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INTRODUCTION

On July 8, 2019, Secretary of State Michael R. Pompeo announced the formation of a Commission on Unalienable Rights,¹ 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,”² and to advise on the role “of human rights in U.S. foreign policy.”³ The Commission comprises eleven Commissioners and one Rapporteur.⁴ While some supported the Commission,⁵ 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.⁶ Just two weeks after Secretary Pompeo’s announcement, more than 125 Catholic leaders called for the Commission’s dismantling,⁷ as did 178 NGOs and 251 individuals objecting to the Commission’s stated purpose, composition, and process.⁸ More recently, human rights groups have filed a lawsuit challenging the Commission’s “unnecessary and inadequately explained creation, unbalanced membership, and opaque operation.”⁹ The Commission held five meetings¹⁰ between October 23, 2019 and February 21, 2020 on the topics of: “founding principles” (in two parts),¹¹ “international legal commitments concerning human rights that the United States has entered since World War II” (in two parts),¹² and “the role of human rights in American foreign policy,”¹³ with ten experts total presenting at the meetings.¹⁴

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.”¹⁵ 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;”¹⁶ the “human rights project has been exposed” to “excesses;”¹⁷ and “authoritarianism”¹⁸ exists. Overall, according to one expert (McConnell), there is reason to be “skeptical of modern international human rights.”¹⁹ 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].”²⁰ 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.”²¹

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”²² through groups using “the moral authority of the human rights idea to champion their causes;”²³ a “blurred [] distinction between fundamental, universal rights and mere political preferences or priorities;”²⁴ “judicial fiat;”²⁵ and improper interpretation by human rights bodies that “stretch the law through their interpretations and go beyond positive law.”²⁶ Under this view, rights’ proliferation is problematic—“more, per se, is not always better”²⁷—because it undermines “focus on those core unalienable rights”²⁸ and the normative power of human rights generally. For Commission Chair Glendon, “if everything is a right, then nothing is a right,”²⁹ 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.”³⁰ 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.”³¹ 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”³² and “mak[ing] the enumeration of unalienable rights as short as possible.”³³

3. Human rights have been unduly confused with “political preferences,”³⁴ “policy preferences,”³⁵ “goals,”³⁶ or “good things.”³⁷

It has been argued that “we’ve blurred the distinction between fundamental, universal rights and mere political preferences or priorities”³⁸ and “confuse[d] rights from good things.”³⁹ Under this analysis, claims to rights increasingly circumvent the “democratic debate”⁴⁰ and “normal process”⁴¹ 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.”⁴² For another commentator, claims to rights are actually “[i]deological activism.”⁴³ Additionally, human rights are said to be confusing⁴⁴ to governments and international institutions,⁴⁵ as well as the public writ large.⁴⁶ For Commission Chair Glendon, “the world is full of confusion about human rights,”⁴⁷ such that the Commission’s “main charge is to try to make sense of all the confusion that currently surrounds the concept of rights.”⁴⁸

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, “[o]ppressive”⁴⁹ governments like Cuba, Iran, and China are said to “have taken advantage”⁵⁰ of both rights’ proliferation⁵¹ and the “confusing” nature of rights⁵² to position themselves as rights-protective, in ways that are “morally reprehensible.”⁵³ For Secretary Pompeo, the problem is particularly that these regimes focus on economic, social, and cultural rights, misusing this “cacophonous call for ‘rights,’” as “[n]o one believed the Soviet call for collective economic and civil rights was really about freedom.”⁵⁴ Human rights advocates are also faulted for following suit: “after the Cold War ended, many human-rights advocates adopted the same approach, appealing to contrived rights for political advantage.”⁵⁵ As such, Secretary Pompeo has criticized “human-rights advocacy” for having “lost its bearings and become more of an industry than a moral compass,”⁵⁶ and censured “rights claims” for being “often aimed more at rewarding interest groups and dividing humanity into subgroups.”⁵⁷ For Commissioner Berkowitz too, a “cadre of bureaucrats, judges, scholars, and activists” is at risk of “succumbing to special interests and self-serving agendas.”⁵⁸ While Commission Chair Glendon is concerned that human rights are “ignored by the world’s worst human rights violators,”⁵⁹ she too has long faulted “special interest groups” who seek to “impose their agendas in the form of rights.”⁶⁰ 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.”⁶¹ 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”⁶² and be “vigilant that human rights discourse not be corrupted or hijacked or used for dubious or malignant purposes.”⁶³ 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.⁶⁴

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

Here, fault is found with the “proliferation” of rights by international treaties and bodies⁶⁵ that have “embraced and even accelerated the proliferation of rights claims—and all but abandoned serious efforts to protect fundamental freedoms.”⁶⁶ Not only have international institutions reportedly “drifted from their missions,”⁶⁷ but the participation of “authoritarian” governments in human rights venues is also said to show institutional failure.⁶⁸ For one expert (Halvorssen), the United Nations (U.N.) is a “playground for dictatorships,”⁶⁹ 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.⁷⁰ One Commissioner (Berkowitz) also defended the U.S. government’s withdrawal from the U.N. Human Rights Council because of its perceived shortcomings.⁷¹ 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.”⁷² Commission Chair Glendon has often stressed the same, noting that “[w]e 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.”⁷³ 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”⁷⁴ and there is a need for a “fresh look at human rights” when “half of the world is living under authoritarian regimes.”⁷⁵ For Commissioner Berman too, “it is as if implementation of human rights has stalled and is failing.”⁷⁶ 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.”⁷⁷

6. There is a difference between core, unalienable rights and *ad hoc* rights.

According to Secretary Pompeo—and potentially the U.S. State Department⁷⁸—unalienable rights “came from our Lord”⁷⁹ and are “given by God”⁸⁰ rather than “a treaty or a law or some writing.”⁸¹ In contrast, “*ad hoc* rights [are] granted by governments” and “politicians and bureaucrats create new rights”⁸² that often reflect “debatable political priorities” or “merely personal preferences,” as opposed to “fundamental, universal rights.”⁸³ When it comes to which rights are identified as core and which as *ad hoc*, for Secretary Pompeo, religious freedom is a core right.⁸⁴ 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.⁸⁵ 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.”⁸⁶ 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.”⁸⁷ For other commentators on the Commission, rights that are not unalienable include “a ‘right’ to abortion or ‘sexual expression.’”⁸⁸

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.”⁸⁹ 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.⁹⁰ Commissioners Rivers⁹¹ and Carozza⁹² 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.⁹³ And economic, social, and cultural rights have been diminished through a focus on “fundamental freedoms” as core rights.⁹⁴ While not endorsing a hierarchy, Commissioner Lantos Swett noted there is “a fundamental difference”⁹⁵ 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.”⁹⁶ Another expert (Halvorssen) went further, emphasizing civil and political rights “are the bedrock upon which the structure of freedom is built,”⁹⁷ and characterizing civil and political rights as “a first tier set of rights”⁹⁸ that must be realized before economic,

social, and cultural ones (with which Commission Chair Glendon disagreed).⁹⁹ Other commentators have argued that recognizing economic, social, and cultural rights as rights results in “dilution” that “diverts our attention from basic rights.”¹⁰⁰

