Chapter

16 Human Rights and Related Concepts

Introduction

Human rights, which constitute a fundamental category of rights, may be defined as a relationship between individuals (citizens) and governments (states). The concept that legal systems should protect the rights of individuals from abuses by government is rooted in natural law. As reflected in his *Two Treatises of Government*, published in 1690, the English philosopher John Locke believed that human rights, not governments, came first in the natural order of things.

Civil and political rights are often referred to as fundamental or core human rights. Examples include the rights to life, liberty, security; freedom from enslavement, torture, and cruel, inhuman, or degrading punishment; freedom from arbitrary arrest, and presumption of innocence until found guilty by a competent and impartial tribunal. All citizens have the right to participate in their governments, either directly or through free elections of their representatives.

Governments have also created economic, social, and cultural rights or perhaps more accurately, entitlements, such as a minimum living standard, including food, clothing, housing, medical care, education, and social security.

Human rights considerations have been a long-standing element of the US foreign policy. Members of the security cooperation community, in particular, should understand and appreciate the importance accorded human rights and civilian control of the military in our relationships with other nations. This importance is reflected in a variety of ways. Countries suspected of gross human rights violations can be prohibited by Congress from participating in security assistance programs or have their programs suspended. International students attending US military schools under the International Military Education and Training (IMET) and Foreign Military Sales (FMS) programs are purposely exposed to human rights policies and issues as part of their studies. Foreign military members are frequently invited to attend fully funded regional seminars focused on human rights and civilian control of the military.

US personnel permanently assigned or temporarily deployed to foreign nations should be able to intelligently discuss the important human rights themes and policies of the US government (USG). The purpose of this chapter is to introduce and familiarize the reader with these key concepts and ideas.

Human Rights Instruments and Authority

Several nations have constitutions, fundamental or organic laws that establish the framework of the government of a state, assign the powers and duties of governmental agencies, and establish the relationship between the people and their government. Constitutions may be written, e.g., the US Constitution, or unwritten, as in the English model. Domestic guarantees concerning human rights may be embodied in such constitutions or in other statutes. In addition, international protection of recognized human rights is found in documents such as the Charter of the United Nations (UN Charter) and international conventions which have been accepted by the vast majority of the world's states. Regional declarations also recognize the existence of human rights.

United States Sources

The Constitution of the United States of America

Human rights have been an integral part of America as a nation from its inception. The Constitution of the United States specifically and deliberately embodies the principles of human rights. It does so generally by intoning the necessity of these principles in the opening Preamble. The basic Constitution outlines the plan of representative government and an electoral mechanism through which the people can express their will. It declares specific human rights principles in the text of the constitution's first ten amendments or, as they are more commonly referred to, the Bill of Rights. These amendments contain a listing of the rights that Americans enjoy that cannot be infringed upon by the government. Included are freedom of religion, freedom of speech, the right of the people to be secure in their persons and houses against unreasonable searches and seizures, and other rights commonly taken for granted by US citizens.

Although these principles were not definitively articulated in the body of the original text of the US Constitution, it is clear that a majority of the delegates present at the constitutional convention intended for a number of basic egalitarian principles or human rights to be incorporated within the constitutional scheme. The US Congress, in one of its first sessions, debated the inclusion of these principles through amendments, ultimately approving them. The original thirteen states, for their part, ratified ten of the original twelve proposed. Collectively, in many ways, the ten amendments compiled in the Bill of Rights represent and have come to symbolize the embodiment of the American character. It also is a tangible reminder of what America and Americans often hold most dear, their identity as a people, and their realization as individuals.

Declaration of Independence

The Declaration of Independence, adopted by the Second Continental Congress on July 4, 1776, also makes reference to certain self-evident truths such as the equality of all men, natural rights, government by consent, and so forth. Unlike the Bill of Rights, which is incorporated into the US Constitution, the Declaration does not have any legal effect today. Nonetheless, it is recognized throughout the world as the basic statement of the American creed.

International Sources

Charter of the United Nations

The UN Charter, which entered into force in 1945, specifically addresses human rights in its preamble and in two of its articles. Article 55 reads as follows:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the UN shall promote:

- Higher standards of living, full employment, and conditions of economic and social progress and development
- Solutions of international economic, social, health, and related problems, and international cultural and educational cooperation
- Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion

Article 56 of the UN Charter states that all members pledge themselves to take joint and separate action in cooperation with the UN to achieve the purposes set forth in article 55.

