

Foreigners Judge United States in First Global Review of Human Rights Record

54 Nations issue 228 Recommendations

by Thomas W. Jacobson (1 June 2011)

On November 5, 2010, the United States Administration of President Barack Obama submitted our country, for the first time in its history, to a Universal Period Review (UPR) process of the United Nations' Human Rights Council (HRC), allowing any of the 192 UN Member Nations to criticize us for our human rights record. Forty-Seven UN Member Nations are part of the HRC, but any Member Nation can speak and present recommendations during certain stages of the UPR process. Fifty-four nations presented 228 separate recommendations¹ – mostly criticisms – on how the United States could improve protection of human rights.

Guess who offered the most criticisms? Venezuela, under the leadership of the tyrant President Hugo Chavez, gave 17 recommendations. Two other oppressive regimes tied for second place: Cuba and Iran who each gave 13 criticisms. Other suggestions came from friends and foes: Austria, 11; Bolivia, 10; Egypt, 9; Nicaragua and North Korea, 8; Brazil, Norway and Uruguay, 7; Australia, Ecuador, Guatemala, Ireland, Sudan and Switzerland, 6; Algeria, Cyprus, Mexico and the Russian Federation, 5; Bangladesh, Belgium, China, Costa Rica, France, Libya, Qatar and Spain, 4; Denmark, Finland, Ghana, Indonesia, Morocco, Netherlands, Slovakia, South Korea, Sweden, Thailand, Turkey and Vietnam, 3; Germany, Haiti, Holy See, Hungary, India, Malaysia, Moldova, New Zealand and the United Kingdom, 2; Canada, Italy, Japan, and Trinidad and Tobago, 1. Some of the 288 recommendations were supported by up to seven nations.²

The United States Delegation

At the start of the UPR, Esther Brimmer, Assistant Secretary of State for International Organizations and one of the leaders of the U.S. delegation, began her remarks by saying, “The United is honored to present our first Universal Periodic Review report to the United Nations Human Rights Council.” Michael Posner, Assistant Secretary of State for Democracy, Human Rights & Labor, followed with his remarks, saying: “The United States is a country founded on the moral truths reflected in the Universal Declaration of Human Rights, and our Constitution has provided the legal framework and foundation for our progress toward a more perfect union over the last 221 years. Our Declaration of Independence reaffirmed the ‘inalienable rights’ of all people.”³ Actually, the 1948 UDHR reflects only some of the truths upon which our 1776 Declaration and 1787 Constitution were founded, but none of the socialistic ideas. It is puzzling that Posner quoted the UDHR first, and the Declaration last.

Mr. Jacobson wrote this paper in 2011 when serving as a Visiting Fellow for Freedom Alliance in their Center for Sovereignty & Security.

The 35-member United States delegation was comprised of “senior officials from eleven U.S. departments and agencies,”⁴ and a few others. Brimmer, Posner and Harold Koh, Legal Advisor for the Department of State, led the delegation. Other senior officials included: Eileen Chamberlain Donahoe, U.S. Representative to the Human Rights Council, and officials from the Departments of Defense, Education, Health and Human Services, Homeland Security, Justice, Labor, Interior, including the Bureau of Indian Affairs, plus the Equal Employment Opportunity Commission and the Environmental Protection Agency. Also, Zainab Al-Suwaij, Executive Director of the American Islamic Conference, was one of three “Private Sector Advisers.”⁵

To this U.S. delegation, the recommendations below were given during the review, following the U.S. presentation of its Report.⁶

China Sets Tone for Review

The tone of the review was reflected accurately by Chinese Ambassador He Yafei, who spoke after the U.S. made its presentation during the review.

The Chinese delegation ... [has] noticed that in recent years the US government has made efforts to promote and protect human rights, leading to some progress ... At the same time, we [are] also concerned by the gaps in the US laws protecting human rights and that it has not become a party to a number of core international human rights instruments. Its law enforcement agencies tend to use excessive force and it lacks independent oversight bodies. There is also serious discrimination against Muslims and minority racial groups, while the instance of poverty among Afro-Americans, Latinos and Indians is three times that of the white. The American judicial authorities have committed abuses under a system which allows for the detention of immigrants. Some states have enacted laws which gravely infringe upon the basic human rights of immigrants. In the name of fighting terror, the United States is also monitoring and curtailing its citizens’ freedom of expression and the right to free internet access.⁷

Ambassador He followed with four recommendations, including asking the U.S. to ratify several UN treaties, end “excessive use of force by law enforcement agents,” and “Quickly close down the Guantanamo prison.”⁸ Are we to assume that China has a sterling record of “protecting human rights,” and that it carefully adheres to all the “international human rights instruments” it has ratified? Do not its police forces “use excessive force,” including to suppress “freedom of expression” and Internet access, at the direction and concurrence of the national government?

