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Congress, Kissinger, and the Origins of Human Rights Diplomacy*

I hold the strong view that human rights
are not appropriate in a foreign policy context.

—Henry Kissinger¹

James Wilson had one of the most unenviable jobs in the Ford administration: he was point man for human rights in a State Department led by a realist who firmly believed human rights had no place in foreign policy. Wilson headed the Bureau of Human Rights and Humanitarian Affairs, an office Secretary of State Henry Kissinger had reluctantly established in 1975 in the hope that, by deterring congressional action, it would enable the department to do *less* about international human rights rather than more. Cast in the role of scorned step-child, Wilson's Bureau spent two years steering an uncertain course between a hostile secretary of state and an assertive Congress bent on giving human rights an important place in foreign policymaking. Overworked, understaffed, and ineffective, the Bureau was widely regarded as little more than window dressing.

As Wilson was being ousted by the incoming Carter administration in 1977, he tried to explain to his successor, Patricia Derian, why he had achieved so little. He retrieved a pile of memoranda he had written and showed her how Kissinger had responded. On every single one of Wilson's proposals, Derian recalled, "Kissinger had checked the 'no' box. Great and small. And in some places . . . he had written 'no' in his own handwriting and underlined it! Put his initials."² Kissinger's "no's," however, do not tell the full story of the Bureau or of human rights in his State Department. Derian, who transformed the Bureau into a major voice within the Carter administration, did not start from scratch.³

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1. Kissinger to Chilean Foreign Minister Patricio Carvajal, 1975, quoted in Peter Kornbluh, *The Pinochet File: A Declassified Dossier on Atrocity and Accountability* (New York, 2003), 228.

2. Interview with Patricia Derian, quoted in Jeffrey D. Merritt, "Unilateral Human Rights Intercession: American Practice under Nixon, Ford, and Carter," in *The Diplomacy of Human Rights*, ed. David D. Newson (Lanham, MD, 1986), 58 n7.

3. Derian was a former civil rights activist and Democratic party organizer who was first the Bureau coordinator and, after Congress upgraded the position, assistant secretary of state. On her role, see, for example, Kathryn Sikkink, *Mixed Signals: U.S. Human Rights Policy and Latin America* (Ithaca, NY, 2004), 123. More generally on the Bureau's role in the Carter years, see

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It was in Kissinger's State Department that human rights were institutionalized, and it was Kissinger's State Department that set in place the standard operating procedures for the Carter administration's human rights approaches.⁴

Drawing primarily on the recently declassified records of the Bureau and other State Department records, this article examines the conflict between Congress and Kissinger over human rights as it played out during the Bureau's first two and a half years, from mid-1975 until the end of the Ford administration in January 1977.⁵ The Bureau's major task was dealing with congressional legislation tying aid to human rights criteria and in particular with Section 502B of the Foreign Assistance Act, a new provision that called for cutting off security assistance to countries that engaged in gross violations of human rights. It has long been known that the State Department evaded Congress's 502B mandate by refusing to reduce aid to human rights violators or to justify its continuation on security grounds, and that Kissinger evaded 502B reporting requirements by refusing to provide Congress with the individual country reports prepared by the Bureau.⁶

The declassified documents allow us to see the full, behind-the-scenes maneuvering behind this process. The story of the State Department's response to the 502B legislation shows that Kissinger alone, against the advice of his closest advisers, drove the State Department's thoroughly intransigent response to the new legislation. Within the department, there was broad-based disagreement—centered in the Policy Planning Staff, the Office of the Legal

Howard Warshawsky, "The Department of State and Human Rights Policy: A Case Study of the Human Rights Bureau," *World Affairs* 142 (1980): 188–215; Edwin S. Maynard, "The Bureaucracy and Implementation of U.S. Human Rights Policy," *Human Rights Quarterly* 11 (1989): 175–248; David Earl Morrison, "Human Rights Foreign Policy Decision Making in the U.S. State Department and Bureau of Human Rights and Humanitarian Affairs: Process and Perception" (Ph.D. diss., University of Maryland, 1987); Victor Kaufman, "The Bureau of Human Rights During the Carter Administration," *Historian* 61, no. 1 (1998): 51–66; Daniel Drezner, "Ideas, Bureaucratic Politics, and the Crafting of Foreign Policy," *American Journal of Political Science* 44, no. 4 (October 2000): 744.

4. On this point, see also Sikkink, *Mixed Signals*, xvii, 70.

5. After the final version of this manuscript was accepted in February 2009, related documents appeared in a new online volume of *Foreign Relations of the United States*. References to the most pertinent of these documents have been added below in the footnotes. See U.S. Department of State, *Papers Relating to the Foreign Relations of the United States, 1969–1976, Volume E-3, Documents on Global Issues, 1973–1976* (Washington, DC, 2009), <http://history.state.gov/historicaldocuments> (accessed May 10, 2010) (hereafter cited as *FRUS 1969–1976 E-3*).

6. The early years of the Bureau have received relatively little attention. The best accounts of the Ford years are Lars Schoultz, *Human Rights and United States Policy toward Latin America* (Princeton, NJ, 1981), 123–26, 250–7; Roberta Cohen, "Human Rights Decision-Making in the Executive Branch: Some Proposals for a Coordinated Strategy," in *Human Rights and American Foreign Policy*, ed. Donald P. Kommers and Gilbert D. Loescher (Notre Dame, IN, 1979), 217–21. See also Clare Apodaca, *Understanding U.S. Human Rights Policy: A Paradoxical Legacy* (New York, 2006), 29–52; the broad survey of Congress's role in David P. Forsythe, *Human Rights and U.S. Foreign Policy: Congress Reconsidered* (Gainesville, FL, 1988); and Robert A. Pastor, *Congress and the Politics of U.S. Foreign Economic Policy, 1929–1976* (Berkeley, CA, 1980), 301–21.

Adviser, and the Office of Congressional Relations, but also including officers in the field—with Kissinger’s blanket refusal to include human rights as a consideration in policymaking. Despite recommendations from key advisers to meet Congress halfway or to make an effort to appear cooperative, Kissinger repeatedly torpedoed efforts at even the most minimal accommodation.