United Nations Universal Declaration of Human Rights

Due to the general language of Article 55 of the UN Charter, member states quickly turned to efforts to specify its meaning. The first result was the often cited and widely heralded Universal Declaration of Human Rights (UDHR), which was adopted by the UN General Assembly in 1948. It is important to recognize that the Universal Declaration is not binding international law, but a UN recommendation to nations. Thus, the Declaration, in and of itself, offers no means of implementation other than through the good will of the member states.

Notwithstanding these technical deficiencies, the Declaration was, and still is, important because it is an attempt at authoritatively stating the meaning of Article 55, and parts of the Declaration reflect customary international law.

The Universal Declaration covers civil and political rights in articles 1 through 22 and social, economic and cultural rights in articles 23 through 28. Article 29, known as the derogation clause, permits limitations of rights when necessary for securing the rights of others or securing morality, order or general welfare in society. The text of the Universal Declaration is in attachment 16-1.

Human Rights Treaties

In addition to the UN Charter and Universal Declaration, there are a number of international human rights conventions which are often in the form of treaties or international agreements. These conventions are compiled in an appendix to the annual *Country Reports on Human Rights Practices*, produced by the Department of State (DOS). The US is shown in the 2012 report as a party to twelve agreements (having signed and ratified), and seven other agreements (having signed but not ratified). In addition, any nation that is a party or signatory to an agreement can attach specified reservations to such an agreement.

The following international conventions and agreements were selected from the Country Reports appendix:

Geneva Conventions. These refer to agreements among nations, reached in Geneva, Switzerland, relative to wartime situations and sometimes referred to as part of international humanitarian law or the law of armed conflict. Included are the *Geneva Convention Relative to the Treatment of Prisoners of War*, and the *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, both dated 12 August 1949. The US is listed as a party to both agreements. These are expansions of similar humanitarian conventions of 1906 and 1929. The rights protected by the Geneva Conventions may not be limited or abrogated. In an armed conflict situation, the Geneva Conventions and the customary law of armed conflict are the primary sources of law. Although listed in the appendix to the annual *Country Reports on Human Rights Practices*, produced by the DOS, these treaties are not part of international human rights law. Rather they are part of a separate and distinct category known as "international humanitarian law" that deals with the specific situation of armed conflict.

International Covenants. The US is listed as a party to the International Covenant on Civil and Political Rights of 16 December 1966. The Covenant, which is regarded by many to be the single most important human rights treaty, codifies the essential freedoms people must enjoy in an effective democratic society, such as the right to vote and participate in government, freedom of peaceful assembly, equal protection under the law, the right to liberty and security, and freedom of opinion and expression. Temporary limitations or "derogations" on Civil and Political Covenant rights are permissible during "times of public emergency." However, "derogation" is never allowed when there is an obligation to protect the right to life, to preserve the freedom of conscience, or to protect against the prohibition against torture and slavery. Subject to a few essential reservations, e.g., to reflect the requirements of the First Amendment of the US Constitution, the principles that the Covenant expresses are entirely consistent with the US Bill of Rights. The US is also listed as a signatory, but not a party,

to a second related covenant, the International Covenant on Economic, Social, and Cultural Rights of 16 December 1966, which requires state parties to provide subsistence, education and medical care "to the maximum of its available resources."

Other Treaties. Additional agreements to which the US is listed as a party in the appendix to the Country Reports are:

- Convention to Suppress the Slave Trade and Slavery of 25 September 1926, as amended by the Protocol of 7 December 1953
- Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948
- Convention on the Political Rights of Women of 31 March 1953
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 7 September 1956
- Convention Concerning the Abolition of Forced Labor of 25 June 1957
- International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965
- Protocol Relating to the Status of Refugees of 31 January 1967
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984