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,¹⁰¹ as well as the U.S. “founding principles,”¹⁰² of unalienable rights.¹⁰³ Secretary Pompeo emphasized that these sources enable the Commission to “go back.”¹⁰⁴ Commission Chair Glendon has also called for this “return to basics” using the “modest approach outlined in the original Declaration.”¹⁰⁵ When it comes to defining unalienable rights, for Secretary Pompeo and one Commissioner (Berkowitz) these unalienable rights ultimately come from God¹⁰⁶ or Christianity¹⁰⁷ and are not authoritatively derived from human rights treaties.¹⁰⁸ One Commissioner (Pan) wondered whether “popular sovereignty” might actually provide “more basis as positive law than the treaties” for human rights,¹⁰⁹ and another (Berman) characterized treaties as something which countries other than the United States “sign and then just forget.”¹¹⁰ While some Commissioners (Berkowitz and Glendon)¹¹¹ 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),¹¹² seemingly because of the (incorrect)¹¹³ understanding that the UDHR’s guarantee is without limits.¹¹⁴

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,”¹¹⁵ “fundamental to humanity,”¹¹⁶ “essential,”¹¹⁷ and at risk of being lost when other rights are recognized.¹¹⁸ Some—including the U.S. Commission on International Religious Freedom on which two of the Commissioners (Glendon and Lantos Swett) have previously served¹¹⁹—heralded the creation of the Commission as a positive development because it would advance religious freedom.¹²⁰ For at least some of the Commission members, religious freedom is broadly-defined, without limits, and ultimately “one of the most important rights, if not the most important.”¹²¹ 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.”¹²² 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.”¹²³ 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.¹²⁴ 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,¹²⁵ and she was “troubled” by one expert’s (Roth) “suggestion that this fundamental right claim could be overridden” by women’s rights.¹²⁶ Commission Chair Glendon has also described the right to religious freedom in Article 18 of the UDHR as “capacious.”¹²⁷ Two experts (McClay and McConnell) also testified that freedom of conscience, which includes religious freedom, is the ultimate example of an unalienable right.¹²⁸

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

Opposition to abortion by Secretary Pompeo¹²⁹ and several Commissioners¹³⁰ 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.”¹³¹ 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”).¹³² For another (Lantos Swett) the conflict is between a woman’s right to abortion and doctors’ rights to conscience and to pursue their profession.¹³³ 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.”¹³⁴ For Lantos Swett this weighing of rights in favor of religious accommodation would also be confirmed by a “man-on-the-street interview.”¹³⁵ 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.”¹³⁶ The Ruth Institute echoes this in its petition presented to the Commission to “Make the Family Great Again,”¹³⁷ which includes recognizing “the right to life from conception to natural death” as a “fundamental right.”¹³⁸

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.”¹³⁹ Under international human rights law, “[a]ll human rights are universal, indivisible and interdependent and interrelated.”¹⁴⁰ Legally—and in practice¹⁴¹—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.¹⁴² 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].”¹⁴³ Nor is a priority order created between guarantees of rights that are “absolute” (e.g., the right to non-discrimination¹⁴⁴) and those that have attached clauses that set out permissible limitations¹⁴⁵ (e.g., freedom to manifest religion¹⁴⁶). Declaring some human rights as core based on their character as civil and political rights versus economic, social, and cultural rights¹⁴⁷ is also not permitted under international human rights law as is outlined further below.¹⁴⁸ 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 rights¹⁴⁹—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,¹⁵⁰ the nine core human rights treaties¹⁵¹ themselves contain interpretive rules that clarify the extent of States parties’ obligations,¹⁵² explain when States can derogate from those obligations,¹⁵³ and include specified limitations for some substantive rights.¹⁵⁴ Human rights treaties are interpreted according to the principles of effectiveness, evolutive interpretation, and proportionality.¹⁵⁵ Taken as a whole, these rules require that treaties are interpreted to make them most effective to protect rights¹⁵⁶ 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,”¹⁵⁷ and requires any purported rights’ restrictions, such as those under derogation or limitation clauses, to be proportionate.¹⁵⁸ 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 substantially¹⁵⁹ since the treaties' adoption (for example, to explain how the right to freedom of expression applies to new information and communication technologies).¹⁶⁰

Other guidance exists to clarify the relationship between rights in the treaties that may seem conflicting,¹⁶¹ such as how States should reconcile the right to freedom of expression and the prohibition on war propaganda and hate speech¹⁶² or the right to freedom of religion or belief and non-discrimination.¹⁶³ 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.¹⁶⁴ For 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."¹⁶⁵

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"¹⁶⁶ and some of its provisions may have the status of customary international law.¹⁶⁷ However, if not considered customary international law, then as a declaration it is not itself legally binding.¹⁶⁸ 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."¹⁶⁹ The nine core human rights treaties create binding obligations¹⁷⁰ for States to respect, ensure, and "give effect to" guaranteed rights.¹⁷¹ 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."¹⁷² The nine core human rights treaties are also distinguished from the UDHR by the increased specificity¹⁷³ with which they define some rights¹⁷⁴ and by their "supervisory machinery,"¹⁷⁵ 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.¹⁷⁶ 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 children¹⁷⁷ and migrant workers¹⁷⁸ or the right to be free from enforced disappearance.¹⁷⁹ 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."¹⁸⁰

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 1965¹⁸¹ and the two covenants on civil and political rights and economic, social, and cultural rights in 1966,¹⁸² the international community has adopted six further human rights treaties that more specifically address marginalized groups (e.g., treaties on women,¹⁸³ children,¹⁸⁴ migrant workers,¹⁸⁵ persons with disabilities¹⁸⁶) and provide detailed guidance on the prohibitions on torture¹⁸⁷ and enforced disappearances.¹⁸⁸ The adoption of the most recent treaty occurred more than a decade ago.¹⁸⁹ 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.¹⁹⁰ 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;¹⁹¹ when rights that are "long neglected" such as economic and social rights are prioritized;¹⁹² 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.¹⁹³ The practice of advancing "new" rights is rarer.¹⁹⁴ To balance the need for dynamism against the risks of undue proliferation,¹⁹⁵ a "new" right is only recognized if it meets robust criteria requiring that new rights be consistent, fundamental, precise, practical, and supported.¹⁹⁶ As Commission Chair Glendon has stated, there "can never be a closed catalog of human rights because times and circumstances change."¹⁹⁷

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.¹⁹⁸ 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.¹⁹⁹ Economic, social, and cultural rights and civil and political rights are "universal, indivisible and interdependent and interrelated."²⁰⁰ This universality is reflected in the UDHR, which explicitly recognizes economic, social and cultural rights in a stand-alone article²⁰¹ and further elaborates on individual economic, social, and cultural rights throughout.²⁰²