Foreign Governments Call Upon U.S. to Ratify More UN Treaties

Venezuela, in the first of its 17 recommendations, called upon the United States to: “Ratify without reservations the following conventions and protocols:

- CEDAW [Convention on the Elimination of All Forms of Discrimination Against Women];
- the ICESCR [International Covenant on Economic, Social and Cultural Rights];
- the Convention on the Rights of the Child [CRC];
- the Convention on the Rights of Persons with Disabilities;

- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- the International Convention for the Protection of All Persons from Enforced Disappearances;
- the Statute of the International Criminal Court;
- those (the Protocols) of the ILO [International Labor Organization];
- the United Nations Declaration on Indigenous Peoples, and
- all those from the Inter-American Human Rights System.”⁹

France concurred on a few conventions, and added “the Optional Protocol to the Convention against Torture.”¹⁰ Russia did as well, but added “Protocols I and II of the Geneva Conventions of 12 August 1949, ILO Conventions No. 87 (on freedom of association) and no. 98 (on the right to collective bargaining.”¹¹ I had no idea that Russia was so concerned about upholding the Geneva Conventions, or protecting “freedom of association”!?!

Many other nations called for the United States to ratify one or more of the international conventions and protocols mentioned above, or others (paragraph numbers are after country names): Australia (12, 33, 34, 35); Austria (21, 28); Bolivia (201); Canada (5); China (17); Costa Rica (16, 114); Cyprus (23, 36); Egypt (29, 32); Finland (33, 203); Ghana (12, 33, 204); Guatemala (31); Haiti (15); Hungary (25); India (10, 26); Indonesia (8); Iran (27, 175, 200); Japan (7); Libya (202); Malaysia (11); Netherlands (18, 33); New Zealand (33, 34, 35, 205); Nicaragua (206); North Korea (12, 33, 34); Qatar (13); Slovakia (19); South Korea (20); Spain (4); Sudan (6); Thailand (24); Trinidad & Tobago (22); Turkey (14, 30); Uruguay (43); and Vietnam (9).¹²

Now the obvious questions must be asked: Does the United States truly practice blatant discrimination against children, women, persons with disabilities, immigrants, and indigenous peoples? Are its local, state and federal courts inept and unable to preserve laws and protect human rights? Do we have citizens committing international crimes without impunity? Do our laws not protect human rights as well as workers exceptionally well? Are not almost all of us immigrants or descended from immigrants, and do we not allow millions of immigrants to migrate to our nation and start a new life for themselves? Do Americans truly want a fully socialized system of government, as espoused in the ICESCR?

More Recommendations Related to International Policies, Law & Treaties

In order to further the universality of the emerging regional and international systems of law, and try to bring the United States fully under the control of the corresponding governing institutions, foreign nations also recommended that that the United States:

- Close Guantanamo Bay Detention Center and other prisons; “invite United Nations Special Rapporteurs to visit and investigate Guantanamo Bay prison and United States secret prisons”; prevent torture and prosecute “perpetrators of tortures”; respect detainees’ human rights and ensure justice to them; provide reparations to victims: Austria (186); Belgium (152); Bolivia (146); Brazil (148); China (157); Cuba (137); Ecuador (149, 218); Egypt (156); Iran (88, 145); Ireland (156); Libya (174); Malaysia (89); Nicaragua (141, 176); North Korea (136, 150); Russia (147); Sudan (158); Switzerland (160); Venezuela (155, 170); Vietnam (159).