Customary International Law

The most fundamental human rights, such as the right to be free from extra-judicial killings, torture, arbitrary arrests, detentions and disappearances, genocide and slavery, are generally thought to be customary international law. A distinction is made between conventional international law and customary international law. With conventional international law, nations that are parties to a treaty or convention explicitly agree to be bound by certain rules. With customary international law, consent is implicit and founded in international practice. This would make these principles legally binding internationally on all nations even if they have not ratified the applicable human rights treaties. Customary international law arises when there exist long-standing and continuous practices by countries that are rooted in the belief that the practice is required by, or consistent with, international law. Customary law also exists when there is a general acceptance, not only of the practice, but of the belief of the practice by other states. The *US Army Operational Law Handbook* (2012) states, "Unfortunately, for the military practitioner there is no definitive 'source list' of those human rights considered by the United States to fall within this category of fundamental human rights. As a result, the Judge Advocate (JA) must rely on a variety of sources to answer this question. These sources may include, but are not limited to, the UDHR, Common Article III of the Geneva Conventions, the Restatement (Third) of The Foreign Relations Law of the United States, and authoritative pronouncements of US policy by ranking government officials."

Figure 16-1 provides human rights excerpts from various international sources, ranging from the UN Charter to regional agreements.

Figure 16-1
Illustrations of Human Rights Provisions

"We the peoples of the United Nations determined to reaffirm faith in fundamental human rights. . . ." Preamble to the Charter of the United Nations, composed in San Francisco, June 26, 1945.
"All human beings are born free and equal in dignity and rights . . . " Universal Declaration of Human Rights, adopted by the UN General Assembly, December 10, 1948.
"Everyone has the right to respect for private and family life, his home and his correspondence." Article 8.1 European Convention for the Protection of Human Rights and Fundamental Freedoms, done in Rome November 4, 1950.
"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development." Article 1.1, International Convention on Civil and Political Rights, composed at New York, December 16, 1966.
"Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions." Article 8, African Charter on Human and Peoples' Rights, done at Banjul, composed in Banjul, June 26, 1981.
"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people to peacefully assemble, and to petition the Government for a redress of grievances." First Amendment to the Constitution of the United States ratified December 15, 1791.

United States Foreign Policy Concerning Democracy and the Rule of Law

Several related themes and concepts are often introduced in USG policy statements and educational programs addressing human rights. Some of these concepts are democracy and the rule of law, civilian control of the military, and a legal system covering military personnel that equates to a country's legal protections for civilians, unless otherwise required by military necessity.

The Rule of Law

The DOS has offered the following meaning of rule of law:

> The rule of law is a fundamental component of democratic society and is defined broadly as the principle that all members of society—both citizens and rulers—are bound by a set of clearly defined and universally accepted laws. In a democracy, the rule of law is manifested in an independent judiciary, a free press and a system of checks and balances on leaders through free elections.

Civilian Control of the Military

Civilian control of the military is also seen as an important means of protecting human rights and democracy because of the belief that a military establishment, particularly a large standing army, potentially poses a threat to individual liberty and to popular control of the government. Civilian control generally requires that:

- The armed forces do not dominate government or impose their unique values upon civilian institutions and organizations
- The armed forces have no independent access to sources of military funding

- The armed forces' policies on the recruitment, pay, education, training, treatment, promotion, and use of personnel are not inconsistent with basic civil liberties and individual beliefs, with some compromises for military discipline and combat effectiveness
- The use of military force, either for or against military action, is not determined by the values of the military establishment itself

Military Justice

Military justice relates to legal systems within each nation which govern order and discipline of members of their armed forces. For example, US armed forces members are subject to the *Uniform Code of Military Justice* (UCMJ). The following military justice-related topics are especially complementary to the overall framework of human rights:

- The rights and responsibilities of military personnel
- The role of the military commander in military justice
- Effective military justice systems and how they ensure accountability for and deterrence from human rights abuses by military personnel

Section 541 of the Foreign Assistance Act of 1961 (FAA) stresses the importance of the IMET program as a means to improve military justice systems and procedures in accordance with internationally recognized human rights.

Increased attention concerning human rights and related themes can be traced to the 1991 changes to the FAA which established expanded IMET (E-IMET). The principal objectives of E-IMET are:

- Fostering greater respect for, and understanding of, the principle of civilian control of the military
- Improving military justice systems and procedures in accordance with internationally accepted standards of human rights
- Increasing professionalism and responsibility in defense management and resource allocation
- Contributing to cooperation between military and law enforcement personnel with respect to counter-narcotics law enforcement efforts [section 541, FAA]

These objectives, combined with the traditional purposes of the IMET program (to expose international students to the US professional military establishment and the American way of life, including US regard for democratic values, respect for individual and human rights, and belief in the rule of law) make human rights and related concepts high priorities in the conduct of the US security assistance program.

