting terrorism.¹⁸⁵ It further argued that the court's action might lead Indonesia to reject U.S. corporate investment in Indonesia, thus undermining human rights initiatives in that country.¹⁸⁶

In July 2002, the State Department expressed outrage and urged investigation of non-governmental reports that military officers in Myanmar (Burma) had "systematically raped hundreds of ethnic minority women and girls."¹⁸⁷ The Chairman of the House International Relations Subcommittee on International Operations and Human Rights also openly condemned the Myanmar junta.¹⁸⁸

177. *Indonesia Sets Up Court*, *supra* note 175; Karen DeYoung, *Powell Says U.S. to Resume Training Indonesia's Forces; Terrorism Fears Overtake Concerns about Army Abuses*, WASH. POST, Aug. 3, 2002, at A15.

178. *Indonesia Sets Up Court*, *supra* note 175.

179. Martin, *supra* note 176.

180. Indonesia, *Country Reports on Human Rights Practices for 2001*, Released by the Bureau of Democracy, Human Rights and Labor March 2002, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/eap/8314.htm> (last visited Nov. 23, 2002).

181. *Id.*

182. DeYoung, *supra* note 177, at A15.

183. *Id.*

184. William Taft, Department of State Legal Advisor, *Doe v. Exxon*, July 29, 2002, available at <http://www.hrw.org/press/2002/08/exxon072902.pdf> (last visited Nov. 23, 2002); Mary McGrory, *Powell's Awkward Position*, WASH. POST, Aug. 29, 2002, at A31; *Human Rights and Terror*, WASH. POST, Aug. 11, 2002, at B6.

185. Taft, *supra* note 184.

186. *Id.*

187. Glenn Kessler, *Burma Rape Charges Spur U.S. Complaint; Report Cites Army Attacks on Women, Girls*, WASH. POST, July 4, 2002, at A19.

188. *Id.*

In December 2002, the DRL confirmed that preliminary investigations starting in August produced anecdotal evidence corroborating these reports.¹⁸⁹ The DRL condemned the violence, noting the "consistency of the stories across three different locations, among differing groups of women."¹⁹⁰

In October 2002, U.S. special envoy James Kelly met with North Korean officials, telling them that bilateral ties with the United States would improve if North Korea would address "U.S. concerns about security and human rights."¹⁹¹ North Korea described the envoy's attitude as "high-handed and arrogant."¹⁹²

In December 2001, President Bush granted China permanent normal trade status, which President Clinton had pushed for Congress to authorize.¹⁹³ Shortly thereafter, the State Department's Country Report accused China of extrajudicial killings, torture, using the war on terror as an excuse to suppress dissidents and minorities, including Uighur Muslims, and "'any person, group, whether religious, political or social,' viewed as a threat to government power."¹⁹⁴ The Bush administration maintained support (as did President Clinton) of China's entry into the World Trade Organization on the grounds that trade liberalization would have a positive effect on human rights.¹⁹⁵ Further, the Bush administration used China's one-child policy to justify withholding funds from the U.N. Population Fund despite the fact that a State Department team led by Colin Powell "found no evidence of coercive abortions or involuntary sterilizations."¹⁹⁶

In late August, the U.S. Embassy in Beijing announced the existence of evidence that the East Turkistan Islamic Movement (ETIM), the same Uighur Muslim separatist group referred to by the State Department's country report, was planning a terrorist attack on the U.S. Embassy in Kyrgyzstan.¹⁹⁷ ETIM was added to the State Department list of terrorist organizations, and its assets were frozen.¹⁹⁸ In September, the United States joined with China in requesting that the United Nations Security Council add ETIM to the list of terrorist groups, despite the fact that the U.S. and human rights groups have condemned China for its treatment of this ethnic minority.¹⁹⁹

Unlike the Clinton administration's strategic engagement with China, using both incentives and sanctions to promote human rights, the Bush administration

189. *Rape by the Burmese Military in Ethnic Regions*, Bureau of Democracy, Human Rights, and Labor, Dec. 17, 2002, available at <http://www.state.gov/g/drl/rls/16087.htm> (last visited Jan. 14, 2003).

