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INTRODUCTION

On July 8, 2019, Secretary of State Michael R. Pompeo announced the formation of a Commission on Unalienable Rights, to “provide fresh thinking about human rights discourse where such discourse has departed from our nation’s founding principles of natural law and natural rights,” and to advise on the role “of human rights in U.S. foreign policy.” The Commission comprises eleven Commissioners and one Rapporteur. While some supported the Commission, its launch quickly drew the attention of civil and human rights advocates nationwide because of its “clear anti-human rights agenda” and risks that its mandate and composition would undermine women’s; lesbian, gay, bisexual, transgender, and intersex (LGBTI); and socioeconomic rights. Just two weeks after Secretary Pompeo’s announcement, more than 125 Catholic leaders called for the Commission’s dismantling, as did 178 NGOs and 251 individuals objecting to the Commission’s stated purpose, composition, and process. More recently, human rights groups have filed a lawsuit challenging the Commission’s “unnecessary and inadequately explained creation, unbalanced membership, and opaque operation.” The Commission held five meetings between October 23, 2019 and February 21, 2020 on the topics of: “founding principles” (in two parts), international legal commitments concerning human rights that the United States has entered since World War II (in two parts), and “the role of human rights in American foreign policy,” with ten experts total presenting at the meetings.

This submission identifies ten core concerning propositions relied upon by the Commission and eight principles of international human rights law that should instead guide the Commission’s work. This is not a full analysis of, or response to, all statements that have accompanied the Commission’s formation and operation. It instead focuses on addressing the most concerning misconceptions about human rights law in how the Commission understands and/or seeks to resolve questions about existing challenges with human rights and institutions. In identifying the core propositions, this submission draws primarily on statements by the United States (U.S.) government and Commission members during its set-up and meetings, as well as by other non-government commentators about the Commission. The Duke University School of Law International Human Rights Clinic monitored all meetings; any quotes in this submission concerning the content of meetings are based on contemporaneous notes unless otherwise indicated.

KEY PROPOSITIONS OF THE COMMISSION ON UNALIENABLE RIGHTS

1. The idea of human rights is in crisis, requiring fundamental re-examination.

For Commission Chair Glendon, “the very idea of human rights is in crisis, as it is under attack “from the right and the left,” and “about half the world’s population is suffering under regimes where they have no rights at all.” According to Commission members and those who testified before the Commission, further proof of this crisis is that “human rights and democratic values are being inadequately defended by the world’s democracies, including our own;” the “human rights project has been exposed” to “excesses;” and “authoritarianism” exists. Overall, according to one expert (McConnell), there is reason to be “skeptical of modern international human rights.” To address these crises, the Commission is envisioned to undertake “one of the most profound reexaminations of the unalienable rights in the world since the 1948 Universal Declaration [of Human Rights].” One Commissioner (Berkowitz) described this far-reaching re-examination as a “sober and deliberate reflection about the roots of human rights in the American constitutional tradition, and their reach in the conduct of America’s foreign affairs.”

2. There has been a proliferation of rights, requiring a reduction in their number.

Here, the assertion is that “[c]laims of ‘rights’ have exploded” through groups using “the moral authority of the human rights idea to champion their causes;” a “blurred [] distinction between fundamental, universal rights and mere political preferences or priorities;” “judicial fiat;” and improper interpretation by human rights bodies that “stretch the law through their interpretations and go beyond positive law.” Under this view, rights’ proliferation is problematic—“more, per se, is not always better” because it undermines “focus on those core unalienable rights” and the normative power of human rights generally. For Commission Chair Glendon, “if everything is a right, then nothing is a right,” and “proliferation of rights can lead to a situation where you’re either in paralysis or the currency is devalued where truly fundamental rights become meaningless.” One expert (McClay) had the same concern with the “hypertrophy” of rights because “[i]f everything comes to be regarded as a right, then it becomes an easy step to saying that nothing is.” The “solution” that follows from this understanding is to “preserve the integrity of the rights ‘brand’” by “curtail[ing] the promiscuous use of that word” and “mak[ing] the enumeration of unalienable rights as short as possible.”
3. Human rights have been unduly confused with "political preferences," "policy preferences," "goals," or "good things."

It has been argued that "we've blurred the distinction between fundamental, universal rights and mere political preferences or priorities" and "confuse[d] rights from good things." Under this analysis, claims to rights increasingly circumvent the "democratic debate" and "normal process" by which rights are deemed universal. According to one expert (McClay), "we conflate rights with entitlements" in order to "make way for the imperial and inexorable forward march of rights," risking the embrace of "the rights of animals or trees, or any of a hundred other putative rights." For another commentator, claims to rights are actually "ideological activism." Additionally, human rights are said to be confusing to governments and international institutions, as well as the public writ large. For Commission Chair Glendon, "the world is full of confusion about human rights," such that the Commission's "main charge is to try to make sense of all the confusion that currently surrounds the concept of rights."

4. Human rights discourse is divisive and misused by governments and human rights advocates, requiring U.S. leadership to re-define and curtail rights.

Under this view, "repressive" governments like Cuba, Iran, and China are said to "have taken advantage" of both rights' proliferation and the "confusing" nature of rights to position themselves as rights-protective, in ways that are "morally reprehensible." For Secretary Pompeo, the problem is particularly that these regimes focus on economic, social, and cultural rights, misusing this "cacophonous call for 'rights,'" as "no one believed the Soviet call for collective economic and civil rights was really about freedom." Human rights advocates are also faulnt for following suit: "after the Cold War ended, many human-rights advocates adopted the same approach, appealing to contrived rights for political advantage." As such, Secretary Pompeo has criticized "human-rights advocacy" for having "lost its bearings and become more of an industry than a moral compass," and censured "rights claims" for being "often aimed more at rewarding interest groups and dividing humanity into subgroups." For Commissioner Berkowitz too, a "cadre of bureaucrats, judges, scholars, and activists" is at risk of "succumbing to special interests and self-serving agendas." While Commission Chair Glendon is concerned that human rights are "ignored by the world's worst human rights violators," she too has long faulted "special interest groups" who seek to "impose their agendas in the form of rights." Recently she has voiced concern that "very little is known about the funding and agendas of many of these groups that have described themselves as human rights groups." The "solution" presented is for U.S. leadership to focus on "unalienable rights" and closely monitor rights claims; the U.S. government is to "reclaim the tradition of unalienable rights from deliberate misunderstanding" and be "vigilant that human rights discourse not be corrupted or hijacked or used for dubious or malignant purposes." Others have relatedly reflected that economic, social, and cultural rights should not be recognized because such recognition allows "totalitarian and authoritarian governments" to claim that they are "promoting" such rights while violating "fundamental human rights" such as freedom of the press.