Human Rights and the Foreign Assistance Program

Foreign Policy Goal

Human rights are addressed in section 502B, FAA:

> The US shall, in accordance with its international obligations as set forth in the UN Charter and in keeping with the constitutional heritage and traditions of the US, promote and encourage increased respect for human rights and international freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of US foreign policy shall be to promote the increased observance of internationally recognized human rights by all countries.

This section also provides that any nations receiving security assistance that engage in a consistent pattern of gross violations of internationally recognized human rights risk a combination of statutory and policy-based suspension or termination of US military and economic assistance, including FMS and direct commercial sales transfers of defense articles and services. The term "gross violations of internationally recognized human rights" as defined in section 116(a), FAA, includes torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, causing the disappearance of persons by the abduction and clandestine detention of those persons, or other flagrant denial of the right to life, liberty, and the security of the person. Any exception to this policy requires a Presidential certification to Congress that extraordinary circumstances warrant such assistance. The goal of any such sanctions is not to punish the offending country but to change its behavior, bringing it back into compliance with international norms for human rights.

Role of the Department of State

Section 624(f), FAA, vests in the Assistant Secretary of State for Democracy, Human Rights and Labor Affairs overall policy responsibility for the creation of USG human rights policy. The assistant secretary is responsible for the following:

- Detailed information regarding humanitarian affairs and the observance of and respect for internationally recognized human rights
- Preparing the annual country reports, discussed below
- Making recommendations to the Secretary of State and the administrator of the US Agency for International Development (USAID) regarding compliance with sections 116 and 502B, FAA
- Performing other responsibilities which serve to promote increased observance of internationally recognized human rights by all countries.

In accordance with sections 116(d) and 502B(b) of the FAA, and section 505(c) of the Trade Act of 1974, as amended, the DOS submits an annual document regarding country reports on human rights practices to the US Congress. The reports cover the human rights practices of all nations that are members of the UN as well as a few that are not. They are submitted to assist members of Congress in the consideration of legislation, particularly foreign assistance legislation. Each country report follows a standard format, consisting of a brief introductory statement followed by a more detailed discussion of human rights practices and concerns under the headings listed in figure 16-2.

Figure 16-2
US Department of State Country Report Format

Section 1 Respect for the integrity of the person, including freedom from:

a. Arbitrary or unlawful deprivation of life

b. Disappearance

c. Torture and other cruel, inhuman, or degrading treatment or punishment

d. Arbitrary arrest or detention

e. Denial of fair public trial

f. Arbitrary interference with privacy, family, home, or correspondence

Section 2 Respect for civil liberties, including:

a. Freedom of speech and press

b. Freedom of peaceful assembly and association

c. Freedom of religion

d. Freedom of movement, internally displaced persons, protection of refugees, and stateless persons

Section 3 Respect for political rights: the right of citizens to change their government

Section 4 Governmental attitudes regarding international and nongovernmental investigation of alleged violations of human rights

Section 5 Discrimination, societal abuses, and trafficking in persons

Section 6 Worker rights

a. The right of association

b. The right to organize and bargain collectively

c. Prohibition of forced or compulsory labor

d. Prohibition of child labor and minimum age for employment

e. Acceptance conditions of work

The DOS and USAID strategic plan on the DOS web site outlines the US commitment to advance the growth of democracy and good governance, including civil society, the rule of law, respect for human rights, and religious freedom in other countries.

Attachment 16-2 provides a suggested action and reporting guideline known as the"Five Rs" for use by the security cooperation officer (SCO) in the event of discovering or witnessing a possible human rights violation.

Role of International and Non-governmental Organizations

Section 502B(b)(1), FAA, recognizes the contributions of international organizations and nongovernmental organizations within the area of human rights. Accordingly, this statutory section mandates that consideration shall be given to the relevant findings of appropriate international organizations, including such non-governmental organizations as the International Committee of the Red Cross, in the preparation of statements and reports concerning human rights conditions in other countries.