190. *Id.*

191. *World in Brief*, WASH. POST, October 8, 2002, at A19.

192. *Id.*

193. Scott Lindlaw, *U.S. Normalizes China Trade Status*, WASH. POST, Dec. 28, 2001, at E2.

194. Wright, *supra* note 123, at A7.

195. *China's Workers*, WASH. POST, Aug. 15, 2002, at A24.

196. Philip P. Pan, *China's One-Child Policy Now a Double Standard; Limits and Penalties Applied Unevenly*, WASH. POST, Aug. 20, 2002, at A1.

197. Philip P. Pan, *U.S. Warns of Plot by Group in W. China*, WASH. POST, Aug. 29, 2002, at A27.

198. *Id.*

199. Karen DeYoung, *U.S. and China Ask U.N. to List Separatists as Terror Group*, WASH. POST, Sept. 11, 2002, at A13.

provided the rewards of compliance with human rights norms absent evidence that there was such compliance. It cooperated in the characterization of an ethnic minority as a terrorist threat. Further, it justified withholding funds from a United Nations organization on the basis of human rights violations its own State Department denied.

e. Eurasia / Central Asia

State Department reports on human rights in Uzbekistan suggest problems with religious freedom, torture, prolonged detention without trial, and using the war on terror as an excuse to crack down on dissidents.²⁰⁰ "The security forces arbitrarily arrested and detained persons, on false charges, particularly Muslims suspected of extremist sympathies, frequently planting narcotics, weapons, or banned literature on them."²⁰¹ Yet, "the United States appear[ed] to have softened criticism of human rights abuses by the authoritarian Central Asian regimes."²⁰² The State Department announced that it would triple economic assistance to Uzbekistan on the heels of a referendum to allow President Karimov to extend his term.²⁰³ U.S. Assistant Secretary of State on European and Eurasian Affairs Elizabeth Jones said the Uzbek government had made a new commitment to working with the United States to improve Uzbekistan's human rights and democracy.²⁰⁴ The Clinton administration had tried to promote political and economic stability through multilateral institutions such as NATO's Partnership for Peace and the Central Asian Economic Community, taking account of Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan.²⁰⁵ The Bush administration instead began unilateral support for Uzbekistan in the form of military aid in order to use it as a base for operations in Afghanistan.²⁰⁶ Some speculated that this concentration of power would exacerbate "domestic political repression," which is often the source of extremism in Central Asia.²⁰⁷

Similarly, in Pakistan, "General Pervez Musharraf pushed through constitutional amendments" that extended his term and gave him the power to dissolve parliament.²⁰⁸ When asked about this development, President Bush commented, "My reaction about President Musharraf, he's still tight with us on the war against terror, and that's what I appreciate."²⁰⁹

200. See Uzbekistan, *Country Reports on Human Rights Practices 2001*, Released by the Bureau of Democracy, Human Rights and Labor Mar. 4, 2002, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8366.htm> (last visited Nov. 23, 2002).

201. *Id.*; Wright, *supra* note 123, at A7.

202. Denise Albrighton, *US Praises Uzbekistan, Looks Past Poll to Extend Presidential Term*, AGENCE FRANCE-PRESSE, Jan. 29, 2002, available at LEXIS, News Library.

203. *Id.*; see also Robert G. Kaiser, *U.S. Plants Footprint in Shaky Central Asia*, WASH. POST, Aug. 27, 2002, at A1.

204. Albrighton, *supra* note 202.

205. Pauline Jones Luong & Erika Weinthal, *New Friends, New Fears in Central Asia*, 81 FOREIGN AFF. 61 (2002).

206. *Id.*

207. *Id.*

208. Introduction, HUMAN RIGHTS WATCH WORLD REPORT 2003, *supra* note 136, at 7.

209. *Id.*

In January 2002, the administration continued to push for permanent normal trade status for Russia.²¹⁰ In March, the State Department reported that human rights violations such as torture and extrajudicial killings were still happening in that country.²¹¹ In a largely symbolic act in October, President Putin revoked special permission to operate in Russia from Radio Liberty, a U.S. government-funded radio station,²¹² though some human rights groups described U.S. treatment of human rights violations, particularly in Chechnya, as "mild."²¹³