5. International human rights treaties and institutions have completely failed.

Here, fault is found with the "proliferation" of rights by international treaties and bodies that have "embraced and even accelerated the proliferation of rights claims—and all but abandoned serious efforts to protect fundamental freedoms." Not only have international institutions reportedly "drifted from their missions," but the participation of "authoritarian" governments in human rights venues is also said to show institutional failure. For one expert (Halvorssen), the United Nations (U.N.) is a "playground for dictatorships," and for another (McClay) the U.N. "has proven an irredeemable failure" in admitting countries such as Mauritania and Venezuela to the U.N. Human Rights Council. One Commissioner (Berkowitz) also defended the U.S. government's withdrawal from the U.N. Human Rights Council because of its perceived shortcomings.Repeatedly, the fact of worldwide human rights violations is claimed as evidence of the irredeemable failure of treaties and institutions themselves. For Secretary Pompeo, it is a "sad commentary on our times" that decades after the Universal Declaration of Human Rights (UDHR), "gross violations continue throughout the world, sometimes even in the name of human rights." Commission Chair Glendon has often stressed the same, noting that "we must never lose sight of the fact that half of the world's population—4 billion and some people—are living under authoritarian regimes where they do not have basic human rights." To this end, she opened the Commission's first and last meetings with reminders that "[m]ore than half of world's population lives under political regimes where rights are systematically denied" and there is a need for a "fresh look at human rights" when "half of the world is living under authoritarian regimes." For Commissioner Berman too, "it is as if implementation of human rights has stalled and is failing." According to Commissioner Pan, the problem is one of enforcement as "there is no system of sovereignty in human rights law" and "there's no world enforcer or sovereign and no world government."
6. There is a difference between core, unalienable rights and ad hoc rights.

According to Secretary Pompeo—and potentially the U.S. State Department—unalienable rights “came from our Lord” and are “given by God” rather than “a treaty or a law or some writing.” In contrast, “ad hoc rights [are] granted by governments” and “politicians and bureaucrats create new rights” that often reflect “debatable political priorities” or “merely personal preferences,” as opposed to “fundamental, universal rights.”

When it comes to which rights are identified as core and which as ad hoc, for Secretary Pompeo, religious freedom is a core right. Repeatedly Secretary Pompeo has emphasized that “fundamental freedoms” are the “essential rights” that require protection, including because of his perception that they have been undermined by the recognition of additional rights. Relatedly, for Secretary Pompeo, unalienable rights do not include “new” rights “identified after the Cold War ended,” and it is problematic that “[o]ppressive regimes like Iran and Cuba have taken advantage of this cacophonous call for ‘rights,’” that go beyond a “focus” on “fundamental freedoms.” For one expert (McClay), rights to healthcare and basic income are examples of ad hoc rights—which, when admitted as rights, then “weaken the binding force of inalienable rights incalculably.” For other commentators on the Commission, rights that are not unalienable include “a ‘right’ to abortion or ‘sexual expression.’”

7. There is a hierarchy among human rights, such as between civil and political rights and economic, social, and cultural rights.

For Secretary Pompeo, rights’ proliferation has led to “questions and clashes about which rights are entitled to gain respect.” Different forms of hierarchies of rights have been suggested prior to, and during, the Commission’s meetings to solve this. Some Commissioners (Berkowitz and Lantos Swett) have identified tensions between religious freedom and women’s sexual and reproductive rights and the need to prioritize religious freedom. Commissioners Rivers and Carozza rely on a hierarchy between non-derogable (i.e., cannot be suspended during public emergency) and derogable rights. Others identified hierarchies between ad hoc rights versus core, unalienable rights as mentioned above. And economic, social, and cultural rights have been diminished through a focus on “fundamental freedoms” as core rights. While not endorsing a hierarchy, Commissioner Lantos Swett noted there is “a fundamental difference” between economic, social, and cultural rights, and civil and political ones. One expert (Yu) stated that the Pope has “said some ‘not helpful’ things that elide distinctions between economic and unalienable rights.” Another expert (Halvorssen) went further, emphasizing civil and political rights “are the bedrock upon which the structure of freedom is built,” and characterizing civil and political rights as “a first tier set of rights” that must be realized before economic, social, and cultural ones (with which Commission Chair Glendon disagreed). Other commentators have argued that recognizing economic, social, and cultural rights as rights results in “dilution” that “diverts our attention from basic rights.”

8. Rights should be re-examined using primarily the UDHR and U.S. “founding principles,” rather than binding treaties.

The Commission’s charter bases its work on the Universal Declaration of Human Rights, as well as the U.S. “founding principles” of unalienable rights. Secretary Pompeo emphasized that these sources enable the Commission to “go back.” Commission Chair Glendon has also called for this “return to basics” using the “modest approach outlined in the original Declaration.” When it comes to defining unalienable rights, for Secretary Pompeo and one Commissioner (Berkowitz) these unalienable rights ultimately come from God or Christianity and are not authoritatively derived from human rights treaties. One Commissioner (Pan) wondered whether “popular sovereignty” might actually provide “more basis as positive law than the treaties” for human rights, and another (Berman) characterized treaties as something which countries other than the United States “sign and then just forget.” While some Commissioners (Berkowitz and Glendon) said that the Commission will not ignore human rights treaties altogether, these treaties were either scarcely addressed in the Commission’s public meetings or de-prioritized in favor of an emphasis on the UDHR. For example, Commissioner Lantos Swett invoked the UDHR’s Article 18 guarantee of religious freedom rather than the subsequent expression of that right in the binding International Covenant on Civil and Political Rights (ICCPR), seemingly because of the (incorrect) understanding that the UDHR’s guarantee is without limits.

9. Religious freedom is more important than other human rights.

From its inception, Secretary Pompeo made clear that the Commission would focus on religious freedom, which he described as “the most important freedom in many respects,” “fundamental to humanity,” “essential,” and at risk of being lost when other rights are recognized. Some—including the U.S. Commission on International Religious Freedom on which two of the Commissioners (Glendon and Lantos Swett) have previously served—heralded the creation of the Commission as a positive development because it would advance religious freedom. For at least some of the Commission members, religious freedom is broadly-defined, without limits, and ultimately “one of the most important, if not the most important.” For example, one Commissioner (Tollefson) wrote that the “right to freedom of thought, conscience and religion” is “surely among the most important, and the most basic, of human rights.” Another Commissioner (Carozza) has argued...
that “the centrality of religious freedom to the protection of human dignity is, in fact, key to the coherence and viability of the entire human rights project.” Commissioner Rabbi Soloveichik has asserted that religious institutions should not have to take actions that violate their beliefs in providing employees with an insurance policy that enables free access to contraceptives. In defining the scope of the right during the Commission’s hearings, Commissioner Lantos Swett stated that religious freedom is a right without limits, including because the guarantee of religious freedom in Article 18 of the UDHR does not have a specific limitation clause, and she was “troubled” by one expert’s (Roth) “suggestion that this fundamental right claim could be overridden” by women’s rights. Commission Chair Glendon has also described the right to religious freedom in Article 18 of the UDHR as “capacious.” Two experts (McClay and McConnell) also testified that freedom of conscience, which includes religious freedom, is the ultimate example of an unalienable right.

