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# Obama's Human Rights Policy: Déjà vu with a Twist

John W. Dietrich and Caitlyn Witkowski

The United States, since its founding, always has placed some focus on the idea of promoting human rights abroad, but much major policy action on the issue came in four waves during the 20th century. Woodrow Wilson's ideas following WWI, the creation of the United Nations and the Universal Declaration of Human Rights in the 1940s, Congressional actions reinforced and expanded by President Jimmy Carter's administration in the 1970s, and President Bill Clinton's policies following the end of the Cold War each developed and institutionalized particular human rights policies. Viewed collectively, the waves had similar underlying triggers: all followed major shifts in the international environment that allowed talk of significant policy shifts, all came during Democratic administrations in which the President's personal commitment led to elevated rhetoric on human rights, and all saw the appointment of human rights supporters into key foreign policy positions. The waves also were similar in being relatively short-lived with some policies reversed by future administrations and many more simply losing momentum to become less central to policy considerations.

During the periods of retrenchment, human rights advocates often lamented the policy limits of the particular moment with a sense that, if they could only be free of these era-specific problems, they could fully implement a human rights driven foreign policy. The recurring nature of the retrenchments, though, shows that the limits were, in fact, not short-term era-specific problems, but rather structural constraints generated by the international and domestic political systems. Four key restraints were 1) practical limits on U.S. power over other countries' domestic actions, 2) competing U.S. policy priorities, 3) a U.S. hesitance to join multilateral institutions, and 4) the continued domestic political weakness of human rights advocates (Dietrich 2006). Still, the retrenchment periods never completely reversed the gains made, with Wilsonianism outliving Wilson, the Carter era State Department Human Rights Bureau remaining after Carter, and so on. Overall, as Sikkink has argued, specific policies adopted in one period became so entrenched in time that they became ongoing parts of the country's identity (Sikkink 2004).

This means that, over the century, U.S. human rights policy has been a situation of "two steps forward one step back," but with a net forwards trajectory. Human rights goals are a much larger component of modern U.S. foreign policy than realist scholars and some practitioners in

the vein of George Kennan or Henry Kissinger would have expected or wished. At the same time, those expecting or hoping for a U.S. policy driven purely by human rights considerations will always be disappointed and, in their frustration over setbacks, may not fully note the progress that is made.

In his 2008 presidential campaign, Barack Obama stressed the theme of “Change.” One arena in which many expected change from the George W. Bush administration was human rights policy. Based on his campaign and the patterns from previous periods, it was predictable that Obama would introduce new human rights initiatives, but it was equally predictable that many of those initiatives would be affected by structural limitations and therefore end up only partially implemented. The steps forward were important, but were somewhat overshadowed by steps sideways or backwards. In turn, many in the human rights community became disappointed and frustrated (Roth 2010; Jost 2009) while other commentators used the failures as further proof that the United States is never serious about action on human rights (Jost 2009; The Arena 2009).

Two plus years into his administration, it is apparent that the past patterns indeed have repeated thus confirming both the importance of variables predicting new initiatives and the continued influence of structural constraints. Even with constraints, though, the Obama administration has advanced U.S. human rights policies sufficiently in half-dozen key areas to say that a fifth wave of human rights policy development is underway. Three of those areas—recognition of international law and institutions, policies on detainees in the War on Terror, and democracy promotion—show modifications of Bush policies. The other three—protections for new societal groups, engagement, and justification of forceful protection of civilians—show Obama’s own modern stamp on new issues or ones revived from the 1990s.

To see how the overall wave patterns have repeated and to examine the specifics of Obama’s policies, it is important to explore more carefully what factors suggested Obama did have a moment of opportunity for policy change, what changes he was able to bring, but also how his policies continued to be constrained by structural factors.

### Reacting to The Bush Legacy

Before examining Obama's actions, it should be noted that history is not a perfect circle, so each human rights wave forward will be affected by the events preceding it. The Bush administration's legacy included both specific policies in key areas and overall policy dynamics that ran across policy areas.

In his two terms, Bush took some actions that were praised by human rights supporters. For example, his administration played a role in ending the North-South civil war in Sudan, he pressed several countries and the U.S. bureaucracy to pay more attention to religious rights, and he led a massive expansion of U.S. programs to combat international HIV/AIDS. On the other hand, his administration's positions in regards to international law and institutions, actions allowable in the War on Terror, and second tier justifications of the Afghan and Iraq wars as proper uses of force to bring democracy claimed the most attention.

Bush's policies have been extensively examined and analyzed (Mertus 2003; Roth 204; Forsythe 2008), but some key actions on international law include that Bush and his advisors argued that the Geneva Conventions did not apply to those captured in the War on Terror and held at the Guantanamo Bay detention camp. They employed a broad reading of the Convention Against Torture to allow tough, and in many eyes illegal, interrogations. For the Iraq War, they stretched the previous international law understanding of the conditions that justify preemptive military action. In regard to international human rights institutions, Bush unsigned the treaty that established the International Criminal Court (ICC), led sharp criticism of the court, and signed new U.S. laws allowing the use of force to free Americans brought before the ICC and denying foreign aid to countries that refused to sign commitments saying that they would not extradite Americans to the court. Bush's intense hostility to the court softened somewhat over time as the United States did not veto a UN Security Council resolution referring the situation in Darfur, Sudan for ICC investigation. The administration was more consistently hostile to the new United Nations Human Rights Council (UNHRC) being one of only seven countries that opposed the UNHRC's draft resolution on working rules, refusing to run for a seat on the council, and repeatedly questioning its effectiveness and apparent bias against Israel.

In the War on Terror, Bush took several positions that were sharply questioned by human rights supporters. The United States established the Guantanamo Bay detention camp as well as

one at Bagram Air Base in Afghanistan. Bush argued that his executive authority allowed him to hold prisoners indefinitely and to set up military tribunals for suspects. Over time, the detentions and tribunal arrangements were repeatedly challenged in the courts, but the administration stuck to as tough a set of policies as possible under the law and continued to defend sweeping powers for the executive. The United States also employed extraordinary rendition to capture suspects and take them to secret CIA prisons around the world or deliver them to countries believed to practice torture. Domestically, the administration supported procedures under the Patriot Act and Foreign Intelligence Surveillance Act that many civil liberties experts argued were violations of civil rights in the name of security.

Bush also made the spreading of democracy one of his central goals. At first glance, this would seem to be in line with the goals of the human rights community, but for years some human rights advocates had argued that too large a focus on creating institutions of democracy such as elections might crowd out efforts on broader human rights objectives such as civil liberties and equality. Furthermore, it could allow regimes to paper over abuses in one area with concessions in another (Donnelly 1999; McFaul 2005). Additionally, Bush's democracy promotion came to be associated with the use of force in Iraq and Afghanistan. The policies also came with a sense that new democracies were expected to adopt a U.S. vision of proper democratic institutions and other policies. As Bush's policies evolved, they came to be criticized by many democratic allies as well as human rights advocates in the United States. As aptly described by democracy scholar Thomas Carothers, democracy promotion had become "radioactive" because of Bush administration policies (2009).