By failing to develop a positive, proactive approach to human rights, Kissinger left it to Congress to implement a reactive, punitive, and unilateral approach that would set the human rights agenda long after the Ford administration. The end result of the conflict between Congress and Kissinger was that congressional leaders felt they had no choice but to enact increasingly restrictive legislation, producing precisely the outcome State Department officials wanted to avoid.⁷ Yet, despite Kissinger’s dogged efforts to undermine it, this article argues, the Bureau during his tenure performed an important educative function, inculcating a new mindset, establishing new diplomatic precedents and procedures, and setting in motion the process through which human rights became a normal part of foreign policy considerations.⁸

The struggle over the proper place of human rights in U.S. foreign relations was part of broader congressional challenge to the “imperial presidency” over the role of the United States in the post-Vietnam War era. It was also the product of deeper transformations in international politics occurring in this period, including dramatic growth in information flows and transnational activism, and the blurring of boundaries between “domestic” and “foreign.”⁹ As one commentator noted at the time, a number of long-term issues were expanding the foreign policy public and increasing Congress’s role, including the demise of the Cold War consensus, the success of ethnic lobbies, the importance of international economic issues, and improved communications and television that projected world events into living rooms as never before. As the head of the senior foreign policy body, the onus was on Kissinger to take the lead in developing constructive ways to engage Congress in foreign policy under the new conditions. But instead of accommodating the new realities, Kissinger held his breath, wishing he could “wave [his] wand” and turn the “new Congressional

7. See also Sikkink, *Mixed Signals*, 106–7. Clare Apodaca’s useful account argues that “human rights policy [in the Nixon and Ford administrations] was the unintended consequence of the clash between Congress and the executive branch”—unintended in the sense that Congress used human rights as a vehicle to restrain executive power. Apodaca, *Understanding U.S. Human Rights Policy*, 30. As I see it, however, the human rights framework established in this period was very much the one Congress intended, and it elicited a significant degree of compliance and sympathy within the State Department except at the highest level.

8. Compare legal scholar Stephen B. Cohen, who writes, “During Kissinger’s tenure . . . Congress was almost entirely unsuccessful in influencing the Executive to change its behavior.” Stephen B. Cohen, “Conditioning U.S. Security Assistance on Human Rights Practices,” *American Journal of International Law* 76, no. 2 (April 1982): 250.

9. Daniel J. Sargent, “From Internationalism to Globalism: The United States and the Transformation of International Politics in the 1970s,” 398 (Ph.D. diss., Harvard University, 2008).

watchdog” into the “old Congressional lapdog.”¹⁰ It was a counterproductive strategy. Even before a Democratic landslide in the 1974 midterm elections seated a freshman cohort with a strong interest in human rights and congressional empowerment, the congressional challenge had already produced the War Powers Resolution, large cuts in aid to South Vietnam, a ban on further bombing of Cambodia, and the Jackson-Vanik Amendment.¹¹ The agenda was set, for the most part, by a group dubbed “the new internationalists,” advocates of economic cooperation, cultural exchange, human rights, support for democracy, and a less militarized foreign policy.¹² Their approach struck a chord with a large part of the American public that saw the new internationalism as a restoration of values and morality to their proper place in policy.¹³ The new internationalists catalyzed a concern with global human rights, growing in force since the late 1960s, into legislation with lasting effects.¹⁴ In doing so, they drew on established tactics for wielding congressional influence in foreign affairs: the use of spending measures, subcommittees, and individual efforts to “frame” issues, and thereby change the way policymakers and the public thought about them.¹⁵ Although their influence was significant in tangible ways—leading to the creation of an institutional home for human rights in the State Department and the introduction of human rights reporting—they also played an important role in shaping public engagement in what has been called “the human rights revolution” of the 1970s.

10. Robert A. Pastor, “Coping with Congress’s Foreign Policy,” *Foreign Service Journal* 52 (December 1975): 15–16, 23.

11. Jussi Hahnhimaki, *Flawed Architect: Henry Kissinger and American Foreign Policy* (New York, 2004), 357.

12. Robert David Johnson, *Congress and the Cold War* (New York, 2006), xiv.

13. To offer but one example, in the six weeks after the 1973 military coup in Chile, which provoked a very strong public reaction in the United States and Europe, the House Subcommittee on Inter-American Affairs received letters, telegrams, and petitions from 2,695 people, of whom all but two expressed serious concern about the coup and/or subsequent violations of human rights. (Interestingly, the overwhelming majority came from California.) Memorandum, R. Michael Finlay to Dante Fascell, “Correspondence on Chile,” October 30, 1973, Record Group (RG) 233, 93rd Congress, International Relations Committee, Subcommittee on Inter-American Affairs, Center for Legislative Archives, National Archives and Records Administration (hereafter NARA), Washington, DC.

14. Interest in international human rights was on the upswing before the congressional insurgency of the 1970s, as evidenced by public concern over torture in Greece and Brazil in the late 1960s. On Greece, see Barbara Keys, “Anti-Torture Politics: Amnesty International, the Greek Junta, and the Origins of the U.S. Human Rights Boom,” in *Human Rights in the Twentieth Century: An International History*, ed. Akira Iriye, Petra Goedde, and William Hitchcock (New York, forthcoming); on Brazil, see James Green, “*We Cannot Remain Silent*”: *Opposition to the Brazilian Military Dictatorship in the United States, 1964–85* (Durham, NC, forthcoming); Pastor, *Congress*, 302–03. Daniel Sargent also shows that human rights concerns were evident in the late 1960s. He argues that in the case of Biafra, which fell cleanly outside of Cold War parameters, Nixon and to a lesser extent Kissinger were willing to engage in humanitarian activism, whereas in the case of Bangladesh, Cold War concerns thoroughly routed humanitarianism. Sargent, “From Internationalism to Globalism,” 279–80.

15. Johnson, *Congress and the Cold War*, xxiii.

The implementation of human rights diplomacy posed many dilemmas, succinctly captured in Sandra Vogelgesang's question: which human rights, whose, and at what cost to whom? Which is more urgent: acting against electric-shock torture of suspected terrorists, preventing children from dying of easily treatable diseases, or promoting self-determination? And which tactics are most efficacious: quiet diplomacy, multilateral initiatives, public condemnation, symbolic gestures, or sanctions?¹⁶ The answers Congress gave in the first half of the 1970s—a focus on rights based on “the integrity of the person” and on sanctions against allies as the central tool—in some respects avoided the truly difficult questions. It was easy enough to cut aid to friendly regimes that engaged in widespread torture, but many of the worst violators did not receive U.S. aid and were immune to such blandishments. Moreover, as Vogelgesang argues, Congress failed in a more important educative responsibility: to convince the American public to pay an economic price for the promotion of rights.¹⁷

If Congress's approach of the mid-1970s posed its own set of problems, prefiguring the dilemmas the Carter administration would face, the contrasting approach offered by Kissinger offered no solution at all. When Kissinger's actions promoted human rights, it was only reluctantly or as a means to a different end. In assessing the most consequential human rights outcome of Kissinger's tenure, the 1975 Helsinki Final Act of the Conference on Security and Cooperation in Europe and its Basket III human rights provisions, Jussi Hanhimäki concludes that Kissinger “deserves some credit” for Soviet concessions, including on human rights, but argues that Kissinger's was a “reluctant” contribution delivered only as a means to achieve international stability.¹⁸ Jeremi Suri has recently argued that human rights were “embedded” in Kissinger's *Realpolitik*, but this was true only when it came to Europeans and only insofar as human rights were a byproduct of international stability.¹⁹ Some human rights were “important,” Kissinger said vaguely to the Indian foreign minister in 1976.