10. There is no right to legal and safe abortion under international human rights law.

Opposition to abortion by Secretary Pompeo and several Commissioners pre-dates the Commission’s formation. Pro-life organizations and other conservative commentators celebrated the Commission because it would “aim an intellectual dagger at the heart of the radical expansion of rights that are not rights that the hard left promotes at the UN; the ‘right’ to abortion.” During the public meetings, some Commissioners cited abortion as an example of conflicting rights, demonstrating their belief that abortion cannot ultimately be protected under international human rights law. For one Commissioner (Berkowitz), the conflict is the “question of the right of women versus the right of the most vulnerable among us” (an “unborn child”). For another (Lantos Swett) the conflict is between a woman’s right to abortion and doctors’ rights to conscience and to pursue their profession. For Lantos Swett, it is “less of an infringement” for a woman to be “inconvenienced” by going somewhere else to get an abortion than to “diminish and dilute the most important right of conscience . . . . A doctor in a rural area would have to commit a grave moral crime or else have to leave their profession versus a woman who has to travel hundreds of miles and be inconvenienced.” For Lantos Swett this weighing of rights in favor of religious accommodation would also be confirmed by a “man-on-the-street interview.” At the same meeting, another Commissioner (Tollefsen) noted that “opposition to abortion is frequently also framed in classic human rights—right to life, concern for bodily integrity of a fetus” and stated his understanding that the UDHR “says that every member of the human family has rights.” The Ruth Institute echoes this in its petition presented to the Commission to “Make the Family Great Again,” which includes recognizing “the right to life from conception to natural death” as a “fundamental right.”

KEY GUIDING PRINCIPLES OF INTERNATIONAL HUMAN RIGHTS LAW

1. There is no hierarchy of rights under international human rights law.

International human rights law “does not support the existence of a defined category of core rights that would include some, but not all, human rights.” Under international human rights law, “[a]ll human rights are universal, indivisible and interdependent and interrelated.” Legally—and in practice—guarantees of rights “both overlap and interact with other provisions” within and across human rights treaties, as well as with other areas of international law. The fact that some rights are designated as non-derogable during a state of emergency does not create a “hierarchy of importance of rights under the Covenant [International Covenant on Civil and Political Rights].” Nor is a priority order created between guarantees of rights that are “absolute” (e.g., the right to non-discrimination) and those that have attached clauses that set out permissible limitations (e.g., freedom to manifest religion). Declaring some human rights as core based on their character as civil and political rights versus economic, social, and cultural rights is also not permitted under international human rights law as is outlined further below. While there are important questions on whether and how to identify the core content of each human right itself—particularly with regard to the “minimum core” of economic, social, and cultural rights—this has not been the Commission’s focus in its public meetings and is not discussed here.

2. Existing rules of human rights treaty interpretation allow for re-examining rights and resolving purported conflicts.

In addition to the general rules of treaty interpretation in the Vienna Convention on the Law of Treaties, the nine core human rights treaties themselves contain interpretive rules that clarify the extent of States parties’ obligations, explain when States can derogate from those obligations, and include specified limitations for some substantive rights. Human rights treaties are interpreted according to the principles of effectiveness, evolutive interpretation, and proportionality. Taken as a whole, these rules require that treaties are interpreted to make them most effective to protect rights through a dynamic approach that recognizes human rights treaties as “living instrument[s]” to be “applied in context and in the light of present-day conditions,” and requires any purported rights’ restrictions, such as those under derogation or limitation clauses, to be proportionate. The international treaty monitoring bodies in particular—through jurisprudence and other interpretive practice such as general comments or recommendations—ensure that human rights treaties “speak to
modern circumstances, in which understandings and perceptions of language and practice may have evolved substantially since the treaties’ adoption (for example, to explain how the right to freedom of expression applies to new information and communication technologies). Other guidance exists to clarify the relationship between rights in the treaties that may seem conflicting, such as how States should reconcile the right to freedom of expression and the prohibition on war propaganda and hate speech or the right to freedom of religion or belief and non-discrimination. This guidance on the treaties is instructive because the meanings of terms in human rights treaties are “autonomous,” such that they are to be interpreted independent of national legal definitions. The UDHR, in situations where “clashes of rights” might occur, as Commission Chair Glendon has noted, the framers of the UDHR “expected [these] conflicts to be opportunities to discover ways to protect each right as much as possible, while never subordinating any right completely to another.”

3. The UDHR alone is an insufficient basis for protecting human rights.

The UDHR is a significant document that has “contributed to the popularization of the idea of an international human rights legal regime” and some of its provisions may have the status of customary international law. However, if not considered customary international law, then as a declaration it is not itself legally binding. Whatever its status, it does not displace treaties in force that are “binding upon the parties to [them] and must be performed by them in good faith.” The nine core human rights treaties create binding obligations for States to respect, ensure, and “give effect to” guaranteed rights. As one expert (Sunstein) noted, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) “goes beyond a mere declaration by attempting to turn the recognition of social and economic rights into binding commitments.” The nine core human rights treaties are also distinguished from the UDHR by the increased specificity with which they define some rights and by their “supervisory machinery,” i.e., the treaty monitoring bodies that further elaborate the content of treaty norms in light of changed circumstances and facilitate compliance by States with the treaties. Undue reliance on the UDHR also risks excluding key human rights guarantees that were not explicitly specified in its text but were later recognized in the post-1948 human rights system, including the rights of children and migrant workers or the right to be free from enforced disappearance. By centering the UDHR, “the commission seems poised to lock itself into an interpretive effort to read together ‘founding principles’ (themselves profoundly exclusionary in terms of gender and racial equality) with a non-treaty human rights instrument . . . short-circuiting what should be an evolutionary approach to human rights norms.”

4. Human rights protections can properly extend, including through the implementation of existing rights.

Since the adoption of the International Convention on the Elimination of all Forms of Racial Discrimination in 1965 and the two covenants on civil and political rights and economic, social, and cultural rights in 1966, the international community has adopted six further human rights treaties that more specifically address marginalized groups (e.g., treaties on women, children, migrant workers, persons with disabilities) and provide detailed guidance on the prohibitions on torture and enforced disappearances. The adoption of the most recent treaty occurred more than a decade ago. Over time, the protective reach of the human rights corpus has expanded either through the recognition of “new” rights or through the “implementation of existing rights” to certain groups or new circumstances. This application of existing rights occurs, for example, when marginalized groups (e.g., women, racial minorities, and LGBTI individuals) claim the protection of existing rights; when rights that are “long neglected” such as economic and social rights are prioritized; and when the scope of an existing right is normatively broadened through evolutive treaty interpretation to meet changed circumstances and to ensure the principle of effectiveness. The practice of advancing “new” rights is rarer. To balance the need for dynamism against the risks of undue proliferation, a “new” right is only recognized if it meets robust criteria requiring that new rights be consistent, fundamental, precise, practical, and supported. As Commission Chair Glendon has stated, there “can never be a closed catalog of human rights because times and circumstances change.”