Bush's actions in these three areas and others of less prominence also changed some overall policy dynamics. Under Bush, the United States lost its traditional leadership role in the international human rights movement. This shift had major implications for human rights globally because U.S. power and moral authority has always meant that its actions, or inactions, have disproportionate influence around the world. Without challenges led by the United States, authoritarian states find it easier to crack down on domestic dissidents. Russia, China and others who often stress sovereignty over human rights can more easily block actions in the U.N. Security Council and other multilateral forums. A European Council on Foreign Relations study

found that, at the end of the Bush era, Russia and China got over 75 percent backing for their positions in the U.N. General Assembly (Gowan and Brantner 2008). Additionally, the UNHRC produced few dramatic criticisms of countries other than Israel. As one leading U.S. legal scholar summed it up near the end of Bush's term, the United States "has been the balance wheel of the system for the last 60 years, but has not been for the last seven years. If the U.S. is not the balance wheel, there is no balance wheel" (Mendelson 2009). The decline of U.S. leadership also has an impact on the country's ability to achieve a wide range of international goals because U.S. moral leadership has always been an important component of its "soft power" used to shape alliances and global actions (Shattuck 2008). In this regard, it is noteworthy that in a 2006 poll, significant majorities in both Germany and Great Britain felt the United States was "doing a bad job" on "advancing human rights in other countries" (World 2006).

As Obama took office, essays and comments by many human rights supporters began with the necessity of bringing the United States back to its leadership position (Schultz 2008). This was also a theme that Obama stressed during the campaign. As he accepted the Democratic nomination in August 2008, he spoke of the need to "restore our moral standing" and to "build new partnerships to defeat the threats of the 21<sup>st</sup> century" (Obama 2008). In many ways, Obama was saying he would bring the country back to where it was ten years ago on international law and institutions, so the statements and actions were not bold advances of human rights policy, but they should not be dismissed or underappreciated since one cannot hope to climb a mountain if one is trapped in a hole.

Bush era policies also drew more focus to U.S. domestic actions on human rights as opposed to its actions promoting human rights abroad. This is not a brand new phenomenon. For example, the U.S. ability to push human rights goals in the 1940s and 1950s was complicated by continuing racial discrimination at home. Recently, the United States has drawn some criticism for domestic policies such as capital punishment (Human Rights Watch 1999). Generally, though, the United States has been able to focus abroad and make tough statements on violations because its own house was in order. Bush's detention and torture policies brought new attention to U.S. actions. Obama is clearly very conscious of this issue. In many of his major speeches, he has acknowledged that past U.S. policies have not been perfect, and that the

United States cannot expect others to follow the rule of law when it itself is challenging norms. For example, in his Nobel Prize acceptance speech, he commented that “America -- in fact, no nation -- can insist that others follow the rules of the road if we refuse to follow them ourselves.” (2009b). Thus, in assessing Obama’s human rights policies, one must spend more time looking at U.S. domestic policies than was the case for most previous presidents and again note that advances may come first as resolving problems and only later as new steps forward.

Bush and his allies’ support for certain human rights goals also complicates analysis of some Obama positions. In comparison, under President Richard Nixon, policy was strongly driven by *realpolitik* considerations that gave little weight to human rights goals. This made it comparatively easy for Carter and other liberals of that generation to portray their own policies as bold steps forward. Bush, his neoconservative advisors, and conservative religious groups were all such strong proponents of democracy, but also other human rights goals such as ending genocide in Sudan, that they were at times more forceful proponents than the human rights groups themselves. This left the human rights groups, and later the Obama administration, with the unenviable task of calling for a downgrade or refocus of certain policies that would otherwise have seemed appealing. For example, the phrase “democracy promotion” carried such stigma that liberal groups became suspicious of any actions taken under its heading. However, excessive efforts to distance new actions from Bush policies risked making the Obama administration appear to be rejecting popular goals as well. For example, Clinton drew much attention at her confirmation hearings when she spoke of the 3 Ds at the center of U.S. policy “defense, diplomacy, and development,” but intentionally did not include democracy (Transcript 2009). Longer-term, the mobilization of neoconservative groups under Bush and their continued belief in the worthiness of their policies means that, while Carter faced criticism from the right for enacting human rights policies, Obama will face criticism for weakness on democracy (Bolton 2010; Muravchik 2009). Some of that criticism may be warranted, but some of it can be ascribed to ideological disputes over policy tactics and to ongoing partisan battles that are considerably more complicated than in the past when very often human rights debates pitted liberal, Democratic proponents against conservative, Republican doubters.



### Obama's Moment

To some extent, what excited the human rights community about Obama's election was simply that he was not Bush, but there also were deeper factors in play that help explain why one observer noted after conducting dozens of interviews in the domestic and international human rights community, "the expectations could not be any higher"(Mendelson 2009). Many of these factors are similar to those seen in other waves of human rights policy development: a view that a new era with new policies is dawning, the establishment of a democratic administration led by someone personally committed to human rights, and the ability to bring established policy advocates into government.

The advancement of major policy changes is often difficult unless the country has just faced some sort of crisis or other turning point that convinces people that the standard operating procedures are proving ineffective. The country also has to be far enough away from the crisis that no policy problem seems all consuming. Obama did not come to power after a monumental event like the end of the Cold War, so his situation is more parallel to Carter coming to office after Nixon. In the same way that many had come to question not just the Vietnam War, but the entire direction of Nixon's policies, many Americans by 2008 were pessimistic about the Iraq and Afghanistan conflicts, and the broader War on Terror as well as Bush's policies on detention, torture, and unilateral action. Obama also took office at a time that had foreign policy challenges, but no imminent threat given the lack of successful attacks on U.S. soil since 2001 and peace among the Great Powers.

A second factor promoting a window of opportunity was that Obama was a Democrat at a time with Democratic majorities in both houses of Congress. Traditionally, Democrats have been more supportive of active human rights policies, while Republicans have prioritized maintaining national security and trade ties over expressions of human rights criticism. This division in some ways reflects party positions on domestic issues such as equal rights and government power. In recent years, party positions on some aspects of human rights promotion have shifted around, but on balance a Democratic administration still seemed more likely to bring in major reforms.

Personally, Obama is deeply committed to both social change and the rule of law. He also is not hesitant to use government power in pursuit of social goals. Policy goals at times reflect personal backgrounds of politicians. Obama comes from fairly humble beginnings and a family that exposed him to cultural diversity at a young age. He is more familiar than most U.S. presidents with the Islamic world and its diversity of opinion on rights issues. Furthermore, Obama's election as the first African-American president was seen by many at home and abroad as the culmination of the civil rights struggle and in and of itself a way of reasserting the United States as a leader on diversity issues. Obama was therefore not just a Democrat, but one seemingly primed to bring new attention to issues that the party had advanced for years.

In the U.S. foreign policy system, the president is the clear leader in setting the policy agenda, developing the rhetoric behind policies, and building coalitions both domestically and abroad to advance policy goals. The president must, though, also use his power of appointment wisely to bring likeminded and effective people into the executive branch. Here, Obama was limited by his own rules against hiring former lobbyists, but he was still able to assemble a team of well-known human rights supporters.

Secretary of State Clinton was known for her interests in effective humanitarian intervention and women's rights. Obama appointed Michael H. Posner as Assistant Secretary for Democracy, Human Rights, and Labor. Previously, Posner had been President of Human Rights First. He had spent years as a leading voice for refugee protection and labor rights and was a delegate to the Rome conference that established the ICC. Obama selected Harold Hongju Koh to be Legal Adviser of the Department of State. Koh recently had been Dean of the Yale Law School, but under Clinton had been Assistant Secretary for Democracy, Human Rights and Labor. He is well known for both his academic work and government service on human rights and international courts. Anne-Marie Slaughter, dean of Princeton University's Woodrow Wilson School and a noted scholar of international law, was appointed as Director of Policy Planning and given the task of distilling key themes from U.S. global efforts. At the National Security Council, Obama selected Samantha Power, best known for her work exploring government policies toward genocide, to be Special Assistant to the President and Senior Director for Multilateral Affairs. Kenneth Roth, executive director of Human Rights Watch,

argues Power “is clearly the foremost voice for human rights within the White House and she has Obama’s ear” (Stolberg 2011). Obama also appointed a number of other highly regarded people to key specialist positions. Eileen Chamberlain Donahue became U.S. Representative to the U.N. Human Rights Council. Melanne Verwee was selected as Ambassador-at-Large for Global Women's Issues. Stephen Rapp was chosen as Ambassador-at-Large for War Crimes Issues. David Pressman was given the new position of Director for War Crimes Atrocities and Civilian Protection at the NSC.