16. Sandra Vogelgesang, “What Price Principle? U.S. Policy on Human Rights,” *Foreign Affairs* 56 (Spring 1978): 825, 830. Neoconservative scholar Joshua Muravchik offers the sharpest critique of Carter's punitive approach to human rights as ineffective. Muravchik cites as an example of a better approach Congressman Dante Fascell's failed proposal to create an Institute for Human Rights and Freedom that would have funded foreign human rights groups and aided victims of political repression. Joshua Muravchik, *The Uncertain Crusade: Jimmy Carter and the Dilemmas of Human Rights Policy* (Lanham, MD, 1986), 168–70. For a useful introduction to the debates over Carter's human rights policies, see David F. Schmitz and Vanessa Walker, “Jimmy Carter and the Foreign Policy of Human Rights: The Development of a Post-Cold War Foreign Policy,” *Diplomatic History* 28, no. 1 (January 2004): 113–43. A briefing paper on human rights prepared by the outgoing Ford administration provides a useful summary of policy options, debates, and developments up to that time: Transition Paper on Human Rights, n.d., doc. 264 in *FRUS 1969–1976 E-3*.

17. Vogelgesang, “What Price Principle?” 838.

18. Jussi Hanhimäki, “‘They Can Write It in Swahili’: Kissinger, the Soviets, and the Helsinki Accords, 1973–5,” *Journal of Transatlantic Studies* 1, no. 1 (2003): 37–38, 55.

19. Jeremi Suri, “Détente and Human Rights: American and West European Perspectives on International Change,” *Cold War History* 8, no. 4 (November 2008): 527–45. Suri argues

Others—the ones that by most Western definitions in the 1970s were the “most fundamental” rights—were not.²⁰ The electric-shock torture of pregnant women and the mass murder of innocent civilians by friendly authoritarian regimes that moved so many Americans in the 1970s left Kissinger untouched. His indifference to the fate of the people, especially in the third world, who suffered the consequences of his policies is well known.²¹ The story of the Bureau and Section 502B highlights just how alone Kissinger was in this stance, even among other hard-nosed diplomats. In denying the appropriateness of human rights considerations in foreign policy decisions, Kissinger was swimming against an onrushing tide.

FORMATION OF THE BUREAU

The end of the Vietnam War set the stage for one of the sharpest confrontations between the executive and legislative branches over foreign policy.²² This conflict pitted an unusually secretive secretary of state, intent on expanding the powers of the executive branch, against an assertive Congress determined to wrest back leverage in foreign policy. Each side drew starkly opposing lessons from the diminution in American prestige and power presaged by the Vietnam War. Kissinger was determined to augment U.S. support for authoritarian anti-Communist regimes as part of his quest for global stability. That search for order took precedence over other concerns, including morality, and efforts to promote democracy or moderate internal repression by allies were eschewed as quixotic and naive. He repeatedly alluded to human rights in dismissive terms, as “easy slogans,” “empty posturing,” “sentimental nonsense,” and “malarkey.”²³

elsewhere that Kissinger was a deeply moral man guided by “basic principles,” who embraced a more “complex” worldview than could be subsumed under the rhetoric of human rights. *Henry Kissinger and the American Century* (Cambridge, England, 2007), 186, 241–46.

20. Kissinger’s reply to Indian complaints about Congressman Donald Fraser’s hearings on India was: “As I have said publicly, I am in total disagreement with Fraser. He would make us the world’s policeman. There are certain human rights which are important.” He did not go on to say which rights were important, but he implicitly disagreed with Fraser’s emphasis on political imprisonment and torture. Memorandum of Conversation, The Secretary’s 8 October 1976 Meeting with Indian Foreign Minister Chavan, October 12, 1976, U.S. Department of State, *Papers Relating to the Foreign Relations of the United States, 1969–1976, Volume E-8, Documents on South Asia, 1973–1976* (Washington, DC., 2007), <http://www.state.gov/t/pa/ho/frus/nixon/e8/97094.htm> (accessed June 20, 2008).

21. See, e.g., Hanhimäki, *Flawed Architect*, 438, 477–78. Hanhimäki emphasizes the pressures and limitations that constrained Kissinger’s choices and worldview, arguing that Kissinger’s “mistaken and simplistic foreign policy architecture” led him to disregard the fate of real people, whom he regarded as mere pawns.

22. Congressional rebellion against Cold War foreign policy began even before the Vietnam War. The “foreign aid revolt” of 1963, in particular, was an important precedent for Congressional action in the 1970s. Johnson, *Congress and the Cold War*, 105.

23. Quoted (in order) in Suri, “Détente and Human Rights,” 529; Hugh M. Arnold, “Henry Kissinger and Human Rights,” *Universal Human Rights* 2, no. 4 (October–December 1980): 63; Sargent, “From Internationalism to Globalism,” 420; Suri, *Henry Kissinger*, 251.

As President Richard Nixon said, “We deal with governments as they are.”²⁴ In confirmation hearings in 1973 after being nominated as Secretary of State, Kissinger said, “I believe it is dangerous for us to make the domestic policy of countries around the world a direct objective of American foreign policy. . . . The protection of basic human rights is a very sensitive aspect of the domestic jurisdiction of . . . governments.”²⁵

As the administration’s amoral approach to policymaking came under critical scrutiny in the 1976 presidential campaign, Kissinger moderated his public stance, acknowledging moral purpose as a legitimate concern in several important speeches. His policies and his private statements, however, remained unchanged. In a 1976 speech to the Organization of American States in Santiago, for example, Kissinger eloquently endorsed U.S. support of human rights through multilateral institutions.²⁶ In private, however, he immediately gave word to his staff not to take the message too seriously, and he personally assured his host, military dictator Augusto Pinochet, that the speech was solely a tactical response to criticism from Congress.²⁷ He repeatedly demanded from Congress the flexibility to use “quiet diplomacy” on human rights issues, but his quiet diplomacy was better characterized as inaudible, and at key moments he endorsed or gave the green light to major abuses.²⁸

Kissinger was also loath to share power and along with Nixon had attempted to assert highly centralized control over foreign policy. As secretary of state, he was distrustful even of his own bureaucracy and profoundly disdainful of Congress’s foreign policy prerogatives. Winston Lord, one of Kissinger’s top advisers, later remarked, “On human rights generally, [Kissinger] never had a full appreciation of the need for public and Congressional support, which might come more naturally to people born in the United States. In many ways he was more comfortable dealing with authoritarian leaders who could make decisions than in dealing with messy democracies and parliaments. And he did not fully appreciate . . . that [having] democracies elsewhere helps on national security

24. Richard M. Nixon, *U.S. Foreign Policy for the 1970’s: Building for Peace; A Report to the Congress by Richard Nixon, February 25, 1971* (Washington, DC, 1971), 18.