5. Economic, social, and cultural rights are equal to civil and political rights.

Economic, social, and cultural rights include the rights to food, work, social security, an adequate standard of living, health, housing, and education. States that are obliged to guarantee economic, social, and cultural rights must progressively realize these rights using their maximum available resources and on the basis of non-discrimination. Economic, social, and cultural rights and civil and political rights are “universal, indivisible and interdependent and interrelated.” This universality is reflected in the UDHR, which explicitly recognizes economic, social and cultural rights in a stand-alone article and further elaborates on individual economic, social, and cultural rights throughout.

Human rights treaties subsequent to the two covenants on civil and political rights and economic and social rights—and their monitoring bodies—have also reflected the interdependence and parity of economic, social, and cultural rights with civil and political rights. As with civil and political rights,
economic, social, and cultural rights are justiciable under international law, including through the Optional Protocol to the ICESCR that mirrors the ICCPR’s Optional Protocol and allows victims to present complaints to the treaty’s monitoring body. Economic, social, and cultural rights similarly form part of States’ extraterritorial human rights obligations. Finally, the intersections in practice of economic, social, and cultural rights with civil and political rights show the need to resist calls to “prioritize[]” a “handful of rights” that comprises only civil and political rights.


As outlined above, critiques of the efficacy of rights and implementing bodies have primarily focused on the effects of so-called rights’ proliferation, authoritarian regimes’ involvement in international institutions, and the idea that ongoing rights deprivations suggest treaties have had little impact on governments’ behavior and human rights outcomes. As discussed, in practice, rights’ “proliferation” is actually often the legitimate implementation of existing rights and occasionally the recognition of new ones. And it is possible to acknowledge that the inclusion of rights-violating countries in international bodies such as the U.N. Human Rights Council affects their institutional credibility, without deeming them ineffective on this basis alone. Finally, focusing on violations alone to measure effectiveness is a discredited methodology, including because it compares the status quo to an ideal, unduly focuses on governments rather than also considering how other actors (e.g., non-State entities and individuals) affect rights, and narrowly understands rights as only legal commitments against which to measure official action. Other methods of analysis—including those that empirically compare levels of rights across time and countries—provide more positive views on the effectiveness of human rights law and institutions. While human rights treaties and institutions are not problem-free, the Commission has not engaged with the full matrices on whether and how rights and institutions work.

7. The right to freedom of religion or belief is important but has limits, including a prohibition on discrimination.

The freedom of religion or belief includes the freedom to adopt, change, or renounce a religion or belief, freedom from coercion, the right to manifest one’s religion or belief, and the freedom to worship. The right to freedom of religion or belief does not allow direct or indirect discrimination by State actors or private individuals—it “may not be relied upon to justify discrimination against women,” and more broadly it “can never serve as a justification for violations of the human rights of women and girls.” Discrimination against LGBTI persons in the name of freedom of religion or belief is similarly proscribed. Instead, the guarantees of freedom of religion or belief and non-discrimination are “mutually reinforcing rights,” which prohibit “discriminatory laws, including those enacted with reference to religious considerations” that criminalize LGBTI persons and “abortion in all cases.” The right to freedom of religion or belief cannot be suspended in times of public emergency, but the guarantee of all aspects of the right is not absolute. While the internal dimension of one’s personal freedom of thought and religion is absolute, the external dimension—public exercise or manifestation—can be restricted. These restrictions are permitted “only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.” The right to freedom of religion or belief is also restricted under the general limitation clauses of the UDHR. Overall, “while religious freedom is an important right, there is no basis in international law for its elevation above other rights. As with all human rights, it is indivisible and interdependent with others.”

8. The rights to sexual and reproductive health are human rights guarantees.

The rights to sexual and reproductive health—including the right to access legal and safe abortion—are guaranteed under international human rights law through the rights to, among others, health, non-discrimination and equality, privacy, freedom from torture and other cruel, inhuman or degrading treatment or punishment (CIDTP), and life. Access to abortion is a component of the right to sexual and reproductive health, which is itself “indivisible from and interdependent with other human rights” and “intimately linked to civil and political rights.” These civil and political rights include the rights of women and girls to equality and non-discrimination, which are violated by measures such as blanket criminalization of abortion, as well as the right to privacy which may be violated in cases of “refusal to act in accordance with [an individual’s] decision to terminate her pregnancy.” The right to be free from torture and CIDTP also proscribes denying or restricting access to sexual and reproductive health services in some cases—such as denying therapeutic abortion—as well as abuses in those services, such as ill-treatment in reproductive health care facilities. Under international human rights law, the right to life also guarantees “safe, legal and effective access to abortion” where there is a risk to life of the pregnant person, such as with preventable maternal mortality and morbidity or unsafe abortions. Indeed, contrary to the assertions of at least one Commissioner during its public meetings, the right to life under international human rights law—including the UDHR—accrues at birth and “does not extend to fetuses.” Under international human rights law, States parties’ obligations to “remove existing barriers” to abortion include “barriers caused as a result of the exercise of conscientious objection by individual medical providers.”
CONCLUSION

When Secretary Pompeo announced the Commission’s formation, he called for “one of the most profound reexaminations of the unalienable rights in the world since the 1948 Universal Declaration”251 that would “revisit the most basic of questions” about what constitutes a human right and the effects of rights claims.252 These and some of the other Commission’s concerns—such as how to address governments’ misuse of rights or analyze the efficacy of human rights treaties and institutions—are not unique to this body. Many in the human rights community contend with these questions too, and often undertake “searching examination and critique of international institutions, laws, history, and organizations.”253 However, the Commission in its composition, set-up, and meetings has reflected some concerning and often one-sided understandings of how these challenges are framed, assessed, and solved. This submission identifies eight principles of international human rights law to help widen and inform the basis on which the Commission finalizes its work, so that the effort to “go back to basics”254 or to “go back to take a look at what are these basic rights and how do we define them”255 does not mean a setback in human rights in U.S. foreign policy.

ENDNOTES

2 U.S. Dep’t of State, Comm’n on Unalienable Rights, 84 FR 25109, 25109 (May 30, 2019).
10 Comm’n on Unalienable Rights, Comm’n Meetings, U.S. DEPT. OF STATE, https://www.state.gov/commission-on-unalienable-rights. The dates of the meetings were: October 23, 2019, November 1, 2019, December 11, 2019, January 10, 2020, and February 21, 2020. The sixth meeting scheduled for March 26, 2020 was canceled because of the novel coronavirus.
11 U.S. Dep’t of State, Comm’n on Unalienable Rights; Notice of Open Meeting, 84 FR 52550, 52550–52551 (Oct. 2, 2019).
12 U.S. Dep’t of State, Comm’n on Unalienable Rights; Notice of Open Meet-
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Michael R. Pompeo, "Remarks Before U.S. Comm’n on Unalienable Rights, Public Meeting No. 1" (Sept. 19, 2019), https://www.youtube.com/watch?v=QeR0y-Ed-iQ (Glendon’s remarks).

Glendon, Comm’n on Unalienable Rights, Public Meeting No. 2.

