

WebMemo



Published by The Heritage Foundation

No. 1744

December 13, 2007

Heritage Foundation Statement to the United Nations Human Rights Council

Steven Groves

The following statement was delivered on December 12, 2007, by Steven Groves, Bernard and Barbara Lomas Fellow at The Heritage Foundation's Margaret Thatcher Center for Freedom, at the 6th Session of the United Nations Human Rights Council in Geneva. It is a response to the "Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin," published on November 21, 2007.¹

Thank you, Mr. President, for the opportunity to participate in this important dialogue concerning the intersection of human rights and counterterrorism. The United States is committed to protecting the civil liberties of its citizens and promoting human rights for all people while fighting the global war on terrorism.

Article Two of the International Covenant on Civil and Political Rights requires the United States to guarantee the rights of all individuals "within its territory and subject to its jurisdiction." The Special Rapporteur's report, however, construes Article Two as having no territorial limitation.

The interpretation of Article Two is no mere legal technicality, since the jurisdictional reach of the Covenant factors significantly into the report's analysis of U.S. counterterrorism policy and practices. It is therefore regrettable that the report ignores both the plain language and the negotiating history of Article Two. The plain language of Article Two declares that the Covenant extends only to those persons who are both (1) within the territory of a State Party and (2) subject to the State Party's jurisdiction.

The language of Article Two was debated at length during negotiations in 1950, where U.S. delegate Eleanor Roosevelt maintained that the Covenant applied only to persons who were within the territory of a State Party. Other delegates disagreed with the U.S. position, contending instead that the Covenant should have no territorial restrictions. A vote was held on that disputed point, and the U.S. position prevailed.

Over 50 years later, in 2004, the Human Rights Committee adopted General Comment No. 31, which purports to lift Article Two's territorial restriction. In so doing, the Committee chose to ignore the original intent of the Covenant's authors. It should also be noted that the general comment process was never meant to serve as a vehicle for altering the substance or terms of the Covenant, but rather was intended to permit the Committee to give technical advice to States regarding reporting requirements.

While it is proper for the Special Rapporteur to rely upon the Covenant in rendering his opinion regarding activities wholly within U.S. territory, it is not proper to rely upon the Covenant to address U.S. detention policy in Cuba or U.S. counterterrorism practices in other parts of the world.¹

This paper, in its entirety, can be found at:
www.heritage.org/Research/InternationalOrganizations/wm1744.cfm

Produced by The Margaret Thatcher Center for Freedom

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

An interpretation of the jurisdictional reach of Article Two that is contradicted by both the plain language and the negotiating history of the Covenant complicates U.S. cooperation on these important issues. Ignoring the original intent of the authors of the Covenant only serves to call into question the substance of the report's conclusions.

The Special Rapporteur should instead focus his efforts on constructively engaging the United States

with reference only to those activities occurring within U.S. territory, in accordance with Article Two of the Covenant.

Thank you, Mr. President.

—Steven Groves is *Bernard and Barbara Lomas Fellow in the Margaret Thatcher Center for Freedom*, a division of the *Kathryn and Shelby Cullom Davis Institute for International Studies*, at *The Heritage Foundation*.

-
1. "Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin," U.N. Human Rights Council, November 21, 2007, at www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=publisher&docid=4757c3e52&skip=&publisher=UNHRC.