Human rights treaties²⁰³ subsequent to the two covenants on civil and political rights and economic and social rights—and their monitoring bodies²⁰⁴—have also reflected the interdependence and parity of economic, social, and cultural rights with civil and political rights.²⁰⁵ As with civil and political rights,

economic, social, and cultural rights are justiciable under international law,²⁰⁶ including through the Optional Protocol to the ICESCR that mirrors the ICCPR's Optional Protocol²⁰⁷ and allows victims to present complaints to the treaty's monitoring body.²⁰⁸ Economic, social, and cultural rights similarly form part of States' extraterritorial human rights obligations.²⁰⁹ Finally, the intersections in practice of economic, social, and cultural rights with civil and political rights²¹⁰ show the need to resist calls to "prioritize[]" a "handful of rights" that comprises only civil and political rights.²¹¹

6. Measuring the effectiveness of human rights and institutions requires nuance.

As outlined above, critiques of the efficacy of rights and implementing bodies have primarily focused on the effects of so-called rights' proliferation,²¹² authoritarian regimes' involvement in international institutions,²¹³ and the idea that ongoing rights deprivations suggest treaties have had little impact on governments' behavior and human rights outcomes.²¹⁴ As discussed, in practice, rights' "proliferation" is actually often the legitimate implementation of existing rights and occasionally the recognition of new ones.²¹⁵ 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.²¹⁶ Finally, focusing on violations alone to measure effectiveness is a discredited methodology, including because it compares the status quo to an ideal,²¹⁷ unduly focuses on governments rather than also considering how other actors (e.g., non-State entities and individuals) affect rights,²¹⁸ and narrowly understands rights as only legal commitments against which to measure official action.²¹⁹ Other methods of analysis²²⁰—including those that empirically compare levels of rights across time and countries²²¹—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.²²²

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,²²³ freedom from coercion,²²⁴ the right to manifest one's religion or belief,²²⁵ and the freedom to worship.²²⁶ The right to freedom of religion or belief does not allow direct or indirect discrimination by State actors or private individuals²²⁷—it "may not be relied upon to justify discrimination against women,"²²⁸ and more broadly it "can never serve as a justification for violations of the human rights of women and girls."²²⁹ Discrimination against LGBTI persons in the name of freedom of religion or belief is simi-

larly proscribed.²³⁰ Instead, the guarantees of freedom of religion or belief and non-discrimination are "mutually reinforcing rights,"²³¹ which prohibit "discriminatory laws, including those enacted with reference to religious considerations" that criminalize LGBTI persons and "abortion in all cases."²³² The right to freedom of religion or belief cannot be suspended in times of public emergency,²³³ 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,²³⁴ the external dimension—public exercise or manifestation—can be restricted.²³⁵ 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."²³⁶ The right to freedom of religion or belief is also restricted under the general limitation clauses of the UDHR.²³⁷ 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."²³⁸

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,²³⁹ which is itself "indivisible from and interdependent with other human rights" and "intimately linked to civil and political rights."²⁴⁰ 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,²⁴¹ 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."²⁴² The right to be free from torture and CIDTP²⁴³ also proscribes denying or restricting access to sexual and reproductive health services in some cases—such as denying therapeutic abortion²⁴⁴—as well as abuses in those services, such as ill-treatment in reproductive health care facilities.²⁴⁵ 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.²⁴⁶ Indeed, contrary to the assertions of at least one Commissioner during its public meetings,²⁴⁷ the right to life under international human rights law—including the UDHR²⁴⁸—accrues at birth and "does not extend to fetuses."²⁴⁹ 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."²⁵⁰

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

- 1 Michael R. Pompeo, *Secretary of State Michael R. Pompeo Remarks to the Press*, U.S. DEP'T OF STATE (July 8, 2019), <https://www.state.gov/secretary-of-state-michael-r-pompeo-remarks-to-the-press-3/>.
- 2 U.S. Dep't of State, *Comm'n on Unalienable Rights*, 84 FR 25109, 25109 (May 30, 2019).
- 3 *Charter for the Comm'n on Unalienable Rights*, U.S. DEP'T OF STATE, 1 (signed June 26, 2019; filed July 8, 2019), <https://www.state.gov/charter-for-the-commission-on-unalienable-rights>.
- 4 *Comm'n on Unalienable Rights, Members*, U.S. DEP'T OF STATE, <https://www.state.gov/commission-on-unalienable-rights-member-bio>. The Commissioners are (in alphabetical order): Professor Kenneth Anderson, Professor of Law at American University Washington College of Law; Dr. Russell A. Berman, Walter A. Haas Professor in the Humanities at Stanford University and a Senior Fellow at the Hoover Institution; Dr. Peter Berkowitz (Executive Secretary), Tad and Diane Taube Senior Fellow at the Hoover Institution, Stanford University, Member of Department of State's Policy Planning Staff; Professor Paolo Carozza, Professor of Law and Concurrent Professor of Political Science at the University of Notre Dame, Director of the Kellogg Institute for International Studies; Ambassador Mary Ann Glendon (Chair), Learned Hand Professor of Law at Harvard Law School; Professor Hamza Yusuf Hanson, President of Zaytuna College; Dr. Jacqueline Rivers, Lecturer in Sociology at Harvard University, Director of the Seymour Institute for Black Church and Policy Studies; Rabbi Dr. Meir Soloveichik, Director of the Zahava and Moshele Straus Center for Torah and Western Thought at Yeshiva University, Rabbi of Congregation Shearith Israel; Dr. Katrina Lantos Swett, President of the Tom Lantos Foundation for Human Rights and Justice; Dr. Christopher Tollefsen, Distinguished Professor and Chair of Philosophy at the University of South Carolina; and Dr. David Tse-Chien Pan, Professor of German at the University of California, Irvine. The Rapporteur is Mr. F. Cartwright Weiland, a Member of the State Department's Office of Policy Planning.
- 5 CWFA Staff, *Groups Unite to Support the U.S. Commission on Unalienable Rights*, CONCERNED WOMEN FOR AMERICA (Aug. 6, 2019), <https://concernedwomen.org/groups-unite-to-support-the-u-s-commission-on-unalienable-rights/>.
- 6 See, e.g., Jayne Huckerby & Sarah Knuckey, *Pompeo's "Rights Commission" is Worse Than Feared: Part I*, JUST SEC. (Mar. 13, 2020), <https://www.justsecurity.org/69150/pompeos-rights-commission-is-worse-than-feared-part-i/>. See also Jayne Huckerby & Sarah Knuckey, *Pompeo's "Rights Commission" is Worse Than Feared: 7 Concerns to Watch*, JUST SEC. (Apr. 16, 2020), <https://www.justsecurity.org/69708/pompeos-rights-commission-is-worse-than-feared-7-concerns-to-watch/>; Jayne Huckerby, Sarah Knuckey, & Meg Satterthwaite, *Trump's "Unalienable Rights" Commission Likely to Promote Anti-Rights Agenda*, JUST SEC. (July 9, 2019), <https://www.justsecurity.org/64859/trumps-unalienable-rights-commission-likely-to-promote-anti-rights-agenda/>; Katherine M. Marino, *How Mike Pompeo's new commission on "unalienable rights" butchers history*, WASH. POST (Aug. 15, 2019), <https://www.washingtonpost.com/outlook/2019/08/15/how-mike-pompeos-new-commission-unalienable-rights-butchers-history/?noredirect=on>; JoAnn Kamuf Ward, *The Human Rights Lessons from COVID-19: Equality Requires Economic and Social Rights Protections*, JUST SEC. (Apr. 9, 2020), <https://www.justsecurity.org/69602/the-human-rights-lessons-from-covid-19-equality-requires-economic-and-social-rights-protections/>.
- 7 *Catholic Leaders Call for State Department Commission to be Dismantled*, DIGNITYUSA (Jul. 22, 2019), <https://www.dignityusa.org/article/catholic-leaders-call-state-department-commission-be-dismantled>.
- 8 Letter from NGO & Individual Signatories, to Honorable Michael Pompeo, Sec'y of State (Jul. 23, 2019), <https://www.humanrightsfirst.org/sites/default/files/Unalienable-Rights-Commission-NGO-Ltr.pdf>.
- 9 Complaint for Declaratory and Injunctive Relief at 3, Robert F. Kennedy Center for Justice and Human Rights et al. v. Michael R. Pompeo et al. No.1:20-cv-02002 (U.S. Dist. Ct. S.D.N.Y. Mar. 6, 2020).
- 10 *Comm'n on Unalienable Rights, Comm'n Meetings*, U.S. DEP'T 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-*