McClay, Testimony Before U.S. Comm’n on Unalienable Rights, supra note 25, at 7.

Id. at 7-8.

McClay, Comm’n on Unalienable Rights, Public Meeting No. 1. See also McClay, Testimony Before U.S. Comm’n on Unalienable Rights, supra note 25, at 12 (“It seems clear that the unalienable rights we should seek to defend and uphold will have to be few in number and extremely well-defined”). See further id. at 9 (“calling for an ‘irreducible minimum’ of rights”).


The Lawfare Podcast: Mary Ann Glendon on Unalienable Rights, supra note 15.


Pompeo, Secretary Michael R. Pompeo at the Concerned Women for America 40th Anniversary Luncheon, supra note 37.

The Lawfare Podcast: Mary Ann Glendon on Unalienable Rights, supra note 15 (“If you insist that your policy preferences are universal rights, that tends to move debatable issues from democratic debate.”).

In Defense of the American Rights Tradition, supra note 24 (“Our politicians too, from time to time, have framed pet causes as ‘rights’ to bypass the normal process by which political ends are achieved.”).

McClay, Testimony Before U.S. Comm’n on Unalienable Rights, supra note 25, at 7-8.


The Lawfare Podcast: Mary Ann Glendon on Unalienable Rights, supra note 15.

Pompeo, Secretary of State Michael R. Pompeo Remarks to the Press, supra note 1.


Carozza, Comm’n on Unalienable Rights, Public Meeting No. 4.


World Over - 2019-09-19 - Mary Ann Glendon with Raymond Arroyo, EWTN
by authoritarian regimes appealing to contrived rights to advance their agendas:”); Ron Wright, Let’s Define Human Rights for the Ages, WASH. TIMES (July 18, 2019), https://www.washingtontimes.com/news/2019/jul/18/lets-define-human-rights-ages/ (“Too often the term ‘human rights’ has been hijacked by individuals or groups to gain and keep power. . . . We have seen it played out many times, most notably by socialist regimes around the world who declare the purity of their actions in the name of the people while systematically stripping away their freedom.”).

54 Pompeo, Unalienable Rights and U.S. Foreign Policy, supra note 49.

55 Id.

56 Id.

57 Id.


59 Pompeo, Secretary of State Michael R. Pompeo Remarks to the Press, supra note 1 (Glendon’s remarks).

60 Mary Ann Glendon, Knowing the Universal Declaration of Human Rights, 73 NOTRE DAME L. REV. 1153, 1154 (1998).

61 The Lawfare Podcast: Mary Ann Glendon on Unalienable Rights, supra note 15 (referencing also “a surge of interest in the part of many groups to have their agenda items characterized as universal human rights”).


63 Pompeo, Secretary of State Michael R. Pompeo Remarks to the Press, supra note 1.

64 Letter from Concerned Women for America et al. to Secretary Pompeo, supra note 43, at 2.

65 See supra notes 22-33 and accompanying text.

66 Pompeo, Unalienable Rights and U.S. Foreign Policy, supra note 49. See also Pompeo, In Defense of the American Rights Tradition, supra note 24 (“International institutions have moved away from these core tenets as well . . . One research group found that between the United Nations and the Council of Europe, there are a combined 64 human rights-related agreements and 1,377 provisions.”).

67 Pompeo, Comm’n on Unalienable Rights Public Meeting: Remarks, supra note 22 (“International bodies designated to protect human rights have drifted from their missions, or have been outright corrupted.”). See also Pompeo, Secretary of State Michael R. Pompeo Remarks to the Press, supra note 20.


69 Halvorssen, Prepared Testimony to Comm’n on Unalienable Rights, supra note 18, at 6.

70 McClay, Testimony Before U.S. Comm’n on Unalienable Rights, supra note 25, at 9.

71 Berkowitz, Comm’n on Unalienable Rights, Public Meeting No. 4.

72 Pompeo, Secretary of State Michael R. Pompeo Remarks to the Press, supra note 1.

73 The Lawfare Podcast: Mary Ann Glendon on Unalienable Rights, supra note 15.


76 Berman, Comm’n on Unalienable Rights, Public Meeting No. 5.

77 Pan, Comm’n on Unalienable Rights, Public Meeting No. 4.

78 Lauretta Brown, Pompeo Launches New “Commission on Unalienable Rights,” NAT’L CATH. REG. (July 13, 2019), http://www.ncregister.com/blog/lauret-tabrown/pompeo-launches-new-commission-on-unalienable-rights (quoting “[a] senior administration official at the State Department” as explaining that “[w]e believe by our nature as human beings that we enjoy unalienable rights and our founders believed in God,” and that “the Founders ‘believed that God gave us these unalienable rights that could not be taken away by man, so in objecting to natural rights, [some Senators] essentially eschew the origins of our founding.”.

79 Pompeo, Secretary Michael R. Pompeo at the Concerned Women for America 40th Anniversary Luncheon, supra note 37.


81 Id. (“Just because a treaty or a law or some writing says it’s a right, it doesn’t make it an unalienable right. Remember where these rights came from.”).

82 Pompeo, Unalienable Rights and U.S. Foreign Policy, supra note 49.

83 Pompeo, Comm’n on Unalienable Rights Public Meeting: Remarks, supra note 22.

84 See infra notes 115-18 and accompanying text.

85 Pompeo, Secretary of State Michael R. Pompeo With David Brody of CBN-TV, supra note 28. See also Pompeo, Unalienable Rights and U.S. Foreign Policy, supra note 49 (“Many have embraced and even accelerated the proliferation of rights claims—and all but abandoned serious efforts to protect fundamental freedoms.”).

86 Pompeo, Unalienable Rights and U.S. Foreign Policy, supra note 49.

87 McClay, Testimony Before U.S. Comm’n on Unalienable Rights, supra note 25, at 7.


89 Pompeo, Secretary of State Michael R. Pompeo Remarks to the Press, supra note 1.

90 Berkowitz, Comm’n on Unalienable Rights, Public Meeting No. 4 (“There’s another argument about religious freedom and the clash of rights and abortion—a woman’s right to control her body and terminate her pregnancy. The other argument is that a fetus is an unborn child and is a vulnerable human being too and abortion is a hard question because it presents a clash of rights between an unborn child and women’s rights . . .”); Lantos Swett, Comm’n on Unalienable Rights, Public Meeting No. 4 (identifying that the conflict is between a woman wanting an abortion and doctors being “compelled to engage in what they believe a grave moral crime or leave their profession.”).

91 Rivers, Comm’n on Unalienable Rights, Public Meeting No. 2 (stating that “even in the UDHR, some rights can be suspended during emergencies versus others cannot be and this implies a hierarchy”); Rivers, Comm’n on Unalienable Rights, Public Meeting No. 3 (“You [to Abramowitz] urge us not to establish a hierarchy of rights. Why is it so important not to do that? In the UDHR some rights are never to be suspended while that’s not the case for other rights.”).

