April 3, 2020

Dear U.S. State Department Commission on Unalienable Rights:

As a nonprofit practice-based research organization that supports the fundamental rights and freedoms of people impacted by armed conflict, we write to express our concern with the work of the U.S. State Department Commission on Unalienable Rights (Commission) and the potential harm that a final Commission report may pose to the international human rights movement, including the growing business and human rights community of which we are a proud member.

The Commission is an advisory body organized and chartered by Secretary of State Pompeo under the Federal Advisory Committee Act with the purpose of determining which internationally recognized human rights are “unalienable” and which are “ad hoc,” in apparent opposition to U.S. treaty and legal obligations and established foreign policy positions. The Commission’s mandate, the opaque process by which it came into being, the duplicative nature of the body in relation to the State Department’s Bureau of Democracy, Human Rights, and Labor, and its work to date have concerned a wide array of human rights practitioners.

Through the reporting of human rights advocates, we have learned of troubling views expressed by several commissioners, who lack a diversity of expertise, which further deepen the concern that the Commission’s objectives are to produce recommendations that narrow the scope of U.S. obligations under international human rights law, to justify a ranking of rights that prioritize some, such as the right to freedom of religion, over others, and to justify rolling back hard-won advances in areas such as the rights of girls, women, and LGBTQ persons.

As invited speakers informed the Commission, the concept of “unalienable rights” has neither a clear legal nor Constitutional meaning. The preamble of the Universal Declaration of Human Rights (UDHR) refers to all human rights as “inalienable.” Additionally, the international human rights law framework adequately identifies the scope, content, and obligations that arise from the human rights contained within the framework. The UDHR and the nine core human rights treaties, particularly the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), codify a set of human rights under widely recognized rules of international law. These treaties are the product of decades of multilateral negotiations and represent an international consensus regarding the scope of human rights that bind states that have ratified them. No state has the authority to unilaterally choose between these rights or redefine the terms of the treaties.

During the Commission’s public hearings, commissioners have suggested that the human rights framework is poorly defined or has been stretched to cover “new” rights. Some have also suggested that it is up to the Commission to differentiate between “alleged” rights claims and those rights that are “unalienable.” Yet, many of the human rights practitioners who have testified have demonstrated that the rights of the human rights framework are inalienable and clearly identified in the aforementioned core human rights treaties and that

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1 During the Commission’s second meeting (held 11/1/2019), Mary Ann Glendon, the Chair of the Commission, stated that it was the responsibility of the Commission “to help the U.S. to think more clearly about alleged human rights . . . .”
various treaty bodies (e.g., UN Human Rights Committee) play an important role in the interpretation and application of the human rights provided by these treaties.²

Commissioners have also demonstrated a reluctance to recognize economic, social, and cultural rights as “inalienable,” or as having equal status to civil and political rights, despite the fact that international law provides clear guidance on how States must implement their various treaty obligations equally. Such reluctance is the product of a false dichotomy that civil and political rights are independent and severable from economic, social, and cultural rights. The human rights movement rejects this narrative, recognizing political, civil, economic, social, and cultural rights as indivisible and interdependent.

The Commission’s willingness to question the basic foundations of the human rights framework risks emboldening illiberal and authoritarian regimes actively promoting revisionist and culturally relativist interpretations of this framework to justify their repressive policies. The damaging precedential aspect of the Commission’s work threatens to undermine hard-won gains and embolden human rights violators. Illiberal regimes have already followed the United States’ lead in undermining free press with spurious proclamations of “fake news,” violating the rights of refugees and asylum seekers to seek protection from persecution, and rolling back regulations to hold companies accountable for human rights violations. The adoption of a restrictive foreign policy on human rights would unnecessarily handcuff U.S. diplomatic efforts around the world.

A responsible review of our national human rights policy would necessarily focus on how the United States might improve its domestic human rights record and promote greater human rights protections abroad. Such an exercise would reaffirm the U.S. government’s commitment to the international human rights framework as defined by the UDHR and the subsequent human rights treaties. It would make clear that the rights recognized in both the ICCPR and ICESCR are indivisible, interdependent, and universal. Most importantly, a responsible review of our national human rights policy would recognize that the promotion and protection of human rights as a cornerstone of U.S. foreign policy serves the national interest and as a guidestar in even the darkest of days.

Sincerely,

Samuel B. Jones
President
Heartland Initiative, Inc.