ing, 84 FR 64179, 64179 (Nov. 20, 2019); U.S. Dep't of State, *Comm'n on Unalienable Rights; Notice of Open Meeting*, 84 FR 70260, 70260-70261 (Dec. 20, 2019).

13 U.S. Dep't of State, *Comm'n on Unalienable Rights; Notice of Open Meeting*, 85 FR 6011, 6011-6012 (Feb. 3, 2020).

14 *Comm'n on Unalienable Rights, Comm'n Meetings*, *supra* note 10. The speakers were (in order of the meetings at which they appeared): Michael W. McConnell, Richard and Frances Mallory Professor and Director of the Constitutional Law Center, Stanford Law School; Wilfred M. McClay, G.T. and Libby Blankenship Chair in the History of Liberty, University of Oklahoma; Cass Sunstein, Robert Walmsley University Professor, Harvard Law School; Orlando Patterson, John Cowles Professor of Sociology, Harvard University; Michael Abramowitz, President of Freedom House, member of the Council on Foreign Relations; Miles Yu, Member of the Policy Planning Staff, Department of State, Professor, U.S. Naval Academy, member, Chinese Military History Society, member, Military History/Contemporary Conflict Working Group, the Hoover Institution, Stanford University; Kenneth Roth, Executive Director of Human Rights Watch; Diane Orentlicher, Professor of Law, American University, Washington College of Law; Martha Minow, 300th Anniversary University Professor, Harvard Law School; and Thor Halvorssen, President, Human Rights Foundation, Founder, Oslo Freedom Forum, film producer. Audience members had the opportunity to ask questions following expert testimony and questions from commissioners.

15 *The Lawfare Podcast: Mary Ann Glendon on Unalienable Rights*, *LAWFARE* (Aug. 3, 2019), <https://www.lawfareblog.com/lawfare-podcast-mary-ann-glendon-unalienable-rights>. See also Peter Berkowitz, *Criticisms Illustrate Need for State Dept. Human Rights Panel*, *REALCLEARPOLITICS* (Sept. 15, 2019), https://www.realclearpolitics.com/articles/2019/09/15/criticisms_illustrate_need_for_state_dept_human_rights_panel_141238.html ("The very idea of human rights has come under fire from the left and the right for its supposedly sham universality.").

16 Michael J. Abramowitz, *Prepared Testimony to Commission on Unalienable Rights: US Leadership in the Reinforcement of Human Rights* (Dec. 11, 2019), <https://freedomhouse.org/article/us-leadership-reinforcement-human-rights>.

17 Berkowitz, *Criticisms Illustrate Need for State Dept. Human Rights Panel*, *supra* note 15.

18 Thor Halvorssen, *Prepared Testimony to Comm'n on Unalienable Rights*, 2 (Feb. 21, 2020), <https://www.state.gov/wp-content/uploads/2020/04/Thor-Halvorssen-Testimony-to-USDOS-Commission-on-Unalienable-Rights.pdf>.

19 McConnell, *Comm'n on Unalienable Rights, Public Meeting No. 1*.

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

21 Berkowitz, *Criticisms Illustrate Need for State Dept. Human Rights Panel*, *supra* note 15.

22 Michael R. Pompeo, *Comm'n on Unalienable Rights Public Meeting: Remarks* (Oct. 23, 2019), <https://www.state.gov/commission-on-unalienable-rights-public-meeting>.

23 Mary Ann Glendon & Seth Kaplan, *Renewing Human Rights*, *FIRST THINGS* (Feb. 1, 2019), <https://www.firstthings.com/article/2019/02/renewing-human-rights>.

24 Michael R. Pompeo, *In Defense of the American Rights Tradition*, U.S. DEP'T OF STATE (Sept. 6, 2019), <https://www.state.gov/speech-secretary-michael-r-pompeo-remarks-at-the-landon-lecture-series-in-defense-of-the-american-rights-tradition/>. See also Berkowitz, *Criticisms Illustrate Need for State Dept. Human Rights Panel*, *supra* note 15.

25 Wilfred M. McClay, *Testimony Before U.S. Comm'n on Unalienable Rights*, 7 (Oct. 23, 2019), <https://www.state.gov/wp-content/uploads/2020/04/Testimony-before-U.S.-Commission-on-Unalienable-Rights-by-Wilfred-M.-McClay-G.T.-and-Libby-Blankenship-Chair-in-the-History-of-Liberty-University-of-Oklahoma.pdf>.

26 Carozza, *Comm'n on Unalienable Rights, Public Meeting No. 4*.

27 Pompeo, *In Defense of the American Rights Tradition*, *supra* note 24.

28 *Id.* See also Michael R. Pompeo, *Secretary of State Michael R. Pompeo With David Brody of CBN-TV*, U.S. DEP'T OF STATE (July 17, 2019), <https://www.state.gov/secretary-of-state-michael-r-pompeo-with-david-brody-of-cbn-tv/>; Michael R. Pompeo, *Interview With Tony Perkins of Washington Watch*, U.S. DEP'T OF STATE (July 15, 2019), <https://www.state.gov/interview-with-tony-perkins-of-washington-watch/>.

29 *World Over - 2019-09-19 - Mary Ann Glendon with Raymond Arroyo*, EWTVN

(Sept. 19, 2019), <https://www.youtube.com/watch?v=QeR0y-Ed-IQ> (Glendon's remarks).

30 Glendon, *Comm'n on Unalienable Rights, Public Meeting No. 2*.

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

32 *Id.* at 7-8.

33 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).

34 Pompeo, *In Defense of the American Rights Tradition*, *supra* note 24.

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

36 Paul Marshall, *The State Department's Commission on Unalienable Rights: Concerns and Five Recommendations*, *PROVIDENCE* (July 15, 2019), <https://providencemag.com/2019/07/state-department-commission-on-unalienable-rights-concerns-five-recommendations/>.