25. Quoted in Cohen, “Human Rights Decision-Making,” 217.

26. Arnold, “Henry Kissinger,” 69. Arnold charts a sharp increase in Kissinger’s use of the term “human rights” in 1976 (*ibid.*, 61). See also Jeremi Suri, *Henry Kissinger*, 244–45.

27. On Kissinger’s remarks to his own staff, see James Wilson, “Diplomatic Theology—An Early Chronicle of Human Rights at State,” [August 1977], 36–37, James Wilson Papers, 1958–77, Human Rights and Humanitarian Affairs, Gerald R. Ford Library, Ann Arbor, Michigan. On Kissinger’s remarks to Pinochet, see Memorandum of Conversation, “U.S.-Chilean Relations,” June 8, 1976, Chile Declassification Project, Department of State, Freedom of Information Act Electronic Reading Room, <http://foia.state.gov> (accessed January 10, 2008) (hereafter DOS FOIA ERR). Wilson also notes that some geographic bureaus interpreted Kissinger’s 1975 speech in Minneapolis as “The Moral Basis of U.S. Foreign Policy” to mean that human rights issues were not to be raised. Wilson, “Diplomatic Theology,” 21.

28. See, e.g., Sikkink, *Mixed Signals*, 107–20.

goals.”²⁹ Kissinger’s beliefs about the nature of the international system thus intersected with his view of Congress as a rival power base to create an extraordinary level of obstinacy when Congress began to take up the issue of human rights.

In stark contrast to Kissinger, congressional critics of the Vietnam War saw a renewed commitment to morality in U.S. foreign policy as essential to restoring Americans’ faith in their government and regaining the world’s respect. Partly in reaction to Kissinger’s policies, human rights became a rallying cry for a global movement in this period. It was, as one 1975 State Department report put it, “no longer a bleeding heart issue presided [over] by fairies in Geneva.”³⁰ Both among the American public and in Congress, concern mounted over the human rights records of U.S. allies, most notably in Latin America where military dictatorships engaged in widespread torture, arbitrary detention, and execution of political opponents. Led by Donald Fraser and Tom Harkin in the House and Jacob Javits, Hubert Humphrey, Edward Kennedy, Alan Cranston, James Abourezk, and Henry “Scoop” Jackson in the Senate, Congress placed increasing pressure on the White House and the State Department to take human rights concerns into consideration in the formation of policy. These were, in the words of political scientist Lars Schoultz, “the salad years” for human rights legislation, with a liberal Congress that “demonstrated greater concern for the international protection of human rights than any other in United States history.”³¹

The new human rights focus, which had begun to emerge in the late 1960s, gathered steam in 1973 when Fraser, a liberal Democrat from Minnesota and an opponent of the Vietnam War, transformed the chairmanship of the Subcommittee on International Organizations and Movements of the House Committee on Foreign Affairs into a major vehicle for the advancement of human rights.³² Under the chairmanship of Pennsylvania Democrat Thomas “Doc” Morgan, a man with little interest in international affairs and what historian Robert Johnson describes as “a limited work ethic,” the Foreign Affairs Committee had long served as a rubber stamp for the executive branch. Congressional reforms in the 1970s, however, had increased the power of foreign affairs subcommittees, and, after Watergate, even Morgan grew willing to allow subcommittee activities that challenged executive power. Along with three other junior Democrats who assumed subcommittee chairmanships in 1971, often

29. Interview with Winston Lord, 1998, The Foreign Affairs Oral History Collection of the Association for Diplomatic Studies and Training, Library of Congress, Manuscript Division, Washington, DC, <http://hdl.loc.gov/loc.mss/mfdip.2004loro2> (accessed January 10, 2008).

30. “Human Rights Today,” undated [1975], Human Rights Subject File, 1975, box 1, “General” folder, Bureau of Human Rights and Humanitarian Affairs, State Department, RG 59, NARA, College Park, Maryland (hereafter HA, NARA).

31. Schoultz, *Human Rights*, 253.

32. On Congressional interest in human rights in the late 1960s and early 1970s, see, for example, Green, “*We Cannot Remain Silent*,” chap. 8.

with staffers who had worked in the peace movement, Fraser soon began shaking things up.³³

In 1973, Fraser's subcommittee held a series of fifteen public hearings on U.S. foreign policy and human rights, drawing testimony from government officials, lawyers, scholars, and representatives of nongovernmental organizations (NGOs). Reflecting growing ties between Congress and human rights NGOs, Joseph Eldridge of the Washington Office on Latin America, a small offshoot of the National Council of Churches, and Ed Snyder of the Friends Service Committee on National Legislation played key roles in selecting witnesses.³⁴ The committee's major conclusion was that human rights ought to be accorded higher priority in U.S. foreign policy, and in particular that "the Department of State should treat human rights factors as a regular part of U.S. foreign policy decision-making." The subcommittee report issued in March 1974 suggested that it was "morally imperative and practically necessary" that human rights be accorded more importance in shaping foreign policy: first, to enhance U.S. moral leadership in the world; and second, because growing interdependence meant that abuses in one country could have effects elsewhere, including "the potential for international conflagration."³⁵

The subcommittee's report led directly to the institutionalization of human rights in the State Department. At the time, the State Department considered human rights at best a marginal concern, particularly in bilateral diplomacy. As late as 1976, a relatively detailed description of the State Department's duties and organization did not use the term "human rights" at all.³⁶ When Fraser held his hearings, the State Department had only one person assigned full time to human rights issues: Warren Hewitt, an officer in the Bureau of International Organization Affairs (IO) who handled technical matters involving international human rights commissions and agreements, especially at the United Nations.³⁷ The Office of Legal Affairs also had an officer whose mandate included, among others, human rights issues. No one else was charged with monitoring or implementing human rights concerns. As one official told Fraser's subcommit-

33. Johnson, *Congress and the Cold War*, 179–80; James M. McCormick, "Decision Making in the Foreign Affairs and Foreign Relations Committees," in *Congress Resurgent: Foreign and Defense Policy on Capitol Hill*, ed. Randall B. Ripley and James M. Lindsay (Ann Arbor, MI, 1993), 127, 138. As staffer Clifford Hackett later put it, from Morgan's point of view, "wild people working for . . . Fraser [were] creating problems." Quoted in Giles Scott-Smith, "Mending the 'Unhinged Alliance' in the 1970s: Transatlantic Relations, Public Diplomacy, and the Origins of the European Union Visitors Program," *Diplomacy and Statecraft* 16 (2005): 754.

34. William Korey, *NGOs and the Universal Declaration of Human Rights: A Curious Grapevine* (New York, 1998), 186.

35. Committee on Foreign Affairs, House of Representatives, *Human Rights in the World Community: A Call for U.S. Leadership: Report of the Subcommittee on International Organizations and Movements, March 27, 1974* (Washington, DC, 1974), 9. William Korey argues that the report had "a very significant and, to an extent, revolutionary impact." Korey, *NGOs*, 181.