Collectively, this group is very well known and respected in the NGO and academic communities. This should give some NGOs better access to the executive bureaucracy than they had under Bush. Many of these key players had previous experience in Bill Clinton’s administration or elsewhere in Washington, so they have personal relationships with each other and with senior administration officials.

There was thus the combination of a historic moment, a Democratic administration, a committed president and experienced top advisors. Given the small number of previous waves, it is impossible to determine definitively how many of these conditions are necessary for policy advancement. The cases of Carter and Clinton seem to show that even when the personnel factors are in place, new policies will continue only as long the international and domestic climate remains favorable. Thus, any advances made by Obama so far or going forward will be dependent on the global and domestic window of opportunity remaining open. Second, one can speculate in broad terms what would have happened had someone other than Obama been elected in 2008. Thinking of a spectrum from a strong Bush supporter like Dick Cheney to John McCain on through to a liberal and antiwar Democrat like Howard Dean, you likely would see more efforts to change policy on international law, War on Terror detentions, and how to promote democracy. To actually achieve change requires commitment, but also compromise and pragmatism, so Obama may well have been the type of person who could provide the strongest momentum to move U.S. human rights policy forward into a fifth wave.

### Obama’s Steps Forward

Upon taking office, Obama was in a position to develop new policies and there was action on a number of fronts.

### *Joining International Treaties and Institutions*

Obama is a strong believer in the rule of law and international treaties. He also supports actions through multilateral institutions. These views, coupled with the desire to reverse Bush administration hostility to certain international treaties and institutions, led Obama to renew focus on several human rights treaties and to advance U.S. participation in the key institutions of the U.N.'s Human Rights Council and the ICC.

Obama publically supported U.S. ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the State Department began a review of issues in advance of asking the Senate to consider ratification. The treaty was negotiated in the late-1970s and signed by President Carter in 1980. It aims to end discrimination against women and girls and to affirm fundamental equality and human rights. Supporters argue that it has led to positive steps globally in reducing violence against women, forced marriages, and sex trafficking while stimulating new laws to assure educational opportunities, political participation, healthcare, and job opportunities for women. Supporters further argue that U.S. ratification would help U.S. credibility in pushing rights issues and provide a new forum for U.S. actions (CEDAW 2011). Critics of the treaty have suggested that it is unnecessary given the existing U.S. commitment to women's rights and have termed it "the Equal Rights Amendment on steroids" (Wright 2002) They argue that the treaty would violate U.S. sovereignty and would force the United States to adopt radical feminist ideas on abortion, same-sex marriage, and other social policies.

After Carter's signing, the treaty was opposed by the Reagan and Bush administrations. President Clinton pushed for ratification and the Senate Foreign Relations Committee voted in favor in 1994. Conservative Senator Jesse Helms opposed the treaty and blocked full Senate consideration. In 2002, the Foreign Relations Committee again voted for ratification, but Bush came to oppose the treaty and once again it was never brought to a full floor vote. By 2010, 186 countries had ratified CEDAW. Only Sudan, Somalia, Iran and three Pacific Island nations

joined the United States on the outside of the treaty. Obama has said that “if it was simply up to me, it would have already been ratified” (Interview 2010). With his backing, Hillary Clinton’s strong support, efforts by Sen. Barbara Boxer (D-CA) and others, a Senate Judiciary Committee hearing featuring administration and non-governmental supporters of the treaty was held November 18, 2010. Verveer and U.S. Principal Deputy Assistant Attorney General Samuel R. Bagenstos testified in support of ratification of the treaty. The hearing, though, drew only one senator. With more Republicans joining the Senate in January 2011 and the Foreign Relations Committee focused on other issues, committee and later Floor action looks less likely.

Similarly, Obama supported ratification of the Convention on the Rights of the Child. Reagan and Bush administration officials were part of the convention’s negotiations, but when it was completed Bush concluded that it would interfere with U.S. laws, so did not sign. In 1995, Clinton authorized signature of the treaty, but it was not submitted for ratification. The treaty calls on members to protect the human rights of children including the rights to free speech, healthcare, education, and freedom from exploitation. Opposition has centered on issues of sovereignty and whether the convention would force changes in U.S. social policies. Globally, only the United States and Somalia have failed to ratify the convention, so it again symbolically puts the United States outside emerging global norms. Despite Obama’s support, no significant action has been taken to ratify the treaty.

Obama also chose to have the United States sign the U.N. Convention on the Rights of Persons with Disabilities. The convention is the latest in a series of U.N. conventions explicitly acknowledging the rights of particular groups. It was opened for signature in 2007, but the Bush administration chose not to sign. During the campaign, Obama pledged that he would lead the United States to sign. At a commemoration of the Americans with Disabilities Act in July 2009, he announced that the United States would sign the following week. At the ceremony, he showed his personal connection to the issue with reference to his father-in-law Fraser Robinson who continued to work despite suffering from multiple sclerosis.

Importantly, despite Obama’s statements on each of the treaties and Democratic control of the Senate, the administration did not submit any of the treaties to the Senate. In part, this reflects the administration’s focus on pushing several domestic issues through Congress, but it

also reflects that the treaties were far from assured of victory in the Senate given fierce Republican opposition and lukewarm Democratic support. Therefore, ultimately, U.S. policy has changed rhetorically, but not in the letter of the law.

Obama also reversed Bush policy on the U.N.'s Human Rights Council. The council was founded in 2006 to replace the U.N.'s Commission on Human Rights. The Commission had been largely discredited because it had come to focus on only a few countries, particularly Israel, and because many of the world's worst abusers had joined the Commission so that they could block tough evaluations of their actions. The Bush administration felt the reforms of mission and membership had not gone far enough, so chose not to have the United States run for a seat on the Council. Human rights groups criticized Bush's actions with the arguments that even if the council was not perfect, it was important to have a global institution active on the issue and that it would be easier to push further reform from within the council. They also noted that with the United States not a member, no other democracy had consistently taken the lead to form active coalitions within the council.

In March 2009, Obama announced that the United States would seek election to the council and, with New Zealand stepping aside, the United States was elected. U.S. ambassador to the U.N. Susan Rice expressed the administration's position saying, "those who dedicate their lives to advancing human rights, need the council to be balanced and credible." She added, "we believe that working from within, we can make the council a more effective forum to promote and protect human rights" (U.S. to Join 2009).

During its first term on the UNHCR, the United States was particularly active in building support for creation of a Special Rapporteur to investigate governments that try to limit freedom of assembly and association, in creating a Working Group to monitor and fight discrimination against women and to aid countries developing new laws to ensure women's rights, and in pushing for more freedom of expression in cases that some countries argue are defamation of religion. The Council extended the mandates of monitors focused on Sudan, North Korea and Burma, and established a new Special Rapporteur to investigate Iran. The United States was a leader in Libya's removal from the Council in February 2011 following reported human rights abuses by the Libyan government. The United States did not win on every issue at the council.