f. Africa

In November 2001, the Bush administration worked to obstruct talks between nations, industries, and human rights groups that would have instituted a multilateral certification system requiring African nations to participate or be "shut out of the diamond trade."²¹⁴ The U.S. delegation argued that this system would violate world trade law.²¹⁵ The Bush administration opposed strong U.S. controls for the same reason.²¹⁶ In compromise legislation that month, the House of Representatives gave the President power to impose trade sanctions against "nations that have no system for tracking diamonds."²¹⁷ However, the president already had this power.²¹⁸

In December 2001, Congress approved incentives for President Mugabe of Zimbabwe to stop human rights abuses and to start market reforms, but the legislation did not impose sanctions.²¹⁹ The State Department's Country Report on Human Rights said the government's "very poor human rights record continued to worsen during the year, and it committed numerous, serious abuses."²²⁰

The State Department Country Report on Human Rights for Nigeria accused police, army, and security forces of extrajudicial killings and use of excessive force.²²¹ "In the year's most egregious case, army soldiers reportedly

210. Peter Slevin, *New Trade Relations Sought for 8 Countries; Rights Groups Hit War-Aid Reward*, WASH. POST, Jan. 6, 2002, at A19.

211. Russia, *Country Reports on Human Rights Practices 2001*, Released by the Bureau of Democracy, Human Rights and Labor Mar. 2002, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8331.htm> (last visited Nov. 23, 2002).

212. *Putin Ends Special Status for U.S. Radio; Rebuke May Have No Practical Effect; Chechen News Cited*, WASH. POST, Oct. 5, 2002, at A15.

213. *Introduction to HUMAN RIGHTS WATCH WORLD REPORT 2003*, *supra* note 137, at 7.

214. *Diamond Diplomacy*, N.Y. TIMES, Nov. 28, 2001, at A24.

215. *Id.*

216. *Id.*

217. *Sparkling Deal*, SCRIPPS HOWARD NEWS SERVICE, Dec. 11, 2001.

218. See Holly Rosencrantz, *Bush Signs Order to Strengthen Ban on Liberian Diamond Imports*, BLOOMBERG NEWS, May 23, 2001.

219. Cf. *EU Sanctions on Zimbabwe*, Interview with Chris Patten, BBC WORLD SERVICE, July 22, 2002, available at http://europa.eu.int/comm/external_relations/news/patten/bbczimb_0702.htm (last visited Nov. 23, 2002).

220. Zimbabwe, *Country Reports on Human Rights Practices for 2001*, Released by the Bureau of Democracy, Human Rights and Labor, Mar. 2002, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/af/8411.htm> (last visited Nov. 23, 2002).

221. Nigeria, *Country Reports on Human Rights Practices for 2001*, Released by the Bureau of Democracy, Human Rights and Labor, Mar. 2002, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/af/8397.htm> (last visited Nov. 23, 2002).

killed approximately 200 unarmed civilians and destroyed much of the town of Zaki Biam in Benue State in apparent retaliation for the killing of 19 soldiers.”²²² In July 2002, Nigerian women were holding employees of Chevron Texaco in an oil facility, protesting for greater investment by the company in schools and electrical and water systems.²²³ Despite this, when the State Department’s Assistant Secretary for African Affairs, Walter Kansteiner, visited Nigeria that month, he “didn’t mention human rights,” instead emphasizing the importance of oil production and exploration there.²²⁴ In August 2002, Philip Reeker, spokesperson for the State Department invoked the Universal Declaration of Human Rights as he decried the death sentence of stoning for a Nigerian woman accused of having sex outside of marriage.²²⁵ Despite these serious concerns about human rights abuse, U.S. support for Nigeria in the form of military training, arms supply, and defense cooperation agreements expanded and continued to grow under the Bush administration.²²⁶

g. *Latin America*

Human rights policy regarding Latin America did not change dramatically after September 11, though there were some noteworthy developments. The State Department declassified documents in August 2002 relating to both U.S. and Argentine government knowledge of death squads and disappearances of Argentines between the years 1976 and 1983.²²⁷ One month earlier, for the first time, a U.S. jury had returned a verdict against accused human rights abusers sued under the Alien Tort Claims Act: Salvadoran generals Carlos Eugenio Vides Casanova and Jose Guillermo Garcia were ordered to pay \$54.6 million to three torture victims.²²⁸