36. Schultz, *Human Rights*, 124 n34.

37. Committee on Foreign Affairs, *Human Rights in the World Community*, 124.

tee, human rights considerations were most often not seen “as legitimate components of the policymaking process, [but] as external considerations to be avoided in that process.”³⁸

Fraser’s first priority was to increase the number of State Department staff working on human rights as an essential means of introducing human rights considerations into policymaking. The subcommittee’s report called for the appointment of an assistant legal adviser on human rights in the Office of the Legal Adviser and the appointment of a human rights officer in each regional bureau.³⁹ Of greatest significance was Fraser’s push for the creation of a central office with overall responsibility for human rights, headed by an officer who would ensure that human rights had a place in policymaking. Senator Edward Kennedy had been pushing for such an office since 1969, and, fearing further action from Congress, in mid-1974 Deputy Secretary Robert Ingersoll persuaded Kissinger to approve a human rights office.⁴⁰

Thus was born a human rights bureaucracy within the State Department. Kissinger saw the appointment of a Coordinator for Humanitarian Affairs within Ingersoll’s office in April 1975 as a means of coping with “the problem”—the problem being not human rights abuses abroad but congressional assertiveness in the realm of foreign policy.⁴¹ With only a coordinating and not an

38. *Ibid.*, 12–13.

39. *Ibid.*

40. Fraser had introduced in 1973 a House resolution to create a Bureau of Humanitarian Affairs, which failed. In July 1974, he wrote to Deputy Secretary Robert Ingersoll to push the idea again. This letter was apparently the trigger for Ingersoll’s move. John P. Salzberg, “A View from the Hill: U.S. Legislation and Human Rights,” in *The Diplomacy of Human Rights*, ed. David Newsom (Lanhan, MD, 1986), 17; Patrick Breslin, “Human Rights: Rhetoric or Action?” *Washington Post*, February 27, 1977, 33. On early proposals for a Bureau, see Schoultz, *Human Rights*, 123. On discussions within the State Department, see Minutes of the Acting Secretary’s Functional Staff Meeting, Washington, June 12, 1974, doc. 236; Memorandum, Ranard to Snider, July 17, 1974, doc. 239; Briefing Memorandum, Brown to Kissinger, August 8, 1974, doc. 241, all in *FRUS 1969–1976 E-3*.

41. Wilson, “Diplomatic Theology,” 3. Wilson’s appointment had been delayed by Frank Kellogg, a political appointee and incumbent special assistant to the secretary for refugees, whose job was to be subsumed by the new coordinator. He delayed Wilson’s appointment by taking his case to friends in the Senate, who “deluged the Department with letters and calls.” *Ibid.*, 5. The Bureau went through various iterations, best summarized on the Web site of its current incarnation, the Bureau of Democracy, Human Rights, and Labor: “On Apr 21, 1975, in response to growing Congressional interest in human rights issues in foreign policy, the Department of State established the position of Coordinator for Humanitarian Affairs. The International Security Assistance and Arms Export Control Act of 1976 . . . made the Coordinator a Presidential appointee, subject to the advice and consent of the Senate, and changed the title to Coordinator for Human Rights and Humanitarian Affairs. The Foreign Relations Authorization Act for Fiscal Year 1978 . . . changed the Coordinator’s title to Assistant Secretary of State for Human Rights and Humanitarian Affairs. The Department of State, by administrative action, established the Bureau of Human Rights and Humanitarian Affairs on Oct 27, 1977. Section 162 of the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995 . . . authorized the appointment of an Assistant Secretary of State for Democracy, Human Rights, and Labor.” “Assistant Secretaries of State for Democracy, Human Rights, and Labor,” <http://www.state.gov/t/pa/ho/po/12258.htm> (accessed February 20, 2009). See also Ingersoll to Eastland, April 18, 1975, doc. 250 in *FRUS 1969–1976 E-3*.

operational role, what became the Bureau of Humanitarian Affairs was, as one newspaper commented, merely “a cosmetic gesture designed to placate congressional liberals.”⁴² In an indication of the low profile Kissinger accorded the new position, his staff plucked the new coordinator, career diplomat James Wilson, from an assignment in Micronesia. Wilson recalled that when he took office, he “knew nothing about human rights beyond an acquaintanceship with the UN Universal Declaration of Human Rights during my law school days.”⁴³ For Kissinger, it was qualification enough.

In accordance with the Fraser report’s recommendations, Charles Runyon was appointed Assistant Legal Advisor for Human Rights, and human rights officers were appointed in the Department’s five geographic bureaus (Latin America, Europe, Africa, the Near East, and East Asia).⁴⁴ In part because Latin America was widely regarded as a hotspot of human rights abuses, the Latin American bureau’s human rights officer, George Lister, devoted full-time work to the issue, but in other bureaus officers merely added human rights to already full portfolios, allotting it perhaps 10 to 15 percent of their time.⁴⁵

As another diplomat later put it, Wilson had been “handed a dead cat.”⁴⁶ In the State Department at the time, concern for human rights was regarded as “the best guarantor of an aborted career.”⁴⁷ It was an accurate prediction in Wilson’s case. Marginalized until Carter took office, he retired shortly after Carter’s people shunted him into a minor position—“a reward,” as one commentator put it, “for a job [Carter administration officials] considered poorly done.”⁴⁸ Handed a weak mandate and wielding virtually no authority—“I really couldn’t do anything to anybody except talk to them,” Wilson’s deputy recalled—Wilson’s ability to effect real change, even if he had wanted to, was

42. Benjamin Welles, “State Department Turns to Human Rights Concern,” *Christian Science Monitor*, April 22, 1975, 16.

43. Wilson, “Diplomatic Theology,” 1.

44. Letter, Donald Fraser to Henry Kissinger, June 27, 1974, and Memorandum, George Lister to Bill Rogers, October 9, 1974, Papers of George Lister, Human Rights Bureau, University of Texas, Austin, <http://www.utexas.edu/law/academics/centers/humanrights/lister/bureau/bureau.php> (accessed February 17, 2008). Ronald Palmer characterized Runyon as “deeply committed to human rights” but “relatively ineffective.” Memorandum, Confidential, March 17, 1976, “Ronald Palmer,” Ivan Morris Papers, box 4, Center for Human Rights Documentation and Research, Columbia University, New York, New York (hereafter Morris Papers).

45. Wilson, “Diplomatic Theology,” 30; Memorandum, Confidential, March 17, 1976, “Ronald Palmer,” Morris Papers, box 4.

46. Interviewer’s comment in “Interview with James M. Wilson, Jr.,” March 31, 1999, Foreign Affairs Oral History Collection of the Association for Diplomatic Studies and Training, Library of Congress, Manuscript Division, <http://hdl.loc.gov/loc.mss/mfdip.2004wil14> (accessed January 10, 2008).