It was critical of the council's Goldstone report on Israeli actions in Gaza and worked to block punishments based on the report; a position that gained more credibility when Goldstone himself later repudiated some of the report's central findings. Still, the administration argued that simply being at the council made a practical difference in several outcomes and was an important symbolic move in reestablishing U.S. human rights leadership. The administration therefore announced it would seek another term on the Council.

The United States also submitted its first report on its own human rights policies under a Universal Periodic Reviews (UPR) system that requires all countries to report their activities to the UNHCR. The report gave the administration a chance to consider its policies and to meet with civil society groups to gain their perspectives. The final report touted the administration's new policies on terrorist detainees and torture, but also acknowledged problems such as continuing gaps in achievement between U.S. racial groups and controversial new policies such as Arizona's immigration laws. In January 2011, the UN released a review of the U.S. submission that included 228 recommendations for the United States to improve. In March 2011, the United States responded that it supported 174 of the recommendations in whole or in part ranging from civil rights to immigration to torture, but that there also were areas where the United States disagreed, for example on maintaining the death penalty. Human Rights First's Gabor Rona expressed the widely held view that "The United States' approach to the UPR will help strengthen compliance with human rights norms here at home and will encourage a high standard for reporting by other countries," and "strengthen the integrity of the Council's credibility as a human rights monitoring body" (Human Rights First 2011).

Obama also has moved the United States to a more active position in ICC planning. Bush moved from outright hostility to grudging acceptance, but Obama officials have gone further to "reset the default on the U.S. relationship with the court from hostility to positive engagement" (Koh and Rapp 2010). Many officials in the administration hold the belief, shaped in many cases by personal experiences, that international courts can be effective. They also note that the ICC is now established with more than 100 members and is unlikely to disappear, so it is important to shape the court as much as possible. The United States therefore sent a delegation as an observer nation to the ICC review conference held in Kampala, Uganda in July 2010.

The United States is not the usual observer nation; it was active throughout the week in a number of meetings focused on particular countries such as the Democratic Republic of Congo and on planning future ICC actions. Crucially, there was much discussion of defining the crime of aggression. ICC members had been working on the issue for years and a consensus appeared to be emerging out of working group meetings. The administration concluded the emerging definition was too vague and did not have proper oversight, so could lead the court into fruitless efforts to try multiple countries. The U.S. delegation at Kampala therefore worked to clarify terminology, to give the U.N. Security Council a leading role either in referring cases of aggression to the court or being able to block investigations, and to require that any definition of aggression not become operational unless it was approved by two-thirds of countries at a review conference held no earlier than 2017. The agreements also stipulated that no U.S. national could be prosecuted for aggression as long as the U.S. remains a non-state party.

The United States also took a step toward cooperation with ICC when it voted in favor of U.N. Security Council Resolution 1970 that referred the situation in Libya since February 2011 to the Prosecutor of the ICC. Libya is not a member of the ICC, so the only way for the ICC to gain jurisdiction was through a U.N. referral. U.S. officials praised the Court's June 2011 warrants for Libyan leader Colonel Muammar Gaddafi, his son Seif al-Islam al-Gaddafi, and the Libyan chief of intelligence, Abdullah al-Senussi, for crimes against humanity. The actions on Libya, along with continued U.S. support of ICC investigations of Sudan, Kenya, and elsewhere show that the United States is willing to support ICC actions even if it does not join the court.

Stephen Rapp, Ambassador-at-Large for War Crimes, was careful to note after the Kampala meeting that "it is clear that joining the court is not on the table, as far as a U.S. decision at this time," but continued by noting that the United States often has taken decades to ratify international treaties and concluded with, "Who knows what the future may hold?" (Koh and Rapp 2010). One should note, though, that even supporters of U.S. cooperation with the ICC now argue that deep U.S. domestic wariness of global governance and concern for impingements on U.S. sovereignty currently make it impossible for the U.S. to join the ICC. (Feinstein and Lindberg 2009) The Obama administration, though, has now staked out a position



of ICC cooperation and leadership for the United States as part of an overall move to support international treaties and institutions.

### *Adjustments in the War on Terror*

Obama very quickly began a series of adjustments to human rights policies tied to the War on Terror. On his second full day in office, he issued Executive Order 13,493 “Review of Detention Policy Options.” This order called for a high-level special task force to examine issues from apprehension to detention to trial and ultimate possibilities of release. It was not limited to looking at current detainees, but was to help establish policies for future actions. At the same time, Obama issued Executive Order 13,492 “Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities.” As the name of the order suggests, it included two major and somewhat distinct purposes, plus a third important move. The first was a review of all Guantanamo detainees to determine the evidence against them, prior interrogations and trials, and possibilities for prosecution, release, or other disposition. This seemingly simple accounting proved challenging as huge amounts of information had been both accumulated and, in some cases misplaced, over the seven years of holdings at Guantanamo and other facilities. Second, the order followed Obama’s campaign pledge by setting a date for closing Guantanamo “as soon as practical, and no later than 1 year from the date of th(e) order.” Lastly, the order halted all work being done by the Military Commissions. Closing Guantanamo was seen as important in bringing the United States back in line with international standards, but also because it was a symbol of the entire set of Bush era policies. A final action on January 22, also called for the closure of the Central Intelligence Agency’s (CIA) secret detention program.

In practice, it proved much easier to close the CIA facilities than to close Guantanamo. In an April 9, 2009 memorandum, CIA Director Leon Panetta reported, “The CIA no longer operates detention facilities or black sites and has proposed a plan to decommission the remaining sites” (Human Rights Watch 2009). Closing Guantanamo raised different issues about the disposition of prisoners. In a May 21, 2009 speech Obama, explained that Guantanamo detainees could be divided into five categories, so policies would have to be

adopted for each group. Over the next years, complications arose with all five categories. Some of these complications were beyond Obama's control, others reflected apparent misjudgments by the administration about how much support there was for closing Guantanamo compared to other considerations, and third the administration was not well coordinated or forceful in lobbying for their own positions. (Finn and Kornblutt 2011) The net effect was that a number of steps forward were made, but problems remained and Guantanamo remained open.

The first group were detainees that could be tried in federal courts for violations of criminal law. The first setback here came when the administration review determined fewer than forty of the 241 detainees could be successfully prosecuted with available evidence. A second blow was major protests against administration plans to try 9/11 suspects in New York. A third problem was when the federal trial of Ahmed Ghailani for attempted murder in the 1998 U.S. embassy bombings ended with a guilty verdict of conspiracy to damage or destroy U.S. property, but acquittal on 284 other counts. In 2010, Congress voted to bar all funding for bringing detainees to the United States for trial, but this was simply confirming that fears of the detainees on U.S. soil and of their possible acquittals overwhelmed human rights arguments that they should receive fair, civilian trials. The administration was unable or unwilling to combat these views.

The second group were those who had violated the laws of war, so would be best tried by military commissions. This option became even more important as civilian trials became more difficult. Obama therefore supported efforts to revamp the Military Commissions. Under the Military Commissions Act of 2009 signed in October 2009, the government can no longer use evidence gained through torture or degrading treatment, defendants have the right to attend their whole trial and hear all the evidence against them even if it is classified, prosecutors must make any exculpatory evidence available to the defendant, and procedures were established for appealing cases in federal appeals courts. Critics charge the trial procedures still do not contain all the protections of a civilian trial, but also note clear improvements over Bush's original plans and over the system established by law in 2006.

The third group were those detainees ordered released by the courts. Talk of releasing the detainees in the United States triggered fear of dangerous criminals roaming the country and

a not in my backyard reaction. The test case of this was a plan to release seventeen Chinese Muslims in Virginia that was so sharply opposed by Rep. Frank R. Wolf that the administration shelved the whole plan.