Some non-governmental organizations, e.g., Amnesty International and Human Rights Watch, publish their own human rights reports. The DOS customarily acknowledges the inputs provided by non-governmental organizations as well as other sources, e.g., private citizens and officials of foreign governments, in the development of its annual country reports on human rights practices. Amnesty International, for instance, lists country reports on its web site at http://www.amnesty.org.

Expanded-International Military Education and Training

The E-IMET initiative was started in 1990 to educate US friends and allies in the proper management of their defense resources, to improve their systems of military justice in accordance with internationally recognized principles of human rights, and to foster a greater respect for, and understanding of, the principle of civilian control of the military. The program is based upon the premise that active promotion of democratic values is one of the most effective means available for achieving US national security and foreign policy objectives and fostering peaceful relationships among the nations of the world.

In response to a 2011 GAO report entitled "International Military Education and Training: Agencies Should Emphasize Human Rights Training and Improve Evaluations" (GAO-12-123), the answers to the following questions are now called for in Combined Education and Training Program Plans CETPP submitted annually by SCOs: (1) Does the country generally receive poor marks on human rights from internationally recognized organizations like Freedom House? (2) If "yes" to question 1 above, to what degree is the military part of the rationale for the poor marks? (3) If the country receives poor marks, how does IMET-provided training planned for this country address human rights, civil-military relations, etc.?

Vetting for US Assistance (Including Leahy Amendment Compliance)

Increased Congressional interest in human rights violations worldwide has resulted in more stringent statutory guidance and limitations on US foreign assistance, including (but not limited to) training programs for foreign individuals and military units. A key component of US human rights policy as it applies to security cooperation is the vetting of those individuals and units, which serves as a background check to determine if they were previously involved in human rights abuses or related abuse of authority such as corruption.

Congress distinguishes in law between assistance provided by State Department oversight under the FAA and the Arms Export Control Act (AECA) and DOD-funded assistance such as counter-drug programs (1004 and 1033) and humanitarian demining. For State Department programs, including FMS, DCS, FMF, and IMET, new legislative provisions were created in the State/Foreign Operations Appropriations Act (S/FOAA) for FY 2012 (PL 112-74). This law amends the FAA with a new section 620M, "Limitation on Assistance to Security Forces." The key provision states that "no assistance shall be furnished under this Act (FAA) or the AECA to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights." The new section 620M is considered the latest version of the so-called "Leahy Amendment," requiring the vetting of individuals or units for possible human rights violations prior to receiving US assistance. Such assistance includes not only military training but also the transfer of defense articles and the providing of defense services.

For DOD-funded training, Congress enacted a similar provision in the DOD Appropriations Act for FY 2012 (also in PL 112-74). Section 8058 of the act states, "no FY 2012 DOD funds may be used to support any training program involving a unit of the security forces of a country if the Secretary of Defense has received credible information from the DOS that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken." This provision of the law has the same effect as the Leahy Amendment. In either case, it is the responsibility of the SCO coordinating the training program to initiate the vetting process as determined by its embassy and CCMD.

Attachment 16-3 provides a suggested checklist for the vetting process to be performed by the SCO.

Summary

A solid understanding of internationally recognized human rights policies is of key importance to members of the US security cooperation community, particularly those who conduct education and training programs for international students as well as SCO personnel who interface on a day-to-day basis with partner country personnel. Human rights are not just a matter of US emphasis; rather, human rights policies are grounded in multiple international conventions, including the UN Charter.

The human rights conditions within each country are documented in an annual report prepared by the DOS. SCO personnel and US military personnel deployed to unified command theaters need to be aware of their responsibilities for reporting human rights violations. To provide further focus on the importance of human rights, military justice, and civilian control of the military, the DOD education and training establishment is tasked with providing appropriate instruction on these topics to international students.

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Attachment 16-1
Universal Declaration of Human Rights

Preamble: Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental and human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international; to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples and territories under their jurisdiction.

Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional, or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3. Everyone has the right to life, liberty, and security of person.

Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5. No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.

Article 6. Everyone has the right to recognition everywhere as a person before the law.

Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9. No one shall be subjected to arbitrary arrest, detention, or exile.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11. (1) Everyone charged with a penal offense has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. (2) No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offense was committed.

Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13. (1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14. (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15. (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17. (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.