92 Carozza, Comm’n on Unalienable Rights, Public Meeting No. 2 (stating that under international human rights law “there is interdependence but the law is clear there is a hierarchy of rights. Some are non-derogable . . . not true that there is not a hierarchy among them. This is why we have non-derogable rights, jus cogens, and customary international law.”).

93 See supra notes 79-88 and accompanying text.

94 See supra notes 84-86 and accompanying text.

95 Lantos Swett, Comm’n on Unalienable Rights, Public Meeting No. 3 (“For most civil and political rights there is no external excuse . . . . with economic and social rights, the declaration speaks in terms of gradually attaining them. It’s not so much about prioritizing . . . you can stop torturing people right now, but extending [economic, social, and cultural rights] does require commitment of resources and a degree of capacity that makes it more gradual. I don’t think that’s a hierarchy, just a fundamental difference. It’s a historical fact that there was a hierarchical mindset because of the backdrop of the Cold War.”).


97 Halvorssen, Prepared Testimony to Comm’n on Unalienable Rights, supra note 18, at 7.

98 Halvorssen, Comm’n on Unalienable Rights, Public Meeting No. 5.

99 Policy Planning Staff, U.S. Department of State Comm’n on Unalienable Rights Minutes, supra note 75 (“Halvorssen clarified that he is not against things like universal healthcare or a right to education in theory. His view, rather, is that there are certain tiers of rights, and that freedom of expression and property ‘have to be first.’ In other words, rights to healthcare or education cannot be re-


Pan, Comm’n on Unalienable Rights, Public Meeting No. 4.

Berman, Comm’n on Unalienable Rights, Public Meeting No. 4.

Comm’n on Unalienable Rights, Public Meeting No. 5 (in the context of answering a question posed by the audience about the place of treaties ratified by the United States in the work of the Commission).


See infra notes 227-37 and accompanying text.

Lansot Swett, Comm’n on Unalienable Rights, Public Meeting No. 4. See also Huckerby & Knuckey, Pompeo’s “Rights Commission” is Worse Than Feared: 7 Concerns to Watch, supra note 6.

Pompeo, Secretary Michael R. Pompeo at the Concerned Women for America 40th Anniversary Luncheon, supra note 37.

Pompeo, Interview With Tony Perkins of Washington Watch, supra note 28.

Pompeo, Secretary of State Michael R. Pompeo With David Brody of CBN-TV, supra note 28.

Id.


See, e.g., Press Release, U.S. Comm’n on Int’l Religious Freedom, USC-RIF Statement on State Department’s Creation of “Commission on Unalienable Rights” (July 8, 2019), https://www.uscirf.gov/news-room/press-releases-statements/uscirf-statement-state-department-s-creation-commission (“We applaud the creation of this Commission as another way of ensuring that the protection of these fundamental rights - the most foundational of which is freedom of religion or belief - is a core element of strategic policy discussions.”); Press Release, Family Research Council, Family Research Council Applauds the State Department’s Formation of a Commission on Unalienable Rights (July 8, 2019), https://www.frc.org/get.cfm?i=PR19G01 (“[T]his commission will help further the protection of religious freedom, which is the foundation for all other human rights, and one which every government has a moral obligation to protect. In light of the increasing attacks on religious freedom around the world today, this comes as especially good news.”).

Huckerby & Knukey, Pompeo’s “Rights Commission” is Worse Than Feared: 7 Concerns to Watch, supra note 6.


124 Robert Pear, Passions Flare as House Debates Birth Control Rule, N.Y. TIMES (Feb. 16, 2012), https://www.nytimes.com/2012/02/17/us/politics/birth-control-coverage-rule-debated-at-house-hearing.html (opposing former President Obama’s proposal for “shifting the responsibility for paying for the contraceptives from religious institutions to their health insurers,” on the basis that “[r] eligious organizations would still be obligated to provide employees with an insurance policy that facilitates acts violating the organization’s religious tenets.”).

125 Lantos Swett, Comm’n on Unalienable Rights, Public Meeting No. 4.

126 Id.

127 Glendon & Kaplan, Renewing Human Rights, supra note 23.

128 McClay, Testimony Before U.S. Commission on Unalienable Rights, supra note 25, at 7 (stating that “the best example of such an unalienable right . . . [is] the freedom of conscience.”); McConnell, Comm’n on Unalienable Rights, supra note 13 (stating that “One interpretation [of unalienable rights] is that some rights cannot be given up because they are related to duties. A good example is freedom of conscience –which doesn’t just mean freedom of religion.”).


132 Berkowitz, Comm’n on Unalienable Rights, Public Meeting No. 4.

133 Lantos Swett, Comm’n on Unalienable Rights, Public Meeting No. 4.

134 Id.

135 Id.

136 Toflesken, Commission on Unalienable Rights, Public Meeting No. 4.


139 See Martin Scheinin, Core Rights and Obligations, in THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW 527, 529 (Dinah Shelton ed., 2013).


ized without first securing basic civil and political liberties. Glendon cordially expressed her disagreement with Halvorson regarding this point but, because time was running short, suggested continuing the discussion another day.”).
H.R. Comm., General Comment No. 36: Article 6: Right to Life, ¶ 52, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019) [hereinafter H.R. Comm., General Comment No. 36]. See also id. ("V. Relationship of article 6 with other articles of the Covenant and other legal regimes.").

H.R. Comm., General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols Thereto, or in Relation to Declarations under Article 41 of the Covenant, ¶ 10, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (Nov. 11, 1994). See also H.R. Comm., General Comment No. 29 States of Emergency (Article 4), ¶ 6, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001) [hereinafter H.R. Comm., General Comment No. 29].

For the guarantee of non-discrimination see, e.g., ICCPR, supra note 112, at art. 2(1).

See Scheinin, supra note 139, at 531-32.

See ICCPR, supra note 112, at art. 18.

See supra notes 84-86 and accompanying text.

See infra notes 198-211 and accompanying text.


See, e.g., ICCPR, supra note 112, at art. 4.

See, e.g., id. at art. 18(3) ("Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.").


See H.R. Comm., General Comment No. 29, supra note 143, ¶ 4. See further H.R. Comm., General Comment No. 27: Article 12 (Freedom of Movement), ¶ 16, U.N. Doc. CCPR/C/21/Rev.1/Add.3 (Nov. 1, 1999) (stating in relation to the limitation clause attached to the guarantee of freedom of movement that “[t]he application of restrictions in any individual case must be based on clear legal grounds and meet the test of necessity and the requirements of proportionality.”).


See, e.g., H.R. Comm., General Comment No. 34, Article 19, Freedoms of Opinion and Expression, ¶ 43, U.N. Doc. CCPR/C/34/34 (Sept. 12, 2011) [hereinafter H.R. Comm., General Comment No. 34].