The fourth group were those who could be transferred safely to another country for detention and rehabilitation. Releasing prisoners outright or transferring them to local detention from where they could be released became difficult with rising reports that former detainees were returning to terrorist groups in Yemen and elsewhere. Sending the prisoners home also was difficult as some feared persecution in their own countries. For example, several Algerian detainees argued that they would prefer to remain in U.S. custody rather than face persecution by the Algerian government or radical groups. The administration responded that its overall review of policies had led to new guidelines for safe transfers and that in this case Algeria had made progress in human rights practices and given “diplomatic assurances” that the men would be safe. In the case of Uighur detainees who feared returning to China, several third countries accepted former detainees, but other detainees sought court action to allow them to settle in the United States.

The last were those who could not be prosecuted, but who posed a danger to the American people. Under Bush, such detentions were defended as necessary presidential power in a time of war. In March 2009, the Obama administration lawyers gave federal judge John D. Bates a more modest argument for the same actions. They argued that under the authorization granted by Congress to use force against those involved in the 9/11 attacks, the president could detain people that were part of al Qaeda or its affiliates, or were substantial supporters (Savage 2010). This decision did not fully clarify how substantial or direct support needed to be, so debate continued over the long-term policy. Obama’s position acknowledged a role of the courts and Congress in determining when to hold these prisoners. As Steve Vladek has noted, the outcome of detainees held indefinitely without trial was the same as under Bush, but at least now the legal arguments and process of decision had moved away from unlimited executive power (The Obama Administration 2011). Finally, there was the challenge of finding a facility to house these high level detainees and others awaiting trial. Several locations in the United States were raised as possibilities, but Congress blocked the funding necessary to establish the new facilities.

Looking across the five categories and what they show for future detainees, the ACLU concluded “that the administration has taken positive steps and made genuine progress in some areas” but often “a significant achievement was followed by a step back” (ACLU 2010). This highlights the underlying argument that human rights moves rarely are total victories because they are limited by international and domestic constraints. It also shows that it can be much harder to dismantle or otherwise alter existing policies than it was to create the policies in the first place.

A second major action taken in the War on Terror category also began with a January 22, 2009 Executive Order. Order 13,491 “Ensuring Lawful Interrogations” directly revoked Bush’s 2007 Order that had established procedures for interrogation. Obama’s order began by stating that common Article 3 of the 1949 Geneva Conventions, which requires humane treatment of prisoners and prohibits torture and other humiliating and degrading treatment, would now be enforced in all U.S. detention facilities. The order requires that all interrogations follow guidelines in the army interrogation manual and the Convention against Torture. In a further direct rebuke of the Bush Administration, the order states that interrogations cannot rely on any interpretations of specific U.S. or international laws that were issued by the Department of Justice between September 11, 2001 and January 20, 2009. Obama also chose to release memos written during the Bush administration justifying enhanced techniques, so that he could directly challenge their legal merits. Obama has defended his moves on enhanced techniques saying the interrogations yielded little valuable information, violated the rule of law, alienated the U.S. from the world, endangered captured U.S. soldiers who might face retaliation and actually served as a recruitment tool for al Qaeda rather than dismantling the terrorist network.

Obama’s moves on torture cannot be considered groundbreaking since they return the United States to its pre-9/11 position, but they are still important. The administration, though, has disappointed some human rights advocates by arguing that, in the interests of looking forward not backward, there should be no special investigations of those who authorized techniques in the Bush administration or compensation for victims. Not pursuing full accountability makes political sense since it might alienate Republicans that Obama needs on other issues, but it is counter to what the administration has supported for other countries.

### *Shifting Focus on Democracy Promotion*

As noted earlier, Obama faced a dilemma on democracy promotion because he felt it should be an important component of U.S. policy, but Bush era rhetoric and policies had tainted the concept in many eyes. In his first years, Obama tried to resolve the dilemma by sharply changing U.S. rhetoric on democracy and somewhat modifying U.S. policies.

The Obama administration intentionally did not stress democracy promotion as its leading goal. Still, Obama gave a number of speeches that touched on the importance of democracy. In all of the mostly closely watched speeches, he stressed the idea that each country must determine its own political path, that democracy will spread over time, and that democracy is good for the world's people. In Egypt in 2009, he noted, "America does not presume to know what is best for everyone, just as we would not presume to pick the outcome of a peaceful election" (Obama 2009c). Clearly these comments aimed to soothe Muslim states' worries that the United States expected Western style democracy and to acknowledge that, in the past, the United States was less supportive of democracy in Palestine and elsewhere if radical, anti-American groups were elected. In Ghana in 2009, he told wary African leaders that "the essential truth of democracy is that each nation determines its own destiny" (Obama 2009a). At the United Nations, he noted, "Each society must search its own path, and no path is perfect. Each country must pursue a path rooted in the culture of its people and in its past traditions" (Obama 2009d). Obama usually followed up these comments with the argument that the main principles of democracy are universal. This suggests that in the end democracy will spread, but at its own pace and form. All of these statements are considerably more open to local variation and more humble sounding than most heard during the Bush administration.

Obama's speeches also include the arguments that democracy is good for countries because it supports individual freedom, good societies, and stable governments. He notes that democracies make good trade partners and allies, but his prime focus remains on how democracy aids the local society. This is different from Bush, who often argued for the security gains from spreading democracy. In his Second Inaugural Address, Bush argued that Middle East

democracy would lessen terrorism and unrest and that “[t]he survival of liberty in our land increasingly depends on the success of liberty in other lands. The best hope for peace in our world is the expansion of freedom in all the world” (Bush 2005). Obama’s arguments make rapid democracy spreading less of a necessity and downplay U.S. gains, so democracy promotion can logically be just one part of an overall human rights strategy, as opposed to the driving force it was in the Bush period.

On policy mechanisms, Obama’s speeches further stress that “America will not seek to impose any system of government on any other nation” (Obama 2009a). He also noted before his inauguration that democracy promotion should be viewed “through a lens that is actually delivering a better life for people on the ground and less obsessed with form, more concerned with substance.” (Baker 2009). In speeches and the main State Department documents on democracy promotion such as the *Advancing Freedom and Democracy Reports* the administration set out five main elements of their approach:

demonstrating our own commitment to human rights by practicing what we preach; principled engagement with other governments aimed not just at making a point, but at making a difference; outreach to civil society groups and individuals working for positive change within their own countries; support for a broad array of accountability and transparency mechanisms in political and economic spheres; and engaging multilateral institutions at both the global and regional levels (Advancing Freedom 2010)

In fact, many of these policies are not all that different from Bush administration policies, which were often caricatured as centered on bringing democracy through the barrel of a gun, but were much more complex and varied. This also means, though, that accusations that Obama has abandoned democracy promotion ring hollow.

The administration has put particular focus on developing civil society as a means to democratic development. Speaking to the Community of Democracies in 2010, Secretary Clinton spoke strongly against governments around the world that are “slowly crushing civil society and the human spirit” singling out Cuba, North Korea, Iran, but also Russia and China (Clinton 2010a). Funds were allocated to strengthen civil society, free media, and political parties and to train these groups in the latest uses of social media and other technology. A separate fund was established for citizens and groups under threat to use to hire lawyers to

defend themselves. In 2011, the State Department launched the first ever Strategic Dialogue with Civil Society to help build ongoing interactions in a global society that moved beyond government to government contacts.