Attachment 16-1 (continued)
Universal Declaration of Human Rights

Article 18. Everyone has the right of freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom, either alone in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

Article 20. (1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association.

Article 21. (1) Everyone has the right to take part in the Government of his country, directly or indirectly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation 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.

Article 23. (1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25. (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26. (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27. (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancements and its benefits. (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author.

Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society. (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein

Attachment 16-2
The "Five Rs"

The responsibilities of US military members, particularly those permanently assigned or temporarily deployed to a foreign country, with respect to human rights can be summarized by the "Five Rs," which are the following guidelines extracted from educational materials developed by the US Army Judge Advocate School.

- Recognize human rights violations. This involves recognizing unlawful action by a government official, or someone acting under the color of government authority, and distinguishing gross violations of human rights from other violations. One must also be mindful that not all "bad" conduct constitutes a human rights violation.

- Refrain from committing human rights violations. Each military member is a government official, and government officials must not commit or aid in the commission of violations. Moreover, military members may be responsible for the acts of subordinates and possibly the acts of fellow soldiers. Upon encountering apparent violations in foreign countries, visiting military members should generally disengage from activity and leave the area, provided they can disengage without impairing their mission.

- React to human rights violations. If observed conduct of a government official involves a gross violation, intervention to protect a victim may be appropriate in certain limited cases:

  ◊ The threat to life or limb is clear and compelling, e.g., without the soldier's intervention, a death, dismemberment, or rape will almost certainly occur.

  ◊ No other government officials or military personnel are able to intervene.

  ◊ Intervention is possible without serious threat to the US soldier's safety, unit security, or mission.

  ◊ Intervention involves no force or absolute minimum force to protect the victim, for example, shouting, not shooting at, the perpetrator. The objective is to restore the status quo, not to punish the perpetrator. If an official's conduct does not involve a gross violation, the soldier follows the report procedures outlined below and secures the consent of higher authority before intervening or notifying others of the apparent violation.

- Report human rights violations.

  ◊ Report all instances of suspected human rights violations immediately to higher authority; use the most secure communications means available.

  ◊ Indicate what official appears to be committing an offense, describe victim(s), and state whether any US military or civilian personnel were involved in any way.

  ◊ As appropriate, provide recommendations as to what the commander should do to protect the victim(s), restore the status quo, and preserve evidence of these events.

- Record human rights violations.

  ◊ In line with personnel or unit safety and mission requirements, use available means to preserve evidence and record other details of any apparent violation of human rights. Such means may include photography and tape recordings as well as written notes and diagrams.

  ◊ As the location may be later examined by professional investigators from the proper host nation authorities or by other international investigators from the United Nations, regional organizations or perhaps the US, be cautious about entering the area where events took place and collecting items of evidence without clearance from a higher authority.

Attachment 16-3
Guidance for Screening Candidates of US-Sponsored Training Programs

The Leahy Amendment requires that candidates for training, individuals or members of units, must be vetted by the US country team, for involvement in gross human rights abuses or criminal acts prior to attending or participating in any US-sponsored training. Per Joint Staff document dated 01 November 1998, a gross human rights abuse is defined as torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person.

The following checklist is designed to assist in the process of screening:

- SCO requests the partner nation to provide student nomination for US training programs.
- SCO specifies to the partner country the type of local record and background checks to be completed.
- SCO informs host country that the provision of student names, in writing, constitutes certification that checks have been completed satisfactorily.
- Training includes all DOD-sponsored training, IMET, FMS purchased training at DOD educational institutions, police training, counter-terrorism and counter-narcotics training, and personnel exchange programs.
- The partner nation conducts local record/background checks and provides, in writing, student nomination to SCO. As indicated above, provision of student nomination constitutes host country certification that requested checks have been completed satisfactorily.
- American embassy personnel, including all relevant members of the country team including human rights officers, Regional Security Officer, Drug Enforcement Agency, Defense Attaché, consular section, and other offices, as appropriate, check and screen the nominees thoroughly.
- SCO interviews the nominees for suitability.
- SCO maintains documentation of local record and background checks.

DOD directs that SCOs develop a checklist that encompasses the guidelines above. This checklist should be included with other documentation related to potential nominees and maintained for a minimum of ten years. Each SCO may adjust the guidelines above as necessary to accommodate the local situation.