In July 2002, Congress lifted restrictions on the use of military assistance to Colombia.²²⁹ Prior to that act, military aid to Columbia could only be used to combat drug supplies. This limitation was in part justified by concern for ties between the government’s military forces and the paramilitary forces largely responsible for human rights abuses. After passing a human rights review, the

222. *Id.*

223. *World in Brief*, WASH. POST, July 16, 2002, at A13.

224. Mary McGrory, *Powell’s Awkward Position*, WASH. POST, Aug. 29, 2002, at A31. Similar protests against Shell in 1995 had resulted in state execution of nine Ogoni leaders, including Ken Saro-Wiwa. *World in Brief*, July 16, 2002, *supra* note 223. His remains and those of seven others were believed to be uncovered in August 2002. Glenn McKenzie, *Nigerians Exhume Remains Believed to Be Activist’s; Ken Saro-Wiwa’s Grave Kept Secret After ‘95 Hanging*, WASH. POST, Aug. 11, 2002, at A20.

225. Colbert I. King, *The Beam in Our Own Eye*, WASH. POST, August 24, 2002, at A23.

226. Philip C. Aka, *The “Dividend of Democracy”: Analyzing U.S. Support for Nigerian Democratization*, 22 B.C. THIRD WORLD L.J. 225, Table 2, 255 (2002).

227. Dana Priest, *Argentine Ex-Leader Tied to Death Squad; U.S. Records Cite Role in 1976-83 Killings*, WASH. POST, Aug. 21, 2002, at A14.

228. Manuel Roig-Franzia, *Torture Victims Win Lawsuit Against Salvadoran Generals*, WASH. POST, July 24, 2002, at A1.

229. *U.S. Special Forces to Train Colombian Troops*, AGENCE FRANCE PRESS, July 26, 2002, available at LEXIS, News Library; see also Scott Wilson, *24 Dead, But Alliance Endures; Colombian Army’s Clash With Paramilitary Troops May Be an Aberration*, WASH. POST, Sept. 18, 2002, at A16.

Columbian government can now use U.S.-made weapons and U.S.-trained troops to fight paramilitaries regardless of these groups' involvement in the drug trade.²³⁰ This policy bears a resemblance to the treatment of Uzbekistan and Indonesia, where stability was sought by supplying overwhelming force to one regime, despite its history of human rights abuse. That said, Human Rights Watch points out that the United States

also took several positive new steps—indicting top leaders of Colombia's paramilitary and guerrilla organizations who were implicated in grave human rights abuses as well as drug trafficking, canceling the U.S. visa of a senior Colombian admiral linked to gross abuses, and suspending assistance to a Colombian air force unit implicated in a serious violation of the laws of war.²³¹

C. Indications of Change

The Bush administration's first forays into human rights diplomacy relied almost entirely on the unilateral tool of State Department Country Reports. However, it attempted to use the multilateral forum of the United Nations Commission on Human Rights to further its agenda with Cuba and China. This attempt failed, and, instead, the United States lost its seat on the Commission. After September 11, the administration turned to strategic diplomatic and economic engagement for improving human rights in other countries. In some instances, the war on terror may have had some positive effects on human rights. But, in most cases, the trend seems to run the other way. Human rights priorities generally took a back seat to fighting the war on terror. The administration actively sought to undermine the exercise of universal jurisdiction in U.S. courts when it might have threatened relations with Indonesia, an important ally in the war on terror. The administration continued to make use of country reports, but it generally only ramped up its human rights rhetoric against oppressive regimes where it perceived little U.S. economic or political interest apart from regime change or at least thorough reworking of government structures—for example, Iran, Iraq, Myanmar, North Korea. The threat to reject increases in aid for Egypt provides an interesting exception.