47. International law specialist Tom Farer, testifying before Fraser’s subcommittee in 1973, quoted in Schoultz, *Human Rights*, 109.

48. *Ibid.*, 125 n37.

limited.⁴⁹ His own view was that human rights were a “laudable” goal but that integrating them into policymaking was problematic. Like many in the State Department, he placed his faith in “quiet diplomacy” and believed that public criticism of foreign governments’ human rights records did more harm than good.⁵⁰ A reticent official who made only one public appearance during his tenure in the Bureau, Wilson was ill suited for the role of human rights advocate even if circumstances had been favorable—and circumstances were distinctly unfavorable.⁵¹ Because refugees also fell under his office’s purview, he spent his first months preoccupied with the Vietnamese refugee crisis triggered by the fall of Saigon.⁵² The office was severely understaffed, at its best comprising Wilson, deputy director Ron Palmer, and one assistant. Repeated requests to supplement the skeletal staff, which under Carter would reach twenty, went unmet.⁵³ It was barely enough to manage the immediate task of coping with congressional initiatives; Wilson had neither the resources nor the imagination for grander human rights initiatives.

HUMAN RIGHTS LEGISLATION

Watergate shifted the balance of power between the executive and legislative branches of government. As revelations of White House dirty deeds mounted, one Senate staffer recalled, “the attitude of the whole damn Congress changed.”⁵⁴ Foreign aid was one focal point of congressional assertiveness. As the Nixon and then the Ford administrations increased military aid to brutal and repressive regimes in Indonesia, Iran, Chile, and the Congo, critics in Congress grew increasingly irate. Congressional advocates of linking aid to human rights believed that providing military or economic assistance to regimes that violated human rights made the United States partly responsible for abuses.⁵⁵ Noting that the most repressive allies often received the largest amounts of aid, critics charged that U.S. military assistance served to increase repression. (Academic studies have since shown that aid went disproportionately to the

49. “Interview with Ronald D. Palmer,” 1990, The Foreign Affairs Oral History Collection of the Association for Diplomatic Studies and Training, Library of Congress, Manuscript Division, Washington, DC, <http://hdl.loc.gov/loc.mss/mfdip.2004pal03> (accessed January 10, 2008).

50. Wilson, “Diplomatic Theology,” 4. Lars Schoultz writes, “[Wilson] spent much of his time attempting to convince Congress not to pass human rights legislation.” Schoultz, *Human Rights*, 125. Wilson summarized his views upon leaving office in Memorandum, Wilson to Robinson, November 8, 1976, doc. 262 in *FRUS 1969–1976 E-3*.

51. Schoultz, *Human Rights*, 125.

52. Wilson, “Diplomatic Theology,” 7.

53. *Ibid.*, 9–10, *passim*; Drezner, “Ideas, Bureaucratic Politics,” 744. Palmer had most recently served as political and military officer in Manila.

54. “Pat M. Holt, Chief of Staff, Foreign Relations Committee,” Oral History Interviews, Senate Historical Office, Washington, DC, 245.

55. Sikkink, *Mixed Signals*, 72.

worst human rights violators.⁵⁶) In Latin America in particular, the military was deeply involved in maintaining internal security, suggesting to critics that U.S. military aid was being used to augment internal repression. As Fraser put it, “military aid to a regime which practices torture was simply wrong on its face, [because] it enhanced the power of that government to remain in control and repress its own citizens.”⁵⁷ Liberals noted as well that associating with brutal regimes violated U.S. ideals. Even if cutbacks in aid would be ineffective in moderating abuses, they argued, it was in America’s interest to uphold its values by dissociating itself from regimes that tortured and murdered political opponents.⁵⁸

The result of the congressional revolt against Kissinger’s *Realpolitik* was a string of legislative initiatives tying foreign aid to human rights criteria. This precedent-setting series of laws made human rights a legally required component of bilateral diplomacy involving aid. Allying with conservatives interested in cutting the foreign aid budget, liberals in Congress succeeded in passing a series of measures, each more stringent than the last.⁵⁹ Section 32 of the Foreign Assistance Act of 1973 requested that the executive branch deny economic or military assistance to governments that held political prisoners. Although the State Department collected information to comply with the provision, an official admitted in testimony before the House Foreign Affairs Committee that the information had led to no action. Department officials argued that it was too difficult to define “political prisoner,” that cutting aid was inappropriate as a tool of diplomacy, and that quiet diplomacy on behalf of human rights was preferable.⁶⁰

Fraser and his staff then drafted and pushed through Congress a second effort to link human rights and aid. Section 502B of the 1974 Foreign Assistance Act, in nonbinding “sense of Congress” language, stated that “except in extraordinary circumstances, the President shall substantially reduce or terminate security assistance to any government which engages in a consistent pattern of gross

56. Lars Schoultz, “U.S. Foreign Policy and Human Rights Violations in Latin America: A Comparative Analysis of Foreign Aid Distributions,” *Comparative Politics* 13, no. 2 (1981): 155–56, 169; Michael Stohl, David Carleton and Steven E. Johnson, “Human Rights and U.S. Foreign Assistance from Nixon to Carter,” *Journal of Peace Research* 21, no. 3 (1984): 215–26.

57. Donald M. Fraser, “Human Rights and U.S. Foreign Policy,” *International Studies Quarterly* 23, no. 2 (June 1979): 179.

58. David F. Schmitz, *The United States and Right-Wing Dictatorships* (Cambridge, UK, 2006), 72–73; Schoultz, *Human Rights*, 212–21. Schoultz notes, with regard to Latin America, that the decline of communist subversion as a threat in the 1970s reduced the rationale for U.S. military aid to the goal of retaining access and influence.

59. Sikkink, *Mixed Signals*, 71. A useful summary of the legislation is provided in Patricia Weiss Fagen, “U.S. Foreign Policy and Human Rights: The Role of Congress,” in *Parliamentary Control over Foreign Policy: Legal Essays*, ed. Antonio Cassese (Germantown, MD, 1980), 109–21. On conservative opposition to foreign aid, see Johnson, *Congress and the Cold War* and the analysis of human rights voting in Forsythe, *Human Rights and U.S. Foreign Policy*, 24–50.