Huckerby & Knuckey, Pompeo’s “Rights Commission” is Worse Than Feared: 7 Concerns to Watch, supra note 6 (noting that “[l]ights can certainly conflict in practice, but there are tools to deal with conflicts . . . that do not resort to creating hierarchies between rights or flat-out denial of protections to marginalized groups.”). See also Minow, Comm’n on Unalienable Rights, Public Meeting No. 5 (identifying “tensions between rights” and noting that these are “solved” through tools such as “co-existence,” “subsidarity,” and “proportionality.”).

See infra notes 227-37 and accompanying text.

H.R. Comm., Van Duzen v. Canada, Communication No. 50/1979, ¶ 10.2, U.N. Doc. CCPR/C/15/D/50/1979, 150 (1982) (“Although the terms of the Covenant are derived from long traditions within many nations, the Committee must now regard them as having an autonomous meaning.”); H.R. Comm., Sayadi and Vinck v. Belgium, Communication No. 1472/2006, ¶ 10.11, U.N. Doc. CCPR/C/94/D/1472/2006 (2008) (“The Committee recalls that its interpretation of the Covenant is based on the principle that the terms and concepts in the Covenant are independent of any national system or legislation and that it must regard them as having an autonomous meaning in terms of the Covenant.”).

Glendon & Kaplan, The Universal Declaration Turns 70, supra note 105.

Mashhood A. Baderin & Manisuli Ssenyonjo, Development of International Human Rights Law Before and After the UDHR, in INTERNATIONAL HUMAN RIGHTS LAW, SIX DECADES AFTER THE UDHR AND BEYOND 3, 5 (MASHHOOD A. BADERIN & MANISULI SENYONJO, eds., 2016). See also Glendon & Kaplan, Renewing Human Rights, supra note 23 (“The Universal Declaration of Human Rights (UDHR), the most prominent symbol and instrument of these changes [in the post-World War II political order], successfully challenged the view that sovereignty provided an iron shield behind which states could mistreat their people without outside scrutiny.”); Mary ANN GLENDON, A WORLD MADE NEW: ELEONOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (2001).

Baderin & Ssenyonjo, supra note 166, at 9 (citing IAN BROWNLY, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 599 (7th ed. 2004)). See also JAMES R. CRAWFORD, BROWNLY’S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 637, fn 14 (8th ed. 2012) (“Some US writers have laid emphasis on the Universal Declaration as custom, given the weaknesses and lacunae in subsequent US human rights practice . . ..”).

Nigel S. Rodley, The Role and Impact of Treaty Bodies, in THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW, supra note 139, at 622 (“The UDHR, as a resolution of the General Assembly, could only have the formal status of a recommendation and so would not be binding per se.”).

See VCLT, supra note 150, at art. 26.


Rodley, supra note 168, at 622.

See Huckerby & Knuckey, Pompeo’s “Rights Commission” is Worse Than Feared: 7 Concerns to Watch, supra note 6. For example, regarding the right to life, according to the Universal Declaration of Human Rights, “[e]veryone has the right to life, liberty and security of person.” UDHR, supra note 101, at art. 3. On the other hand, the International Covenant on Civil and Political Rights includes more extensive detail. See ICCPR, supra note 112, at art. 6. By way of another example, the UDHR provides that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” UDHR, supra note 101, at art. 5. However, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is entirely dedicated to the elaboration of this right. See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, T.I.A.S. 11420, 1465 U.N.T.S. 145 [hereinafter CAT]. This additional specificity is particularly provided by the non-discrimination treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]; International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, T.I.A.S. No. 9412, 660 U.N.T.S. 195 [hereinafter (ICERD); and Convention on the Rights of Persons with Disabilities.
General Comment on Economic, Social and Cultural Rights


Vienna Declaration and Programme of Action, supra note 140, at Part I, ¶ 5. Both the U.N. Human Rights Committee and the Committee on Economic, Social and Cultural Rights have emphasized the linkages between civil and political rights and economic, social, and cultural rights. See e.g. H.R. Comm., General Comment No. 36, supra note 142, ¶ 26 ("The measures called for to address adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care, electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions, such as the bolstering of effective . . . social housing programmes."); Comm. on Economic, Social and Cultural Rights, General Comment No. 14, supra note 198, ¶ 3 ("The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.").

UDHR, supra note 101, at art 22 ("Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.").

Id. at arts. 23-27. See further Comm. on Economic, Social and Cultural Rights, General Comment No. 8 (1997): The Relationship Between Economic Sanctions and Respect for Economic, Social and Cultural Rights, ¶ 8, U.N. Doc. E/C.12/1997/8 (Dec. 12, 1997) (noting "the status of the economic, social and cultural rights of vulnerable groups as part of general international law, as evidenced, for example, by . . . the status of the Universal Declaration of Human Rights."); Comm. on Economic, Social and Cultural Rights, General Comment No. 4, supra note 198, ¶ 3, fn. 3 (citing the UDHR as an example of an “international instrument] addressing] the different dimensions of the right to adequate housing."); Comm. on Economic, Social and Cultural Rights, General Comment No. 14, supra note 198, ¶ 2 ("The human right to health is recognized in numerous international instruments" including UDHR article 25(1)). See also Louis Henkin, Human Rights and State Sovereignty, 25 GA. J. INT’L L. 31, 40 (1996) ("The Universal Declaration recognizes civil and political, and economic and social rights equally, and all these rights are ‘universal’: all are rights of all human beings, all are accepted by all states.").

See, e.g., CEDAW, supra note 174; CRPD, supra note 174; CRC, supra note 177; ICESCR, supra note 178.

See, e.g., U.N. GA. Res. 41/120, ¶ 4 (Dec. 4, 1986) (stating that “international instruments in the field of human rights law” should “(a) be consistent with the existing body of international human rights law; (b) be of fundamental character and derive from the inherent dignity and worth of the human person; (c) be sufficiently precise to give rise to identifiable and practicable rights and obligations; (d) provide, where appropriate, realistic and effective implementation machinery, including reporting systems; and (e) attract broad international support.”); See generally Kerstin von der Decken and Nikolaus Koch, Recognition of New Human Rights, Phases, Techniques and the Approach of “Differentiated Traditionalism”, in CAMBRIDGE HANDBOOK OF NEW HUMAN RIGHTS 21, 21 (Andreas von Arnauld et al. eds., 2020).

Both the U.N. Human Rights Committee and the Committee on Economic, Social and Cultural Rights have emphasized the linkages between civil and political rights and economic, social, and cultural rights. See e.g. H.R. Comm., General Comment No. 36, supra note 142, ¶ 26 ("The measures called for to address adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care, electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions, such as the bolstering of effective . . . social housing programmes.").

See note 198, ¶ 3, fn. 3 (citing the UDHR as an example of an “international instrument] addressing] the different dimensions of the right to adequate housing."); Comm. on Economic, Social and Cultural Rights, General Comment No. 4, supra note 198, ¶ 2 ("The human right to health is recognized in numerous international instruments" including UDHR article 25(1)). See also Louis Henkin, Human Rights and State Sovereignty, 25 GA. J. INT’L L. 31, 40 (1996) ("The Universal Declaration recognizes civil and political, and economic and social rights equally, and all these rights are ‘universal’: all are rights of all human beings, all are accepted by all states.").