The United States has not employed multilateral methods systematically to achieve human rights objectives *per se*, though in the attempt to bring the United Nations along for a war in Iraq, it bolstered its position by reference to human rights abuses in that country. The administration has also employed human rights language to support women's inclusion in democracy, though it has avoided such language when withdrawing support for birth control and other social, cultural, and economic rights that are arguably necessary for the exercise of other human rights. Finally, there appears to be a trend toward making reference to "human dignity," "freedom," or even "well-being" rather than to terms of international law like "human rights" in formulating U.S. foreign policy priorities.

230. Wilson, *supra* note 229.

231. Introduction to HUMAN RIGHTS WATCH WORLD REPORT 2003, *supra* note 137, at 6.

V. A CHANGED APPROACH TO HUMAN RIGHTS DIPLOMACY AND FOREIGN POLICY

No one would expect U.S. foreign policy to remain entirely unchanged after September 11, not even with respect to human rights. Since then, the Bush administration has adopted a more contextualized approach to human rights diplomacy when it is used in the service of other policy goals, particularly those related to the war on terror. This entails multilateral and bilateral cooperation, often with powers that have poor human rights records. When human rights goals are de-linked from military and economic targets, however, the rhetoric and tactics much more resemble the pre-September 11 Bush administration: unilateral and isolationist. The new plan resembles Clinton's "inside-outside" engagement in the sense that there is external criticism, the threat of economic sanction and support for internal reforms, yet the formula is changed. Because the war on terror is at the forefront of the U.S. foreign policy concerns, human rights policy is often trailing in its wake.²³² The current administration and Congress seem to favor crack-downs on political freedoms whenever and wherever there is a threat of terror, and this includes supporting regimes that are guilty of gross human rights violations.

In his remarks to the Heritage Foundation on October 31, 2001, Lorne Craner, Assistant Secretary of the Bureau for Democracy, Human Rights, and Labor, insisted that the United States would maintain its leadership in the multilateral effort to expand human rights. He described the importance of human rights in the former Soviet Union, Colombia, Indonesia, Cuba, Zimbabwe, Kenya, and Nigeria to the U.S. national interest, and he predicted their centrality to foreign policy after September 11. He also expressed continuing support for long-term human rights improvement through economic engagement with China and Persian Gulf nations. Finally, while acknowledging that "business runs on profits, not on human rights," he explained that the DRL would build on the work of the previous administration in working with companies on the issue of corporate responsibility for human rights violations.²³³ Military objectives in the war on terror appear to have undermined these objectives in several cases, though one can easily imagine that it could have been worse.

Given how quickly and recently this administration's objectives and methods have changed with regard to human rights, it may be too soon to evaluate their effectiveness. Early attempts to work through multilateral mechanisms to achieve human rights goals were not successful: the United States isolated itself at the United Nations Commission on Human Rights in 2001. That isolation

232. Consider Mary Robinson's comments as she left her post as the United Nations High Commissioner for Human Rights: "I hope that after the first anniversary of September 11 we will have a change that will reinforce the importance of human rights norms." *Robinson Bows Out With Post-September 11 Hope for Rights*, AGENCE FRANCE-PRESS, Sept. 10, 2002, available at LEXIS, News Library.

233. Lorne W. Craner, *The Role of Human Rights in Foreign Policy: Remarks at the Heritage Foundation*, Oct. 31, 2001, available at <http://www.state.gov/g/drl/rls/rm/2001/6378pf.htm> (last visited Nov. 11, 2002).

played against U.S. human rights objectives at the World Conference Against Racism at Durban. It further isolated itself on human rights issues at both the General Assembly and the Security Council. Since the United States has reclaimed its seat at the Human Rights Commission, perhaps the coming year will provide this administration with a better opportunity to work for human rights on a multilateral level. However, as of January 20, 2003, the United States strongly opposed and had even demanded a ballot challenging the appointment of a Libyan representative to the chairmanship of the Commission.²³⁴ Despite serious questions about Libya's own human rights record, so far only Canada had said it would join U.S. opposition to Libya's apparently certain election.²³⁵ This would be the first time since 1947 that the chairmanship would go to a vote.²³⁶