37 Michael R. Pompeo, *Secretary Michael R. Pompeo at the Concerned Women for America 40th Anniversary Luncheon*, U.S. DEP'T OF STATE (Sept. 13, 2019), <https://www.state.gov/secretary-michael-r-pompeo-at-the-concerned-women-for-america-40th-anniversary-luncheon/>.

38 Pompeo, *In Defense of the American Rights Tradition*, *supra* note 24.

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

40 *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 remove debatable issues from democratic debate.").

41 Pompeo, *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.").

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

43 Letter from Concerned Women for America et al. to Secretary Pompeo 1 (Aug. 6, 2019), <https://concernedwomen.org/wp-content/uploads/2019/08/Hyperlinked-Pompeo-Coalition-Letter-Commission-on-Unalienable-Rights.pdf>.

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

45 Pompeo, *Secretary of State Michael R. Pompeo Remarks to the Press*, *supra* note 1 ("Nation-states and international institutions remain confused about their respective responsibilities concerning human rights.").

46 J. Kennerly Davis, *Human Rights in American Foreign Policy*, *FEDERALIST Soc'y* (Aug. 29, 2019), <https://fedsoc.org/commentary/blog-posts/A%20Timely%20Review%20with%20Far-Reaching%20Significance>.

47 Lauretta Brown, *Mary Ann Glendon Is Inspired by the "Call to Service," NAT'L CATH. REG.* (Aug. 7, 2019), <http://www.ncregister.com/daily-news/mary-ann-glendon-is-inspired-by-the-call-to-service> (Glendon's remarks).

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

49 Michael R. Pompeo, *Unalienable Rights and U.S. Foreign Policy*, *WALL ST. J.* (July 7, 2019), <https://www.wsj.com/articles/unalienable-rights-and-u-s-foreign-policy-11562526448>.

50 *Id.*

51 *Id.*

52 Pompeo, *In Defense of the American Rights Tradition*, *supra* note 24.

53 Pompeo, *Secretary Michael R. Pompeo at the Concerned Women for America 40th Anniversary Luncheon*, *supra* note 37. See also Brown, *Mary Ann Glendon Is Inspired by the "Call to Service," supra* note 47 (Glendon's remarks) ("[W]hat is more troubling to me is documented in Human Rights Watch's 2019 report. The theme of that report is how many authoritarian regimes are not only ignoring the basic freedoms that we take for granted in liberal democracies, but many of them – and I'm thinking particularly of China here – are making deliberate efforts to undermine the fragile consensus that we were just talking about, the common ground that supported the principles of the Universal Declaration."). See further Kennerly Davis, *Human Rights in American Foreign Policy*, *supra* note 46 ("The concept of human rights has been further debased

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.*

58 Berkowitz, *Criticisms Illustrate Need for State Dept. Human Rights Panel*, *supra* note 15.

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”).

62 Pompeo, *In Defense of the American Rights Tradition*, *supra* note 24.

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.

68 Pompeo, *Comm’n on Unalienable Rights Public Meeting: Remarks*, *supra* note 22 (“Authoritarian governments often misuse these bodies. Just last week, China and Russia, for instance, voted Venezuela onto the UN Human Rights Council. What hypocrisy.”). See also Morgan Ortagus, Dep’t Spokesperson, *Department Press Briefing*, U.S. DEP’T OF STATE (July 9, 2019), <https://www.state.gov/briefings/department-press-briefing-july-9-2019/>.

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.

74 See Policy Planning Staff, *U.S. Department of State Comm’n on Unalienable Rights Minutes*, U.S. DEP’T. OF STATE (Oct. 23, 2019), <https://www.state.gov/u-s-department-of-state-commission-on-unalienable-rights-minutes/>.

75 Policy Planning Staff, *U.S. Department of State Commission on Unalienable Rights Minutes*, U.S. DEP’T. OF STATE (Feb. 21, 2020), <https://www.state.gov/u-s-department-of-state-commission-on-unalienable-rights-minutes-5/>.

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/laurettabrown/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.

80 Pompeo, *In Defense of the American Rights Tradition*, *supra* note 24.

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.

88 Jennifer Roback Morse, *How the Commission on Unalienable Rights Can Make the Family Great Again*, NAT’L CATH. REG. (Sept. 17, 2019), <http://www.ncregister.com/daily-news/how-the-commission-on-unalienable-rights-can-make-the-family-great-again>.

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] urged 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, *ius 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.”).

96 Policy Planning Staff, *U.S. Department of State Commission on Unalienable Rights Minutes*, U.S. DEP’T. OF STATE (Dec. 11, 2019), <https://www.state.gov/u-s-department-of-state-commission-on-unalienable-rights-minutes-3/>.

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-

alized without first securing basic civil and political liberties. Glendon cordially expressed her disagreement with Halvorssen regarding this point but, because time was running short, suggested continuing the discussion another day.”)

100 Aaron Rhodes, *Pompeo Tries to Rescue the Idea of Human Rights*, WALL ST. J. (June 10, 2019), <https://www.wsj.com/articles/pompeo-tries-to-rescue-the-idea-of-human-rights-11560207792>. See also Adam Garfinkle, *Is Pompeo’s Rights Commission More or Less Than Meets the Eye?*, AM. INT. (Sept. 9, 2019), <https://www.the-american-interest.com/2019/09/09/is-pompeos-rights-commission-more-or-less-than-meets-the-eye/>.

101 G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

102 *Charter for the Comm’n on Unalienable Rights*, *supra* note 3, ¶ 3.

103 See Pompeo, *Unalienable Rights and U.S. Foreign Policy*, *supra* note 49 (“America’s Founders defined unalienable rights as including ‘life, liberty, and the pursuit of happiness.’ They designed the Constitution to protect individual dignity and freedom. A moral foreign policy should be grounded in this conception of human rights.”).

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

105 Mary Ann Glendon & Seth D. Kaplan, *The Universal Declaration Turns 70*, AM. INT. (Dec. 19, 2018), <https://www.the-american-interest.com/2018/12/19/the-universal-declaration-turns-70/>. See generally Brown, *Mary Ann Glendon Is Inspired by the “Call to Service,”* *supra* note 47 (Glendon’s remarks).

106 Pompeo, *In Defense of the American Rights Tradition*, *supra* note 24.

107 Peter Berkowitz, *Recovering the Christian Foundations of Human Rights*, REALCLEARPOLITICS (Apr. 20, 2019), https://www.realclearpolitics.com/articles/2019/04/20/recovering_the_christian_foundations_of_human_rights__140109.html.

108 Pompeo, *In Defense of the American Rights Tradition*, *supra* note 24; Berkowitz, *Criticisms Illustrate Need for State Dept. Human Rights Panel*, *supra* note 15.

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

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

111 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).

112 International Covenant on Civil and Political Rights, art. 18, Dec. 16, 1966, T.I.A.S. No. 92-908, 99 U.N.T.S. 171 [hereinafter ICCPR].

113 See *infra* notes 227-37 and accompanying text.

114 Lantos 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.

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

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

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

118 *Id.*

119 *Former Commissioners*, U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, <https://www.uscirf.gov/about-uscirf/former-commissioners>.