60. Cohen, “Conditioning U.S. Security Assistance,” 250; David Weissbrodt, “Human Rights Legislation and U.S. Foreign Policy,” *Georgia Journal of International and Comparative Law* 231 (1977): 241.

violations of internationally recognized human rights.” Responding to State Department complaints that Section 32’s reference to “political prisoner” had lacked precise definition, Section 502B explicitly defined “gross violations” as abuses such as torture and prolonged detention without charges, emphasizing “gross violations” on a reading of international law that said such abuses could not be regarded as merely domestic issues and that intervention to prevent them did not constitute a violation of sovereignty.⁶¹ Fraser intended to focus on protecting rights widely recognized internationally, to avoid charges of U.S. imperialism. That meant a focus on what he described as “the most fundamental of all human rights, the right to the integrity of one’s person.”⁶²

The following year, the Harkin Amendment, formally known as Section 116 of the 1975 International Development and Food Assistance Act, added economic assistance to the list of aid now tied to human rights standards and required the executive branch to provide annual human rights reports.⁶³ Again reflecting the influence of NGOs, the amendment had been drafted by Eldridge and Snyder, who had first asked Fraser to sponsor the bill. Fraser declined, fearing it would be exploited by conservative opponents of all foreign aid.⁶⁴ Harkin, one of the human rights-oriented “Watergate babies” elected in 1974, took up the cause.⁶⁵ In addition to these statutes calling for executive-branch action, Congress retained the right to amend aid provisions for specific countries, as it did when it reduced or cut off aid to South Korea, Chile, and Uruguay in the years 1974–1976.⁶⁶

Kissinger’s response to congressional human rights legislation amounted to a blanket refusal to cooperate.⁶⁷ He consistently refused to heed his advisers’

61. The State Department Office of the Legal Adviser agreed that the principles of sovereignty and noninterference did not protect a state that failed to meet international human rights obligations. Statement from the Office of the Legal Adviser concerning international law and human rights, August 26, 1974, doc. 242 in *FRUS 1969–1976 E-3*.

62. Cohen, “Conditioning U.S. Security Assistance,” 252; Fraser’s remarks in *Congressional Record* 120 H1 1,597 (daily ed. December 11, 1974), as quoted in Weissbrodt, “Human Rights,” 259; the text of the section is quoted in Weissbrodt, “Human Rights,” 242 n41; Sikkink, *Mixed Signals*, 69–70. The phrase “consistent pattern of gross violations of human rights” was borrowed from UN Economic and Social Council Resolution 1503, which governed the handling of human rights complaints. John Salzberg and Donald D. Young, “The Parliamentary Role in Implementing International Human Rights: A U.S. Example,” *Texas International Law Journal* 12 (Spring–Summer 1977): 271. Section 502B covered “security assistance” (unlike Section 32, which had covered “military assistance”) and thus included sales of arms for cash as well as military aid. Cohen, “Conditioning U.S. Security Assistance,” 252. Fraser later said of the “extraordinary circumstances” exception written into Section 502B, “We might as well have opened the barn door and let the horses out right there!” Fraser, “Human Rights,” 179.

63. Weissbrodt, “Human Rights,” 243.

64. Interview with John Salzberg, Washington, DC, November 6, 2008.

65. Korey, *NGOs*, 187.

66. *Ibid.*, 261–62. For a complete list of country-specific legislation in these years, see Cohen, “Conditioning U.S. Security Assistance,” 254–55.

67. He adopted a similar position toward congressional investigations of covert actions in 1975: “strategic stonewalling” and obstruction, as Peter Kornbluh calls it. See Kornbluh, *Pinochet File*, 220–21.

recommendations to develop a proactive stance on human rights. Before Wilson came on board, for example, Abe Sirkin of the Policy Planning Staff had written a study suggesting several positive recommendations for action on human rights. Kissinger had ignored it, and even Director of Policy Planning Winston Lord's efforts to press for a response yielded no results.⁶⁸ The memo argued that human rights violations abroad "are becoming an increasingly urgent problem for the United States," both in terms of harming the U.S. image abroad and in terms of public opinion at home. In many places, the United States was now viewed as "the special friend and protector of tyrannical regimes." Recognizing that a changing international environment had given human rights organizations and activists the power to define the national agenda, the memo urged attention to human rights as a serious issue.⁶⁹

As public and congressional interest in human rights increased pressure on the State Department, Kissinger did begin asking violators for token concessions and public relations gestures.⁷⁰ When officials in his department seemed to show genuine concern for human rights, however, Kissinger derided them as "bleeding hearts," "theologians," and "people who have a vocation for the ministry" who had gone into diplomacy only because they could not find enough churches.⁷¹ When Ambassador to Chile David Popper, a strong advocate of U.S. support for Pinochet's regime, mentioned human rights in discussions with Chilean officials, Kissinger admonished him to "cut out the political science lectures"—essentially reprimanding him for taking seriously a congressional mandate.⁷² (As the *New York Times* wrote after the comment was leaked, Kissinger's attitude toward human rights in Chile had provoked a "bitter dispute" within the Bureau of Inter-American Affairs.⁷³)

The secretary of state repeatedly told his staff that what was at stake was a matter of principle. Congress could help set the general direction of foreign policy but should not be involved in day-to-day operational decisions, especially when Congress's desires amounted to an abdication of the responsibility to

68. Wilson, "Diplomatic Theology," 4.

69. Policy Planning Staff, "U.S. Policies on Human Rights and Authoritarian Regimes," undated [October 1974], RG 59, Policy Planning Staff, Director's Files (Winston Lord), box 348, NARA, College Park, MD. I thank Daniel Sargent for a copy of this document. For a summary, see "Summary of Paper on Policies on Human Rights and Authoritarian Regimes," October 1974, doc. 243 in *FRUS 1969-1976 E-3*.

70. See, e.g., Schmitz, *United States and Right-Wing Dictatorships*, 106.

71. Wilson, "Diplomatic Theology," 20-21; Memorandum of Conversation, Secretary's Meeting with Foreign Minister Carvajal, September 29, 1975, National Security Archive Electronic Briefing Book No. 110, "The Pinochet File," <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB110/index.htm#doc8> (accessed June 10, 2008) (hereafter NSA EBB 110).

72. Quoted in "Kissinger Said to Rebuke U.S. Ambassador to Chile," *New York Times*, September 27, 1974, 18; Pastor, *Congress*, 308.

73. "Kissinger Said to Rebuke U.S. Ambassador to Chile," 18. Fraser called Kissinger's remark "outrageous" and demanded a meeting. "Kissinger is Challenged on Chile Policy," *New York Times*, September 28, 1974, 9.

protect the “national interest.”⁷⁴ Kissinger forcefully expressed his views in 1974 during a tussle with Congress over aid to Pinochet’s Chile. In staff meetings in December 1974 after Senator Kennedy had spearheaded a congressional cutoff of military aid to Chile, Kissinger called the cutoff “insane” and repeatedly railed against any form of compromise. “My position,” he said, is that “I don’t yield to Congress on matters of principle.”⁷⁵ Suggesting that Kennedy was “on some ego trip,” Kissinger repeatedly expressed eagerness for a public fight with Congress.⁷⁶

Although his advisers advocated some degree of cooperation with Congress, if for no other reason than that human rights advocates were likely to pass even more restrictions if the State Department was seen as obstructionist, Kissinger adamantly refused. In December 1974, Undersecretary for Security Assistance Carlyle Maw agreed that the issue came to down to “this silly human rights question and the publicity on it” but nevertheless urged Kissinger to work with Congress because “they’ve got the votes to get us into trouble.” Kissinger exclaimed, “Out of the question. I don’t yield to this sort of nonsense.” He explained:

We have to fight a general battle, which we do not open by this self-serving human rights attitude. . . . I’ve told you people a hundred times. Our record on human rights is very good, but I won’t play that sort of self-serving game by publishing a document. I absolutely will not do it. . . . I want us to stand for what is in the national interest . . . and not go running around for compromises every time. Somebody has to take these things on. They are going to cripple any foreign policy we have. . . . You cannot have military governments that you don’t give arms to. They’re going to get it sooner or later from somebody else.