- Investigate and prosecute “all reliable allegations made to date of violations of international human rights law committed by American forces in Iraq,” Afghanistan or other places; and stop “all forms of torture” and “war crimes”: Cuba (140); Egypt (138); Iran (60); North Korea (166); Norway (139).
- Ratify “all international human rights instruments,” or all the U.S. is not yet a party to, or at least a dozen more: Algeria (39); Bolivia (38); Costa Rica (16); Indonesia (8); Libya (40); Nicaragua (37); Slovakia (19); South Korea (20); Thailand (24); Vietnam (9).
- Withdraw any reservations from international conventions: Algeria (39); Austria (50); Brazil (46); France (48); Indonesia (47); Russia (3); Slovakia (19); Spain (44); Uruguay (49); Venezuela (45).
- Accede to the human rights treaties “of the inter-American system” and subject the U.S. to “the jurisdiction of the Inter-American Court on Human Rights”: Brazil (42); Uruguay (43); Venezuela (1).
- Ensure implementation of treaties into domestic law: Bolivia (38); Egypt (32); Slovakia (19); Turkey (14).
- Conform laws, policies and legal definitions to “international standards” or United Nations policies: Algeria (129); Austria (66); Bangladesh (216); Bolivia (62, 146, 173); China (63, 157); Egypt (65); Ghana (204); Guatemala (164); Iran (58); Nicaragua (206); Norway (227); Sudan (158); Sweden (118, 177); Switzerland (160, 184).
- “Establish a national human rights institution” and “national framework”: Egypt, Germany, Ghana, Sudan, Venezuela (72); Ireland, Qatar, Russia, South Korea (73); Norway (74); Trinidad & Tobago (22).
- Help achieve universality of application of international human rights instruments: Trinidad & Tobago (22).
- “Respect the ruling of the International Court of Justice”: Mexico (54); Nicaragua (53).
- Allow more UN Special Rapporteurs, or those conducting “special procedures” for the Human Rights Council, to conduct investigations within the United States, and follow their recommendations: Austria, Costa Rica, Netherlands, Spain (92); Cyprus, South Korea (93); Denmark (91, 93); Iran (88); Malaysia (89); Mexico (90); Venezuela (45).
- “Abandon the State Department” human rights reports, and replace and strengthen “the Universal Periodic Review as a fair and appropriate mechanism of the international community to evaluate the situation of human rights between States”: Ecuador (224).
- Fulfill “obligations under international humanitarian law (to the) Palestinian people”: Iran (52).
- “Raise the level of official development assistance to achieve the United Nations target of 0.7 percent of GDP”: Bangladesh (216).¹³

Additional Intrusive Recommendations

Leading representatives of foreign nations also asked the United States to:

- Prevent states within the United States from taking any initiatives to control their borders and immigration, especially Arizona: Ecuador (110); Guatemala (79).
- Immigrants and immigration policies and issues: Bangladesh (99, 106); Bolivia (192); Brazil (211, 212, 213); Cuba (207); Cyprus (144); Ecuador (210); Egypt (29, 64); Guatemala (31, 79, 80, 81, 164, 185); Haiti (15); Mexico (101, 108, 208); Moldova

(165); Sudan (209); Switzerland (182, 183, 184); Turkey (30); Uruguay (105, 214); Venezuela (1, 82); Vietnam (104).

- Raise “to 18 years the minimum age for the voluntary recruitment to the armed forces”: Uruguay (71).
- “Abolish the death penalty in all cases,” restrict, “establish a moratorium,” or ban “the imposition of the death penalty for crimes committed by persons under 18”: Algeria (129); Australia, Hungary (122); Austria (50); Belgium, Italy, Netherlands, New Zealand, Switzerland, United Kingdom (120); Cuba (134); Cyprus (121); Denmark (131); France (48, 126); Germany (125); Holy See (127); Ireland (127, 135); Nicaragua (128); Norway (122, 132); Russia (119); Slovakia (123); Spain (130); Sweden (118); Turkey (124); Uruguay (49, 120); Venezuela (133).
- Eliminate life sentences “without the possibility of parole” for “juvenile offenders under the age of 18”: Austria, Belgium, Slovakia, Switzerland (180).
- “Repeal the norms that limit freedom of expression and require journalists to reveal their sources, under penalty of imprisonment”: Venezuela (56).
- “(S)top spying on citizens” and “prohibit authorities from using “modern technology for excessive and unjustified intervention in citizens’ private life””: Russia (188); Venezuela (187).
- Stop all discrimination “against persons of African descent,” “Arab and Muslim Americans,” Latinos, and Native Americans, including in the justice system; stop “racial and religious profiling”; or stop police brutality against them: Algeria (220); Austria (96); Bangladesh (106); Bolivia (101); China (151); Cuba (94); Cyprus (144); Egypt (64); France (95); Ghana (107); Haiti (97); Libya (100); Mexico (101, 108); Nicaragua (206); North Korea (68); Qatar (111, 219); Sudan (102, 209).
- Stop “Islamophobic and xenophobic trends,” and “insults against Islam and Holy Quran,” and “violence against Moslems”: Egypt (98); Iran (190).
- “End the blockade against,” interference with, and “hostility against Cuba”: Bolivia, Venezuela (75); Cuba (75, 117); Nicaragua (76); Sudan (77).
- “(L)iberate immediately the five Cubans held in prison for 12 years” and other political prisoners: Cuba (153, 154); Nicaragua (76).
- End “the economic financial and commercial embargo against” North Korea and Sudan: North Korea (78); Sudan (77).
- “The removal of blanket abortion restrictions on humanitarian aid”: Norway (228).
- Enshrine “sexual orientation” and “gender identity,” particularly for “gays, lesbians, bisexuals and transsexuals,” to ensure that they are not discriminated against based on their sexual preferences and behaviors: Australia (112); Israel (116); Uruguay (86).¹⁴