See, e.g., CEDAW, supra note 174; CRPD, supra note 174; CRC, supra note 177; ICESCR, supra note 178.


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civil and political rights but also to economic, social and cultural rights.
206 Legal Consequences of the Construction of a Wall in the Occupied Pal-
209 See Comm. on Economic, Social and Cultural Rights, General Comment No. 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities, ¶ 27, U.N. Doc. E/C.12/GC/24 (Aug. 10, 2017) (“Such extraterritorial obligations of States under the Covenant follow from the fact that the obligations of the Covenant are expressed without any restriction linked to territory or jurisdiction.”). See H.R. Comm., General Comment No. 31, supra note 170, ¶ 10 (“[A] State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.”).
210 Roth, supra note 141, at 1, 4-5; Kamuf Ward, The Human Rights Lessons from COVID-19: Equality Requires Economic and Social Rights Protections, supra note 6 (noting “the reality that economic and social protections are essential to the ability to exercise true freedom” and demonstrating the connections between civil, political, economic, and social rights in the context of the COVID-19 pandemic).
211 Glendon & Kaplan, Renewing Human Rights, supra note 23 (“The interna-
tional human rights project would do well to move toward...the systematic elimination of a narrow set of evils for which a broad consensus exists across all societies. The bedrock of this should be the handful of rights prioritized and given little scope for flexibility by the drafters of the Declaration. The list, which could be augmented through negotiations, must include protections against genocide; slavery; torture; cruel, inhuman, or degrading treatment or punish-
ment; retroactive penal measures; deportation or forcible transfer of popula-
tion; discrimination based on race, color, sex, language, religion, nationality, or social origin; and protection for freedom of conscience and religion.”).
212 See supra notes 22-33 and accompanying text.
213 See supra notes 68-70 and accompanying text.
215 See supra notes 181-97 and accompanying text.
org/45119/trump-support-un-era-america-first/.
219 Id. at 519-21.
220 See, e.g., Beth A. Simmons, Mobilizing for Human Rights, International Law in Domestic Politics (2009); Cossette D. Creamer & Beth A. Simmons, The Proof is in the Process: Self-Reporting Under International Human Rights Trea-
221 See Sikkink, supra note 217, at 141 (stating that “my survey of the current data suggests that overall there is less violence and fewer human rights viola-
tions in the world than there were in the past.”) (italics in original). See further supra notes 218-20.
222 See, e.g., Comm’n on Unalienable Rights, Citations, U.S. DEP’T OF STATE, https://www.state.gov/commission-on-unalienable-rights-citations. See further Huckerby & Knuckey, Pompeo’s “Rights Commission” is Worse Than Feared: 7 Concerns to Watch, supra note 6 (“There are important debates to be had about what has gone wrong – and right – in the modern system of human rights. But none of the scholarly and empirical studies on these topics has actually been considered by the commission in public session.”).
223 See ICCPR, supra note 112, at art. 18(1) (“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either indi-
videntally or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”); UDHR, supra note 101, at art. 18; H.R. Comm., General Comment No. 22, The Right to Free-
224 See ICCPR, supra note 112, at art. 18(2); UDHR, supra note 101, at art. 18; H.R. Comm., General Comment No. 22, supra note 223, ¶ 5.
225 See ICCPR, supra note 112, at art. 18(1), (3); UDHR, supra note 101, at art. 18; H.R. Comm., General Comment No. 22, supra note 223, ¶ 4.
226 See UDHR, supra note 101, at art. 18; H.R. Comm., General Comment No. 22, supra note 223, ¶ 4.
227 See Special Rapporteur on freedom of religion or belief, Report of the Special Rapporteur on freedom of religion or belief, ¶¶ 73, 77a(iv), U.N. Doc. A/ HRC/43/48 (Feb. 27, 2020) (Advance Unedited Version). See further H.R. Comm., General Comment No. 36, supra note 142, ¶ 8 (noting that “States parties should remove existing barriers to effective access by women and girls to safe and legal abortion, including barriers caused as a result of the exercise of conscien-
tious objection by individual medical providers, and should not introduce new barriers.”) (citations omitted); Roth, supra note 141, at 6 (summarizing that un-
der international human rights law “in the case of abortion, a government may allow some scope for individual healthcare providers who hold a religious con-
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240 Comm. on Economic, Social and Cultural Rights, General Comment No. 22, supra note 239, ¶ 10.

241 Id. ¶ 34. See also A/HRC/43/48, supra note 227, ¶ 77(a)(vi).


243 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, ¶ 44, U.N. Doc. A/ HRC/31/57 (Jan. 5, 2016). See also Comm. on Economic, Social and Cultural Rights, General Comment No. 22, supra note 239, ¶ 10.

244 H.R. Comm., K.L. v. Peru, supra note 242, ¶ 6.3.


246 H.R. Comm., General Comment No. 36, supra note 142, ¶ 8. See also Comm. on Economic, Social and Cultural Rights, General Comment No. 22, supra note 239, ¶ 10.

247 Tollefsen, Comm’n on Unalienable Rights, Public Meeting No. 4 (stating, in the context of a question to Kenneth Roth about disagreements in the interpretation of rights, that “the UDHR says that every member of the human family has rights.”).


249 Comm. on the Elimination of Discrimination against Women, Report of the Committee: Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, supra note 248, ¶ 68. See also H.R. Comm., Draft General Comment No. 36, supra note 248, ¶ 7 (“Unlike the American Convention on Human Rights, the Covenant [International Covenant on Civil and Political Rights] does not explicitly refer to the rights of unborn children, including to their right to life.”). Id. at fn. 9 (“This omission is deliberate, since proposals to include the right to life of the unborn within the scope of article 6 were considered and rejected during the process of drafting the Covenant.”).

250 See H.R. Comm., General Comment No. 36, supra note 142, ¶ 8 (citations omitted). See also supra note 227.

251 Pompeo, Secretary of State Michael R. Pompeo Remarks to the Press, supra note 1.

252 Id. (“I hope that the commission will revisit the most basic of questions: What does it mean to say or claim that something is, in fact, a human right? How do we know or how do we determine whether that claim that this or that is a human right, is it true, and therefore, ought it to be honored? How can there be human rights, rights we possess not as privileges we are granted or even earn, but simply by virtue of our humanity belong to us? Is it, in fact, true, as our Declaration of Independence asserts, that as human beings, we - all of us, every member of our human family - are endowed by our creator with certain unalienable rights?”).

253 Huckerby & Knuckey, Pompeo’s “Rights Commission” is Worse Than Feared: 7 Concerns to Watch, supra note 6.

254 Glendon, Comm’n on Unalienable Rights, Public Meeting No. 2. See also Glendon & Kaplan, The Universal Declaration Turns 70, supra note 105.

255 Pompeo, Interview With Tony Perkins of Washington Watch, supra note 28. See also Pompeo, Secretary of State Michael R. Pompeo With David Brody of CBN-TV, supra note 28.