120 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.”).

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

122 Christopher Tollefsen, *An Absolute Liberty of Conscience?*, PUB. DISCOURSE (Jan. 9, 2009), <https://www.thepublicdiscourse.com/2009/01/100/>.

123 Paolo G. Carozza, *The Right and the Good, and the Place of Freedom of Religion in Human Rights*, 40 COMMUNIO INT’L CATH. REV. 456, 457 (2013) (Proceedings of the Conference, “Dignitatis Humanae and the Rediscovery of Religious Freedom,” held at the Pontifical John Paul II Institute at the Catholic University of America, Feb. 21-23, 2013).

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 (“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.”).

129 See, e.g., Michael R. Pompeo, *Remarks to the Press*, U.S. DEP’T OF STATE (Mar. 26, 2019), <https://www.state.gov/remarks-to-the-press-7/>.

130 See, e.g., Robert P. George & Christopher O. Tollefsen, *Embryos and Five-Year-Olds: Whom to Rescue*, PUB. DISCOURSE (Oct. 19, 2017), <https://www.thepublicdiscourse.com/2017/10/20332/>; Christopher O. Tollefsen, *Assault Weapons, Defense, and the Resistance to Tyranny*, PUB. DISCOURSE (Mar. 6, 2018), <https://www.thepublicdiscourse.com/2018/03/21140/>; Erika Bachiochi, *Why We Are Pro-Life @ Harvard Law*, MIRROR OF JUST. (Oct. 6, 2017), <https://mirrorofjustice.blogspot.com/mirrorofjustice/2017/10/why-we-are-pro-life-harvard-law.html>; Kenneth Hallenius, *CEC Presents Notre Dame Evangelium Vitae Medal to Mary Ann Glendon*, DE NICOLA CTR. FOR ETHICS AND CULTURE (Apr. 30, 2018), <https://ethicscenter.nd.edu/news/cec-presents-notre-dame-evangelium-vitae-medal-to-mary-ann-glendon/>.

131 Email from Austin Ruse, President, C-Fam, Amazing Opportunity for C-Fam and the Unborn Child at the UN, (July 19, 2019), <https://email.opusfidelis.com/t/ViewEmail/j/D06B88B021F872B12540EF23F30FEDED/34A1EB8166AF5B-7B46778398EADC2510>. See also Stefano Gennarini, *Can Unalienable Rights Be Rescued from Human Rights?*, PUB. DISCOURSE (July 15, 2019), <https://www.thepublicdiscourse.com/2019/07/54871/>; Marshall, *The State Department’s Commission on Unalienable Rights: Concerns and Five Recommendations*, *supra* note 36; Roback Morse, *How the Commission on Unalienable Rights Can Make the Family Great Again*, *supra* note 88; Letter from Concerned Women for America et al. to Secretary Pompeo, *supra* note 43, at 2; Tony Perkins, *The Rights Stuff: Pompeo’s New Commission Tackles Freedom*, FAM. RES. COUNCIL (July 8, 2019), <https://www.frc.org/updatearticle/20190708/rights-stuff>.

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

137 *Dr. Morse’s Presentation to the Commission on Unalienable Rights*, RUTH INST. (Feb. 24, 2020), <http://www.ruthinstitute.org/ruth-speaks-out/dr-morse-presentation-to-the-commission-on-unalienable-rights>.

138 *PETITION: Ask President Trump to Make the Family Great Again!*, LIFE PETITIONS (Oct. 1, 2019, 6:20 AM), <https://lifepetitions.com/petition/ask-president-trump-to-make-the-family-great-again>.

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

140 World Conference on Human Rights, *Vienna Declaration and Programme of Action*, Part I, ¶ 5, U.N. Doc. A/CONF.157/23 (July 12, 1993).

141 See, e.g., Kenneth Roth, *Prepared Testimony to Commission on Unalienable Rights*, 3-5 (Jan. 10, 2020), https://www.hrw.org/sites/default/files/supporing_resources/011020_testimony_cur_kenneth_roth.pdf.

- 142 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.”).
- 143 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*].
- 144 For the guarantee of non-discrimination see, e.g., ICCPR, *supra* note 112, at art. 2(1).
- 145 See Scheinin, *supra* note 139, at 531–32.
- 146 See ICCPR, *supra* note 112, at art. 18.
- 147 See *supra* notes 84–86 and accompanying text.
- 148 See *infra* notes 198–211 and accompanying text.
- 149 See, e.g., Comm. on Economic, Social, and Cultural Rights, *General Comment No. 3: The Nature of States Parties’ Obligations*, ¶ 10, U.N. Doc. E/1991/23 (Dec. 14, 1990) [hereinafter Comm. on Economic, Social, and Cultural Rights, *General Comment No. 3*].
- 150 See Vienna Convention on the Law of Treaties, art. 31(1), opened for signature May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT].
- 151 *The Core International Human Rights Instruments and their Monitoring Bodies*, U.N. OFF. OF THE HIGH COMM’R FOR HUMAN RIGHTS, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>. The U.S. government has ratified three and signed four of the nine core human rights treaties. See *Status of Ratification Interactive Dashboard*, U.N. OFF. OF THE HIGH COMM’R FOR HUMAN RIGHTS, <https://indicators.ohchr.org>.
- 152 See, e.g., International Covenant on Economic, Social and Cultural Rights, art. 2, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].
- 153 See, e.g., ICCPR, *supra* note 112, at art. 4.
- 154 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.”).
- 155 See generally Birgit Schlütter, *Aspects of Human Rights Interpretation by the UN Treaty Bodies*, in UN HUMAN RIGHTS TREATY BODIES: LAW AND LEGITIMACY 261 (HELEN KELLER & GEIR ULFSTEIN eds., 2012); Malgosia Fitzmaurice, *Interpretation of Human Rights Treaties*, in THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW, *supra* note 139, at 739; Yutaka Arai-Takahashi, *Proportionality*, in THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW, *supra* note 139, at 446.
- 156 See e.g., H.R. Comm., *Ahani v. Canada*, Communication No. 1051/2002, U.N. Doc. CCPR/C/80/D/1051/2002 (2004). See further Schlütter, *supra* note 155, at 286 (noting that “the principle of effectiveness itself is firmly rooted both in general international law and in human rights law”).
- 157 See H.R. Comm., *Judge v. Canada*, Communication No. 829/1998, ¶ 10.3, U.N. Doc. CCPR/C/78/D/829/1998 (2003). See also Comm. on the Elimination of Racial Discrimination, *Hagan v. Australia*, Communication No. 26/2002, ¶ 7.3, U.N. Doc. CERD/C/62/D/26/2002 (2003).
- 158 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.9 (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.”).
- 159 U.N. Off. of the High Comm’r for Human Rights, *Civil and Political Rights: The Human Rights Committee, Fact Sheet No. 15, 24*, <https://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf> (undated).
- 160 See, e.g., H.R. Comm., *General Comment No. 34, Article 19, Freedoms of Opinion and Expression*, ¶ 43, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) [hereinafter H.R. Comm., *General Comment No. 34*].
- 161 Huckerby & Knuckey, *Pompeo’s “Rights Commission” is Worse Than Feared: 7 Concerns to Watch*, *supra* note 6 (noting that “[r]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,” “subsidiarity,” and “proportionality.”).
- 162 H.R. Comm., *General Comment No. 34, supra* note 160, ¶¶ 50–52.
- 163 See *infra* notes 227–37 and accompanying text.
- 164 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.”).
- 165 Glendon & Kaplan, *The Universal Declaration Turns 70, supra* note 105.
- 166 Mashood 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 (MASHOOD A. BADERIN & MANISULI SSENONJO, 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: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* (2001).
- 167 Baderin & Ssenyonjo, *supra* note 166, at 9 (citing IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 559 (7th ed. 2008)). See also JAMES R. CRAWFORD, *BROWNLIE’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 treaty practice . . .”).
- 168 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.”).
- 169 See VCLT, *supra* note 150, at art. 26.
- 170 See, e.g., H.R. Comm., *General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 4 U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (May 26, 2004) [hereinafter H.R. Comm., *General Comment No. 31*] (“The obligations of the Covenant . . . are binding on every State Party as a whole.”). See further Comm. on Economic, Social and General Comment No. 3, *supra* note 149, ¶ 1; Comm. Against Torture, *General Comment No. 2: Implementation of Article 2 by States Parties*, ¶ 2 U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008).
- 171 Bertrand G. Ramcharan, *The Law-Making Process: From Declaration to Treaty to Custom to Prevention*, in THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW, *supra* note 139, at 511.
- 172 Cass R. Sunstein, *Rights and Citizenship*, Prepared Testimony to Commission on Unalienable Rights, 10 (Oct. 28, 2019), <https://www.state.gov/wp-content/uploads/2020/04/Statement-by-Cass-R.-Sunstein-to-the-Commission-on-Unalienable-Rights.pdf>.
- 173 Rodley, *supra* note 168, at 622.
- 174 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. 94–1120.1, 1465 U.N.T.S. 85 [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. 94–1120, 660 U.N.T.S. 195 [hereinafter ICERD]; and Convention on the Rights of Persons with Disabilities