One way of measuring political commitment is to look at funding levels. A Freedom House study found that in Obama's FY2010 State and Foreign Operations budget request there was \$2.81 billion allocated for programs centered on Governing Justly and Democratically. This was a \$234 million increase from funding in Bush's last year (Freedom House 2009). Examining the types of programs within the allocations is complicated by the fact that several different agencies run multiple programs aimed at spreading democracy, but one can see that while the more directly political programs of the State Department and the National Endowment for Democracy saw modest cuts, USAID programs were being sharply increased.

Another way to examine commitment is to look at actions on the ground. Many of the administration's policies can be seen in its handling of Egypt. Documents released by Wikileaks and other evidence show that for the administration's first two years there was a concerted move to engagement. During the Bush administration, there were numerous public confrontations over promotion of democracy and specific human rights cases that Bush officials publically cited. A cable prepared for a visit by Gen. David H. Petraeus in 2009 noted that, under Obama, the policy was now to be blunt in private, but to avoid "the public confrontations that had become routine over the past several years" and that reportedly greatly angered Egyptian President Hosni Mubarak (Landler and Lehren 2011). American ambassador Margaret Scobey even suggested to Clinton that she not even draw positive attention to Egyptian human rights issues by thanking Mubarak for releasing an ill opposition leader from jail (Landler and Lehren 2011). Privately, Obama and others pushed Mubarak to not reinstate Egypt's emergency law limiting opposition, but the law was renewed, although a number of political prisoners were released. Meanwhile, funding and training of civil society groups continued through the International Republican Institute, the National Democratic Institute, and Freedom House. Some civil society groups, though, reported that their funding had been reduced and that U.S. embassy officials were less supportive of their activities than in previous years. This led to deflated hopes as people concluded the United States had returned to its previous focus on stability and economic

opportunities in the region (Diehl 2009). In August 2010, Obama issued a presidential study directive seeking a review of political reform in the Middle East, but few inside or outside the administration expected rapid change. When protests began in Tahrir Square, Obama was cautious, wanting neither to upset a long-term U.S. ally nor a have political vacuum emerge in Egypt, but also stressing that the course of the revolt must be determined by Egyptians not by U.S. pressures. He was, though, firm that Mubarak must allow free protest and not use violence to suppress the demonstrations. In two phone calls with Mubarak, Obama stressed the need for peaceful actions and real reform. As the protests continued and it was clear Mubarak had lost the support of most of the populace, Obama moved to increasingly strong calls for a change in leadership. This pattern of focusing on the right to protest and calibrated calls for regime change was similar across U.S. policy in Bahrain, Libya, Syria and elsewhere, although events played out differently in each country. The U.S. actions may have helped deny Mubarak and others legitimacy, but the Arab Spring also highlights the point, to be developed further later, that many human rights events around the world, both good and bad, happen more because of local politics than any actions taken by the United States.

### *Focusing on New Areas*

Although some goals of U.S. human rights policy have been fairly consistent over time and others have been affected more by global developments than presidential choices, there is some flexibility in what goals particular presidents pursue and highlight. For example, Bush chose to focus much more attention on religious freedom than did previous administrations or the Obama administration (Farr 2010). Obama has chosen to focus increased attention on the areas of women's rights and Lesbian, Gay, Bisexual and Transgendered (LGBT) rights.

On women's rights, Obama's first important move was selecting Clinton as Secretary of State. Clinton has long been active on these issues and also could serve as an important role model. In international politics, her most famous previous comments on the issue came at the U.N.'s Women's Summit in Beijing where she argued, "human rights are women's rights and women's rights are human rights" (Clinton 1995). This formulation became frequently employed by both domestic and international groups. As a role model, she became the third



recent woman U.S. Secretary of State. This trend has been noted as a positive step in helping women diplomats globally get new respect in their own countries and in international forums, and also has likely contributed to the recent rise in women serving in the U.S. foreign service and those reaching the level of ambassador (Jordan 2010). These women pursue the full range of policies for their countries, but they are in some cases particularly sensitive to women's issues.

Obama further ensured focus on women's rights issues by supporting creation of a new office for Global Women's Issues within the State Department in spring 2009. The office is headed by someone at ambassador rank and reports directly to the Secretary of State. The first leader of the office is Melanne Verveer. Verveer previously led the NGO Vital Voices Global Partnership that focuses on promoting women leaders and opportunities, but, more importantly, she was Chief of Staff to the First Lady in the Clinton administration and worked with Hillary Clinton on international women's issues.

Under Clinton and Verveer's leadership, the United States has used a variety of avenues to pursue women's rights. Both women have travelled extensively and make a point of raising women's issues as often as possible. They have taken advantage of occasions like International Women's Day and the tenth anniversary of UN Security Council Resolution 1325 on women's rights to draw public and U.N. attention. The United States took the lead on a Security Council resolution on sexual violence in conflict situations and pushed the U.N. Human Rights Council to new actions. Seventeen million dollars has been designated to help prevent and respond to sexual and gender-based violence and the U.S. military has trained numerous militaries on related issues. The United States has also focused more money on efforts to assist women's health and economic opportunities. Verveer's office also oversees the Secretary's International Fund for Women and Girls that uses private funds to promote a range of political, economic, health and education opportunities for women.

Clinton also has worked to avoid having women's issues separated from traditional security concerns. At the United Nations, she argued that including women in politics and peacemaking "is not doing a favor for ourselves and them by including women in the work of peace. This is a necessary global security imperative, including women in the work of peace advances our national security interests, promotes political stability, economic growth, and

respect for human rights and fundamental freedoms” (Clinton 2010c). Similar language was included in Obama’s *National Security Strategy*. Clinton showed the connections of women’s issues and security in policy to Afghanistan. In the summer of 2010, there was concern in Afghanistan and abroad that women were not playing a major part in planning the country’s future and that the security policy of establishing stability by negotiating with the Taliban might lead to major reversals in women’s rights. Clinton raised the issues repeatedly with Afghan President Hamid Karzai. In July 2010, she told a conference of foreign ministers that women in the country “will not be sacrificed” in pursuit of stability and pushed for language in a final meeting communiqué that recognized “the centrality of women’s rights to the future of Afghanistan” (Boone 2010).

The Obama administration also has been active promoting LGBT rights with Clinton modifying her phrasing to “human rights are gay rights and gay rights are human rights” (Clinton 2010b). Some actions on the issue have been domestic, with Obama supporting an end to the U.S. military’s “don’t ask, don’t tell” policy and increased medical access for gay partners. Global focus on LGBT rights is relatively new and remains controversial. In 2008, the United Nations considered a proposed resolution that would have affirmed equal rights for all and said that countries should not have laws that make sexual orientation or gender identity a basis for criminal penalties, detention, or executions. Due to opposition from Arab League members, the resolution was not adopted, but a statement with the same wording was opened for signature. The Bush administration chose not to sign citing conflicts with existing U.S. law. Obama reversed the decision and the United States signed the statement. The United States also co-sponsored a High-Level U.N. Panel on LGBT rights in September 2010. U.S. determination on the issue was further seen in a battle over having the International Gay and Lesbian Human Rights Commission (IGLHRC) granted consultative status by the U.N. Economic and Social Council (UNOSOC). In the UNOSOC NGO Committee, an Egyptian effort to block the status was aggressively attacked by three U.S. representatives. Later, Ambassador Rice said the United States would pursue the issue at the full committee level. There, the U.S. rallied twenty-three, primarily European and Latin American, states to vote in favor of IGLHRC, while thirteen states voted no and thirteen abstained.