Other paragraphs addressed issues regarding indigenous peoples, women, gender equality, trafficking, prisons, prisoners, political prisoners, excessive use of force, climate change, and so-called “rights” to food, health care, housing, etc.

Closing Remarks

Four days later, Harold Hongju Koh, Legal Adviser for the Department of State, responded to the recommendations:

The recommendations received fall into three broad categories. First, many of the recommendations fit well with the Obama Administration's existing approach to human rights, and can be implemented in due course. Second, several recommendations are plainly intended as political provocations, and cannot be taken seriously. Yet a third group of recommendations invite fuller discussion within our government and with our own civil society. Because we take this process seriously, we now plan to conduct a considered, interagency examination of all 228 recommendations"¹⁵

The Obama Administration's unmistakable desire to please the international community, and yield to foreign intervention in our domestic and security affairs is disconcerting.

Clearly, the uniform tone of the recommendations evinces a design toward increased global governance, and regional governance within global guidelines, and decreased national governance. These recommendations also reveal the strong desire of foreign governments to dictate or control policy for the United States at all levels of government. Some of the criticisms and recommendations are worth noting, and expose areas our nation needs to address. Even so, it is for us to address these matters, and not foreigners or international governing organizations to dictate to us. Let us pray that our government leaders, officials and legislators discern the inherent problems and evils of the present global course toward regional and international government, and wisely choose a better course, which hopefully other nations will follow.

¹ "Conclusions and/or Recommendations," part II of the "Draft Report of the Working Group on the Universal Periodic Review: United States of America." UN document: A/HRC/WG.6/9/L.9.

² All of these tabulations are from a table created by the author, tracking the recommendations.

³ "UPR of the United States – Opening Statements by Esther Brimmer and Michael Posner," Geneva, November 5, 2010. <http://geneva.usmission.gov/2010/11/05/us-upr/>

⁴ *Ibid.*, "UPR of the United States – Opening Statements," Esther Brimmer.

⁵ "Annex: Composition of the delegation," of, *Op. Cit.*, the "Draft Report" in endnote 1. UN doc.: A/HRC/WG.6/9/L.9.

⁶ "National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council Resolution 5/1: United States of America," 23 August 2010. UN Doc: A/HRC/WG.6/9/USA/1

⁷ "Ambassador He Yafei's Speech on the Universal Periodic Review of U.S.A." 2010-09-05. <http://www.china-un.ch/eng/hom/t767011.htm>

⁸ *Ibid.*

⁹ *Op. cit.*, "Conclusions and/or Recommendations," par. 92.1.

¹⁰ *Ibid.*, par. 92.2.

¹¹ *Ibid.*, par. 92.3.

¹² *Op. cit.*, "Conclusions and/or Recommendations." Each of the 228 conclusions or recommendations are part of paragraph 92 in the original document and contain "92." prior to the actual sub-paragraph number. Author's text contains only the sub-paragraph numbers.

¹³ All quotes and numbers correspond with the sub-paragraphs mentioned above.

¹⁴ *Ibid.*

¹⁵ "United States Response to UN HRC Recommendations," November 9, 2010. <http://geneva.usmission.gov/2010/11/09/un-hrc-recommendations/>