Dec. 13, 2006, 2515 U.N.T.S. 3 [hereinafter CRPD].

175 Rodley, *supra* note 168, at 622.

176 See *supra* notes 159–163 and accompanying text.

177 Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

178 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Dec. 18, 1990, 2220 U.N.T.S. 3 [hereinafter ICMW].

179 Convention for the Protection of all Persons Against Enforced Disappearance, Dec. 20, 2006, 2716 U.N.T.S. 3 [hereinafter CPED].

180 Huckerby & Knuckey, *Pompeo's "Rights Commission" is Worse Than Feared: 7 Concerns to Watch*, *supra* note 6.

181 ICERD, *supra* note 174.

182 ICESCR, *supra* note 152; ICCPR, *supra* note 112.

183 CEDAW, *supra* note 174.

184 CRC, *supra* note 177.

185 ICMW, *supra* note 178.

186 CRPD, *supra* note 174.

187 CAT, *supra* note 174.

188 CPED, *supra* note 179.

189 See *id.*

190 Lorna McGregor, *Looking to the Future: The Scope, Value and Operationalization of International Human Rights Law*, 52 VAND. J. TRANSNAT'L L. 1281, 1295 (2019), <https://www.transnat.org/post/looking-to-the-future-the-scope-value-and-operationalization-of-international-human-rights-law> (follow "PDF" hyperlink) (stating that "a distinction needs to be made between the creation of entirely new legal rights and the implementation of existing rights, through the articulation of how they apply to particular groups or new contexts"). See also Mart Susi, *Novelty in New Human Rights*, in CAMBRIDGE HANDBOOK OF NEW HUMAN RIGHTS 21, 21 (Andreas von Arnould et al. eds., 2020).

191 Roth, *supra* note 141, at 2.

192 Clifford Bob, *Introduction: Fighting for New Rights*, in THE INTERNATIONAL STRUGGLE FOR NEW HUMAN RIGHTS 1, 4 (Clifford Bob ed., 2010).

193 See *supra* notes 155–60 and accompanying text.

194 McGregor, *supra* note 190, at 1298 (stating that "there are very few attempts to create new rights but rather the focus is often on clarification of the normative scope and contours of a right and whether this evolves over time").

195 Bridget Lewis, *Quality Control for New Rights in International Human Rights Law: A Case Study of the Right to a Good Environment*, 33 AUST'N Y.B. INT'L L. 55, 57–60 (2015).

196 See, e.g., U.N. G.A. Res. 41/120, ¶ 4 (Dec. 4, 1986) (stating that "international instruments in the field of human rights" 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, *supra* note 190, at 7; Lewis, *supra* note 195, at 60–79.

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

198 ICESCR, *supra* note 152, at arts. 6, 7, 9, 11, 12, 13. See Comm. on Economic, Social and Cultural Rights, *General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/GC/23 (Apr. 27, 2016); Comm. on Economic, Social and Cultural Rights, *General Comment No. 19 The Right to Social Security (Art. 9)*, U.N. Doc. E/C.12/GC/19 (Feb. 4, 2008); Comm. on Economic, Social and Cultural Rights, *General Comment No. 14 (2000) The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter Comm. on Economic, Social and Cultural Rights, *General Comment No. 14*]; Comm. on Economic, Social and Cultural Rights, *General Comment 12 (Twentieth session, 1999) The Right to Adequate Food (Art. 11)*, U.N. Doc. E/C.12/1999/5 (May 12, 1999); Comm. on Economic, Social and Cultural Rights, *General Comment 11 (1999) Plans of Action for Primary Edu-*

cation (Article 14 of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/1999/4 (May 10, 1999); Comm. on Economic, Social and Cultural Rights, *General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, U.N. Doc. E/1992/23 (Dec. 13, 1991) [hereinafter Comm. on Economic, Social and Cultural Rights, *General Comment No. 4*].

199 See Comm. on Economic, Social and Cultural Rights, *General Comment No. 3, supra* note 149, ¶¶ 1, 2, 9, 10, 13. See also Comm. on Economic, Social and Cultural Rights, *General Comment No. 20 Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, Para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 7, U.N. Doc. E/C.12/GC/20 (July 2, 2009).

200 *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.") (citations omitted); 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.")

201 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.")

202 *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[] address[ing] 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 & COMP. 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.")

203 See, e.g., CEDAW, *supra* note 174; CRPD, *supra* note 174; CRC, *supra* note 177; ICMW, *supra* note 178.

204 Urfan Khaliq & Robin Churchill, *The Protection of Economic and Social Rights: a Particular Challenge?*, in UN HUMAN RIGHTS TREATY BODIES: LAW AND LEGITIMACY, *supra* note 155, at 258.