In March 2011, the United States was a leader at the Human Rights Council in drafting a new statement agreed to by 85 countries that called for an end to violence, criminal sanctions and human rights violations based on sexual orientation. Building off that momentum, the U.S. delegation worked with others from South America, Europe and South Africa to narrowly pass a June 2011 UNHCR resolution expressing grave concern at violence and discrimination and calling for the High Commissioner to document discriminatory laws, practices and acts of violence globally. Ambassador Donahoe described the resolution as “a game changer in terms of changing the culture in at least at the Human Rights Council, on the topic of protections for LGBT people” and part of a global shift in norms” (Briefing on LGBT 2011)

The administration has been sharply critical of countries with anti-gay laws, but this has in some cases showed how divided the U.S. NGO community is on the issue. In 2009, three American evangelical Christians traveled to Uganda to speak on their view that homosexuality is counter to the Bible and to African family values, and to discuss how gay people could be made straight. The next year, a Ugandan politician claiming ties to friends in the American government and elsewhere introduced a new law to impose a death sentence for homosexual behavior. Obama termed the new law “odious” and the United States and others threatened to cut off aid to Uganda (Obama Condemns 2010). Subsequently, the draft law was modified to a maximum penalty of life imprisonment, but the debate, and to some degree, the question of who speaks for the United States on the issue will recur in Uganda and elsewhere.

### *Using Engagement*

During the campaign and early in his administration, Obama repeatedly spoke about the importance of engaging countries in the hopes of settling disagreements and inducing better behavior on global issues. On human rights, this went along with his view that:

“The promotion of human rights cannot be about exhortation alone. At times, it must be coupled with painstaking diplomacy. I know that engagement with repressive regimes lacks the satisfying purity of indignation. But I also know that sanctions without outreach -- condemnation without discussion -- can carry forward only a crippling status quo.” (Obama 2009d).

This policy was seen in calls to “reset” U.S.-Russian relations, work with China, meet with Iran about nuclear proliferation and human rights, talk to the Sudanese leadership about Darfur and send an ambassador to Syria.

One particularly instructive case of engagement was U.S. policy toward Burma. In February 2009, Clinton announced that the administration would conduct a full policy review because previous U.S. policy based on sanctions was yielding little change in the repressive country. The six month review concluded that sanctions alone were not working, but also that efforts at engagement led by the ASEAN states had achieved few results. The administration therefore announced a three-pronged approach to the goals of a peaceful, prosperous, united, democratic Burma. Sanctions would be maintained to continue pressure, but also so that a future removal of sanctions could be used to reward progress. Humanitarian assistance to the people would be maintained. The new dimension would be engagement with senior government officials and with opposition leaders and ethnic minority groups.

Interestingly, Obama was very slow in appointing a special envoy for Burma, even though one is required by law. Instead, the policy was led by Assistant Secretary of State for East Asia and Pacific Affairs Kurt M. Campbell and Deputy Assistant Secretary of State for East Asia and Pacific Affairs Scot Marciel. Both men are very familiar with Burma, but critics suggested that they had too many other responsibilities to focus appropriately on Burma. It was not until April 2011 that Obama appointed Derek Mitchell as special envoy. The engagement process began with talks among officials in the United States and then trips by Campbell and Marciel to Burma, which were the first high level U.S. visits since 1995. Shifting tactics also made it easier for the United States to work with ASEAN, so Obama and the Burmese leadership attended an ASEAN conference in Singapore in November 2009.

During the meetings, U.S. officials raised general concerns about the importance of political dialogue within Burma based on free speech and assembly, encouraged the regime to release political prisoners, and promoted new policies for ethnic minorities. They put particular focus on steps needed to make Burma’s scheduled fall 2010 elections credible. In November 2009, after their first visit to Burma, Marciel and others were quite frank in admitting that they faced a difficult challenge and that they did not know whether their talks would lead the Burmese

to change. Therefore, they noted that the policy would not continue unless there was real progress (Marciel 2009).

Less than one year into the new policy and after a second trip to Burma, Campbell announced “profound disappointment in what we have witnessed to date” (Campbell 2010a). He noted that a number of regime actions meant the elections would lack international legitimacy. Political prisoners had not been released, instead the leading opposition figure Aung San Suu Kyi had had her sentence extended and prisoners had been dispersed to remote locations around the country. In seeking stability, the regime had increased pressure on ethnic minorities, leading many people to flee their homes. By September 2010, Campbell was still urging patience with the policy, but noted, “in our assessments of our engagement strategy to date . . . I think the benefits have been quite limited” (Campbell 2010b). The United States sharply criticized the flawed 2010 elections, but days later welcomed Aung San Suu Kyi’s release from house arrest. There was also some progress in Spring 2011 when a new civilian government was formed, but it was unclear whether real change would continue and whether U.S. engagement was at all responsible for the changes being made.

#### *Justification of Forceful Protection of Civilians*

The events in Libya in the Spring of 2011 provided Obama with an opportunity to establish new ideas about when the United States should militarily intervene to prevent human rights abuses. This issue was central to the foreign policy of the 1990s when the United States considered action in Somalia, Rwanda, the former Yugoslavia, Haiti and elsewhere, but for almost a decade interventions tied to the War on Terror had dominated U.S. military focus. In the meantime, the United Nations had developed and adopted in 2005 a new formulation namely that states have a Responsibility to Protect (R2P) their citizens from genocide, war crimes, crimes against humanity and ethnic cleansing. In cases where the state was not fulfilling this responsibility, the international community must use measures including force to protect the citizens. This formulation meant that intervention could more easily be justified against a sovereign state, and possibly that it would be more accepted by traditionally strong supporters of sovereignty such as Russia, China, and many African states. Obama was careful to stress that

Libya presented an unusual combination of circumstances, so that policy there would not limit policy flexibility in dealing with Syria and others, but it still represented a real application of R2P against a sovereign state, so laid out some important markers.

The Libyan case shows three ways in which Obama set important limits on U.S. human rights intervention. First, Obama stated that, in cases where U.S. safety was not at stake, “our interests and our values” could be threatened enough to provide a responsibility to act, but he set the bar quite high for the specific circumstances necessary in those cases (Obama 2011). Gaddafi’s long-term dictatorship and human rights abuses earned mild criticism, his forceful crackdown on protestors earned condemnation and sanctions, but it was not until the city of Benghazi was in Obama’s words, one day away from “a massacre that would have reverberated across the region and stained the conscience of the world” that force was justified. Second, for both Libya and more generally, even justifiable force needed to come with multilateral support and action. Clinton suggested that the “turning point was really the Arab League statement” asking the U.N. Security Council to take actions (Landler and Bilefsky). The United States then threw its weight behind French and English actions at the U.N. to get passage of Resolution 1973 authorizing all means necessary to protect Libyan civilians. Third, Obama suggested that U.S. actions would have important limitations from the very start. No U.S. ground troops would be used. The United States would quickly assume a “supporting role” focused on intelligence, logistics and search and rescue, while NATO took control of most enforcement. A senior White House official noted Obama always stressed that U.S. involvement should be “days, not weeks” (Cooper and Myers 2011). Obama directly noted that this was not like Iraq with a commitment to bring regime change and to stay for years. Taken together, these limits mean actions should be only taken in extreme cases with multilateral support and where U.S. goals and contributions are well-defined and limited.

At the same time, Obama’s moves were fast and bold compared to actions taken in the 1990s. Within a month of the protests beginning in Libya, the United States had joined the international community in freezing assets, embargoing arms, referring the case to the ICC, calling for new leadership and authorizing the use of force. In comparison, it was over a year to develop equivalent actions in Bosnia. It also is important that Obama resisted calls to impose a

no-fly zone until he learned from Rice that the U.N. would be able to go further and authorize all means necessary.