The State Department's many reports indicate that U.S. allies are using the war on terror as an excuse to repress human rights in their own countries.²³⁷ Human Rights Watch's World Report for 2003 also makes this finding and further suggests that the U.S. "tendency to ignore human rights in fighting terrorism is not only disturbing in its own right; it is dangerously counter-productive."²³⁸ As the National Security Strategy suggests, terrorism finds a home more easily in countries where human rights are repressed. So, allowing human rights to be compromised in the war on terror could exacerbate rather than solve the problem. While this is not a good sign for human rights as a policy objective, it does suggest that the unilateral reporting mechanism remains vitally important to on-going assessment of the effectiveness of current human rights policies. For this reason, it is perhaps disturbing to think that these reports may also be compromised by the administration's other, more immediate goals, as Amnesty International suggested when the Country Reports for 2001 were issued.

VI. IMPLICATIONS

The question that arises from these changing circumstances and policies is how significantly the policies of the Bush administration and the current Congress change the U.S. position with respect to human rights as a multilateral goal and with respect to multilateral institutions and mechanisms for promoting and protecting human rights.

Both the Clinton and Bush administrations maintained an explicit commitment to human rights, and both showed something of a preference for unilateral and bilateral mechanisms for promoting and enforcing them. This is not surprising given the uniquely powerful position of the United States in the world. Trade

234. *U.S. to Demand Vote on Libya's Leadership of Rights Panel*, N.Y. TIMES, January 20, 2003, at A4.

235. *Id.*

236. *Id.*

237. See Fain, *supra* note 1; Dahlstrom, *supra* note 1.

238. *Introduction to HUMAN RIGHTS WATCH WORLD REPORT 2003*, *supra* note 137, at 3.

incentives, for example, may be more effective for pressuring a nation to respect its human rights commitments than United Nations enforcement mechanisms, which are notoriously weak. This is even truer when the target state has not made human rights commitments at all.

However similar the methods may be, some of the substance has changed. Where the Clinton administration saw ethnic and religious minorities in need of protection, the Bush administration sees terrorist threats. Where the Clinton administration encouraged regional cooperation as a means to stability, the Bush administration favors stability through more concentrated power. While President Clinton may have intervened in Kosovo with the goal of avoiding a human rights catastrophe, humanitarian concern does not apparently fuel the looming war with Iraq in the same way. Where the Clinton administration supported Alien Tort Claims cases and otherwise encouraged individual and corporate accountability, the Bush State Department has undermined unilateral accountability mechanisms when they conflict with a competing foreign policy priority, be it trade, security, or oil. One question that emerges from these policy shifts is to what extent they represent ideological differences between these governments and to what extent they reflect a changing world after September 11.

Furthermore, the recently released National Security Strategy reflects the President's State of the Union Address by going out of its way to avoid using the multilateral language of human rights law. A shift in U.S. policy away from using human rights language would raise serious questions about the future of international human rights law in general.

On December 9, President Bush signed a proclamation declaring "December 10, 2002, as Human Rights Day; December 15, 2002, as Bill of Rights Day; and the week beginning December 10, 2002, as Human Rights Week."²³⁹ In the proclamation, the president said, "Since the founding of our country, the Bill of Rights has served to guide our people and our Government to ensure basic human rights and liberties."²⁴⁰ The proclamation goes on to assert that the war on terror is proof of America's "dedication to a future of hope and understanding for all people."²⁴¹ There is more than one way to read this proclamation and other documents like it. On the one hand, they can be read to support the multilateral goal of human rights by making an explicit connection between American values and human rights. On the other hand, they can be read to subvert the multilateral norms by supplanting them with American values. How they ultimately should be understood will depend on future events.

239. Proclamation 7634—Human Rights Day, Bill of Rights Day, and Human Rights Week 2002, 38 WEEKLY COMP. PRES. DOC. 2143 (Dec. 9, 2002).

240. *Id.*

241. *Id.*