205 See, e.g., Comm. on the Elimination of Racial Discrimination, *General Recommendation No. 35 Combating Racist Hate Speech*, ¶ 29, U.N. Doc. CERD/C/GC/35 (Sept. 26, 2013) ("Freedom of expression, indispensable for the articulation of human rights and the dissemination of knowledge regarding the state of enjoyment of civil, political, economic, social and cultural rights . . ."); Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 28 on the Core Obligations of States Parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, ¶ 9, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010) ("The obligation to respect requires that States parties refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights."); Comm. on the Rights of the Child, *General Comment No. 21 (2017) on Children in Street Situations*, ¶ 29, U.N. Doc. CRC/C/GC/21 (June 21, 2017) ("This conception of the right to life extends not only to

civil and political rights but also to economic, social and cultural rights.”).

206 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. G.L. 131, ¶ 134 (July 9, 2004).

207 Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; 6 I.L.M. 368.

208 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, U.N. Doc. A/RES/63/117 (Dec. 10, 2008). See also Eibe Riedel, Gilles Giacca & Christophe Golay, *The Development of Economic, Social and Cultural Rights in International Law*, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN INTERNATIONAL LAW: CONTEMPORARY ISSUES AND CHALLENGES 3, 34 (EIBE RIEDEL, GILLES GIACCA, & CHRISTOPHE GOLAY eds., 2014) (“... the new OP-ICESCR now emphasizes that the community of states regards ESC rights as an inseparable part of the fundamental guarantees first spelled out fully in the UDHR...”).

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 international 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 punishment; retroactive penal measures; deportation or forcible transfer of population; 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.

214 See *supra* notes 72–75 and accompanying text. This view is also shared by some scholars. See, e.g., EMILIE M. HAFNER-BURTON, MAKING HUMAN RIGHTS A REALITY (2013); ERIC POSNER, THE TWILIGHT OF HUMAN RIGHTS LAW (2014); Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?* 111 YALE L.J. 1935 (2002).

215 See *supra* notes 181–97 and accompanying text.

216 See, e.g., Jennifer Norris, *Why Trump Should Support the UN, Even in the Era of “America First,”* JUST SEC. (Sept. 18, 2017), <https://www.justsecurity.org/45119/trump-support-un-era-america-first/>.

217 KATHRYN SIKKINK, EVIDENCE FOR HOPE MAKING HUMAN RIGHTS WORK IN THE 21ST CENTURY 31 (2017).

218 Andrew Keane Woods, *Discounting Rights*, 50 N.Y.U. J. INT’L L. & POL. 509, 516 (2018).

219 *Id.* at 519–21.

220 See, e.g., BETH A. SIMMONS, MOBILIZING FOR HUMAN RIGHTS, INTERNATIONAL LAW IN DOMESTIC POLITICS (2009); Cosette D. Creamer & Beth A. Simmons, *The Proof is in the Process: Self-Reporting Under International Human Rights Treaties*, 114 AM. J. OF INT’L L. 1 (2020); Christopher J. Fariss, *The Changing Standard of Accountability and the Positive Relationship Between Human Rights Treaty Ratification and Compliance*, 48 BRIT. J. POL. SCI. 239 (2018).

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 violations 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 individually 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 Freedom of Thought, Conscience and Religion*, U.N. Doc. CCPR/C/21/Rev.1/Add.4, ¶¶ 3, 5 (Sept. 27, 1993) [hereinafter H.R. Comm., *General Comment No. 22*].

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, 77(a)(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 conscientious objection by individual medical providers, and should not introduce new barriers.”) (citations omitted); Roth, *supra* note 141, at 6 (summarizing that under international human rights law “in the case of abortion, a government may allow some scope for individual healthcare providers who hold a religious conviction to decline to perform an abortion. Yet, the space for such refusals should be closely and appropriately regulated to protect the rights of women and girls by ensuring that reasonable access to an abortion is available in the vicinity.”).

228 H.R. Comm., *General Comment No. 28: The Equality of Rights Between Men and Women*, U.N. Doc. CCPR/C/21/Rev.1/Add.10, ¶ 21 (Mar. 29, 2000). See also U.N. Doc. A/HRC/43/48, *supra* note 227, ¶ 69. See further CRC, *supra* note 177, at art. 30; CEDAW, *supra* note 174, at art. 2; ICCPR, *supra* note 112, at art. 2(1), art. 5(1), & arts. 26 & 27; ICESCR, *supra* note 152, at art. 2(2); ICERD, *supra* note 174, at art. 5.

229 Special Rapporteur on freedom of religion or belief, *Interim Report of the Special Rapporteur on freedom of religion or belief*, ¶ 30, U.N. Doc. A/68/290 (Aug. 7, 2013). See also U.N. Doc. A/HRC/43/48, *supra* note 227, ¶ 69.

230 See generally U.N. Doc. A/HRC/43/48, *supra* note 227.

231 *Id.* Summary.

232 *Id.* ¶ 77(a)(v).

233 ICCPR, *supra* note 112, at art. 4(2).

234 *Id.* at art. 18(2); Special Rapporteur on freedom of religion or belief, *Report of the Special Rapporteur on freedom of religion or belief*, ¶ 6, U.N. Doc. A/HRC/40/58 (Mar. 5, 2019).

235 ICCPR, *supra* note 112, at art. 18(3); CRC, *supra* note 177, at art. 14(3); ICMW, *supra* note 178, at art. 12(3). See also U.N. Doc. A/HRC/40/58, *supra* note 234, ¶ 6.

236 H.R. Comm., *General Comment No. 22*, *supra* note 223, ¶ 8.

237 LORENZ LANGER, RELIGIOUS OFFENCE AND HUMAN RIGHTS 94 (2014) (explaining that the general limitation clauses of the UDHR (articles 29 and 30) also apply to article 18).

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

239 Comm. on Economic, Social and Cultural Rights, *General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, ¶¶ 11, 13, 21, 40 U.N. Doc. E/C.12/GC/22 (May 2, 2016) [hereinafter Comm. on Economic, Social and Cultural Rights, *General Comment No. 22*]. See also Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard

of physical and mental health, *Interim Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, ¶ 21, U.N. Doc. A/66/254 (Aug. 3, 2011); Comm. on the Rights of the Child, *General Comment No. 15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health* (Art. 24), ¶ 56, U.N. Doc. CRC/C/GC/15 (Apr. 17, 2013).

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)(v).

242 H.R. Comm., *K.L. v. Peru*, ¶ 6.4, U.N. Doc. CCPR/C/85/D/1153/2003 (Nov. 22, 2005). See also H.R. Comm., *General Comment No. 36*, *supra* note 142, ¶ 8.

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.

245 Comm. against Torture, *Concluding Observations on the Second Periodic Report of Kenya, adopted by the Comm. at its Fiftieth Session (6 to 31 May 2013)*, ¶ 27, U.N. Doc. CAT/C/KEN/CO/2 (June 19, 2013).

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.").

248 See, e.g., 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*, ¶ 68, fn. 63, U.N. Doc. CEDAW/C/OP.8/GBR/1 (Mar. 6, 2018); H.R. Comm., *Draft General Comment No. 36: Article 6: right to life*, fn. 9, U.N. Doc. CCPR/C/GC/R.36/Rev.2 (Sept. 2, 2015) [hereinafter H.R. Comm., *Draft General Comment No. 36*].

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 & 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.



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