Also important is that the Libyan actions explicitly used the R2P formulation. Resolution 1973, reiterates “the *responsibility* of the Libyan authorities to protect the Libyan population” (emphasis added) and noted the Libyan government’s failure to meet its responsibilities. It considers that a flight ban “constitutes an important element for the protection of civilians.” In Obama’s speech to the nation, he spoke of the “*responsibility* to act” and “our *responsibilities* to our fellow human beings” emphasis added (Obama 2011). Gareth Evans, former Australian foreign minister and key advocate of R2P, commented that the U.N. actions gave “extraordinary new momentum and authority” to R2P and ushered in the implementation phase of developing a world without major human rights violations (Rieff 2011). The long-term impact of portraying Libya as a case of R2P depends in part on how events in Libya play out, but the very fact of justifying U.S. actions in those terms is an important development.

#### Continued Barriers to Action

Criticism that Obama has ignored human rights or taken no significant steps forward is unwarranted. On the other hand, some of his steps have been half steps-- such as supporting U.N. treaties, but not getting ratification; trying, but failing to close Guantanamo; speaking about democracy in general, but not pushing it equally hard in all cases. Other active efforts have so far yielded few results-- such as efforts to end gender discrimination and engagement efforts with Burma. His track record to date has led many human rights supporters to become frustrated. This is not surprising, particularly after the very high hopes and expectations at the start of the administration, but these feelings should not overwhelm recognition that positive steps have been taken or discount the impact of the four key factors that continue to limit U.S. human rights policies.

First, the United States, and really all international actors, have limited power over other countries’ domestic actions. They can condemn countries, use pressures and inducements, but, ultimately, other countries remain sovereign states influenced most directly by the goals of their

own state leaders. In most cases, these state leaders are well aware that they are violating international norms or law, but they have determined that these actions are justifiable given their country's culture, economic, or political situation or are necessary to maintain their own power and privilege. Leaders in China, Russia, Burma, and even much smaller countries will sometimes ignore U.S. objectives. When change does come to countries like Egypt, it is usually more the result of internal actions than foreign pressures. Furthermore, U.S. global leverage has been reduced in recent years as economic power has become more evenly distributed, and non-democracies like China and Russia have shown willingness to maintain ties with human rights abusers and to use their U.N. veto powers if necessary. These factors do not mean that the United States should abandon its efforts, but it does mean that some policy failures must be expected and they should not always be perceived as a lack of effort or will.

A second limit on U.S. human rights actions is competing U.S. policy priorities. Globally, human rights concerns are given more attention now than ever in world history, but this does not change the fact that countries, including the United States, will always rank security and economic priorities higher than human rights goals. This reality can be illustrated in a number of Obama's moves that considered human rights, but also sought to limit terrorist attacks, that promoted democracy, but still valued stability in the Middle East, that sought to pressure countries, but not cut American business out of any markets. When four countries, Chad, the Democratic Republic of Congo, Sudan and Yemen, could have lost U.S. military aid under the new Child Soldiers Prevention Act, Obama granted a waiver to all four citing the national interest.

Balancing goals is also clear in U.S. policies in Asia. For a number of years, a major component of U.S.-China relations was U.S. criticism of China's lack of democracy and free speech, the crackdown at Tiananmen Square, limits on internet freedom and so on. Early on, the Obama administration decided that Chinese cooperation was necessary on a host of global issues. Subtle moves were made to avoid antagonizing the Chinese, for example postponing a White House visit by the Dalai Lama. More directly, Clinton commented to the press in February 2009 that while the United States would continued mentioning Tibet and free speech issues "[o]ur pressing on those issues can't interfere with the global economic crisis, the global climate change



crisis and the security crisis” (Clinton: Chinese 2009). In her major December 2009 speech on U.S. human rights policies, she called U.S.-China policy “principled pragmatism” (Clinton 2009). Over time, though, the administration became less convinced that China would cooperate on global issues, so began to press harder on issues such as existing disputes over currency exchange and security issues. In January 2011, the administration increased focus on human rights with Clinton criticizing China’s repression of dissent in a State Department speech just before President Hu Jintao visited Washington and Obama held a meeting with five human rights advocates to discuss strategy. Human rights did not dominate Hu’s visit, but it was raised in both private and public settings. China’s human rights policies were not significantly different in 2009 and 2011, but overall the United States had toughened its stance, so human rights could be given more prominence. U.S. efforts to rally allies that could confront China also contributed to other human rights policies. For example, In July 2010, the United States reestablished full military training assistance with the Indonesian military, which had been partially restricted since 1992 because of human rights abuses; a move that many human rights watchers saw as putting an anti-China coalition above other priorities (Kessler 2010). These actions are a long way from the Cold War era when anti-Communist goals almost always trumped human rights issues, but they may be a sign of things to come if the United States becomes more worried about China’s rise.

A third limit on U.S. human rights policy is continued U.S. hesitance to join multilateral institutions. There are few modern Americans that could be called true isolationists, but there are many in the public and government who strongly believe the United States is an exceptional country that should not bend to international opinion, as well as a country that holds the Constitution and domestically passed laws supreme above international treaties and law. The continued strength of these views can be seen in reactions to Obama’s call for ratifying U.N. treaties and in how much those reactions mirror reactions to earlier U.N. treaties. Treaty critics almost always begin by arguing that the particular treaty is unnecessary given existing good U.S. behavior and that the treaty is weak because it has been ratified by other countries with worse human rights records. The critics then switch the argument and suggest that the treaty is so strong that it would bring nearly apocalyptic changes to the United States on this issue and

eventually multiple other issues as well. This means the debate is not really about the particulars of the treaty; it is about whether it is un-American to ratify the treaty. Virtually the same debates are heard over whether to join particular international institutions. In time, the United States sometimes does shift position, for example ratifying the Genocide Convention after forty years, but, in the short-term, all human rights supporters can hope for is that the United States follow the spirit of the treaty or institution and that it not openly attack them as Bush often did. There also remains ongoing debate about whether to attempt reforms from inside institutions, or by showing disapproval from the outside. The Obama administration's successes at the Human Rights Council and ICC seem to argue for inside reform, but the same administration refused to send a U.S. delegation to the U.N. World Conference against Racism because it felt the group's statements were too anti-Israel.

Lastly, human rights policy is limited by the continued domestic political weakness of human rights advocates. There are human rights positions in a number of U.S. agencies and several particular people with good ties to top Obama officials, but this does not mean that these officials drive policy when challenged by country bureaus or security agencies. In Congress, there are a number of Members very devoted to human rights issues who submit resolutions, organize hearings or press conferences, and at times pass new legislative restrictions, although almost always ones that give the President discretion in implementation. Very rarely, though, do human rights positions become campaign issues and few campaign funds come from human rights groups, so many Members will prioritize other concerns such as security, local jobs, or positions against international organizations and not support tough actions. Human rights NGOs are highly respected in Washington and have grown in sophistication over time to be smart political players. (Mertus 2004) At the same time, these NGOs are often preaching to the choir of Executive and Congressional officials who already feel that human rights are important. The human rights movement also lacks grassroots support nationally and has been eclipsed by the environmental movement and others in prominence. As Sarah E. Human Mendelson has argued, the fact that central human rights concerns were at times set aside by the Bush administration shows that core concepts were not as fully imbedded in U.S. policy and public views as many people thought (2009).

Given all these limits, it is not surprising that Obama's first years saw mixed results and it will not be surprising if this continues. Still, Obama has modified a number of Bush policies and accomplished enough on other issues to say that a fifth wave of human rights policy development is underway.

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