Complaining that some members of the Bureau for Inter-American Affairs (ARA) were probably “egging Kennedy on,” the secretary went on to say that in the minds of those who supported the cutoff of aid to Chile, “the worst crime of [the Pinochet] government is that it’s pro-American.” Suggesting that Pinochet was unfairly targeted simply because he had removed an anti-American government, he asked, “I’d like to know whether the human rights problem in Chile is that much worse than in other countries in Latin America or whether

74. See, for example, Department of State, The Secretary’s Principals and Regionals Staff Meeting, December 23, 1974, NSA EBB 110.

75. The “insane” remark appears in Department of State, The Secretary’s Principals and Regionals Staff Meeting, December 23, 1974, 26; the “principle” remark appears in Department of State, Secret, The Secretary’s Principals and Regionals Staff Meeting, December 20, 1974, 27; NSA EBB 110.

76. Department of State, The Secretary’s Principals and Regionals Staff Meeting, 20 December 20, 1974, 29, NSA EBB 110. On the more conciliatory reaction by the Agency for International Development, see Pastor, *Congress*, 306–7.

their primary crime is to have replaced Allende. . . . Is it worse than in other Latin American countries?" "Yes," was Maw's dry reply.⁷⁷

Kissinger was unmoved by arguments that compromise might deter more restrictive congressional initiatives. In a meeting later that month, Assistant Secretary William D. Rogers told Kissinger that Congress had cut off aid because "they didn't think we were sincere on the human rights issue" and that the only way to retain the State Department's freedom of action was to compromise. Kissinger disagreed. "There is a more fundamental problem," he told Rogers. "It is a problem of the whole foreign policy that is being pulled apart, pulling it apart thread by thread, under one pretext or another." If the department were to go to Congress and ask for a reinstatement of aid on the basis that the Chilean government had released two thousand prisoners, he said, Congress would merely demand the release of five thousand. If the department gave way on the issue of human rights violations in Chile, South Korea would be next, and no U.S. ally would be immune. "There isn't going to be any end to it," Kissinger insisted. Conceding the principle that human rights had a legitimate role in determining policy would merely ensure—rather than forestall—further legislative meddling. Expressing a willingness to suffer a "backlash from the Congress" and a determination to defend the executive branch's prerogatives for the sake of future administrations, Kissinger concluded, "That is why we have to make a stand now. If we lose, we lose. At least we will have defined what the issues are. I don't mind losing. I mind this compounding the issue by totally confusing what the problem is."⁷⁸

This attitude would define Kissinger's position until the end of his tenure. His advisers repeatedly counseled some form of accommodation with Congress; again and again, Kissinger refused. Seven months later, for example, in a meeting to discuss economic aid and resumption of arms sales to Chile after the expiration of the temporary congressional ban, Rogers remarked that he had heard from Fraser's office that Kissinger had reached an agreement with the

77. Transcript, The Secretary's 8:00 a.m. Regional Staff Meeting, December 3, 1974, 25–36, National Security Archive, Electronic Briefing Book No. 212, "Pinochet: A Declassified Documentary Obit," <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB212/19741205%20Kissinger%20Staff%20Meeting.pdf> (accessed June 2, 2008). Official opinion was divided on the question of whether military governments cut off from U.S. aid would turn to other suppliers; see Schoultz, *Human Rights*, 248. See also a similar, slightly earlier conversation in which aides tried to convince an extremely reluctant Kissinger to meet with Fraser in order to prevent Congress from "get[ting] out of hand." Kissinger said that Fraser and his colleagues were interested only in "grandstand plays" and "public humiliation of other countries" about matters that amounted to "sentimental nonsense." The State Department could not become "a reform school for allies," he declared. "They want us to be anti-Philippine, anti-Korean, anti-Chilean—pro what? Castro? I don't know what they want us to be pro. Nor do they explain how other countries can in any way deal with us." Minutes of the Secretary's Staff Meeting, October 22, 1974, doc. 244 in *FRUS 1969–1976 E-3*. (For the record of the meeting with Fraser, see *ibid.*, doc. 245.)

78. Department of State, Secret, The Secretary's Principals and Regionals Staff Meeting, December 23, 1974, NSA EBB 110.

congressman to release weapons to Chile only “if some progress were made on human rights.” “Not even remotely did I say that,” Kissinger insisted. “I told Fraser that I wanted to assist the Chileans and then we would see what we could do to improve the situation. I did not say that first there must be human rights improvements and then we would assist the Chileans. It cannot work that way.”⁷⁹

In the atmosphere of the mid-1970s, Kissinger’s intransigence was fatal for congressional cooperation. It was not that most members of Congress particularly wanted to remove the executive’s traditional flexibility in the implementation of foreign aid. But as staffer Pat Holt recalled, there was a “credibility gap” of “cosmic proportions,” and “the prevailing mood [in Congress] with respect to almost anything out of the White House was one of cynicism.” When Kissinger went to the Senate Foreign Relations Committee after Section 502B was proposed, he gave an “impassioned plea not to tie his hands, that progress in human rights was best promoted through ‘quiet diplomacy.’” Most of the committee agreed, at least in the abstract. The trouble, Holt said, “was that nobody believed there had been any ‘quiet diplomacy.’”⁸⁰

THE 502B COUNTRY REPORTS

In the case of 502B compliance, Kissinger was willing to engage in quite blatant evasion of the law. There were two key issues: first, the preparation of reports on human rights to determine whether “gross violations” had occurred and second, the justification of funding levels for those countries for which 502B provisions might be invoked. Naming “gross violators” was too much for most officials in the State Department to swallow, and, even under Carter, no country was pinned with that label.⁸¹ Wilson and his colleagues, however, were willing to determine which countries were the most serious violators and then to consider whether funding levels to those countries should be cut or justified to Congress. Kissinger ultimately blocked all of these steps.

The 502B legislation did, however, impel the State Department to embark on its first serious, sustained effort to collect information on human rights practices in other countries. The collection of information itself put in motion other changes, bringing both public and diplomatic attention to matters once regarded as strictly internal affairs. Despite Kissinger’s intentions, the Bureau helped set in motion a process whereby human rights were inserted into bilateral diplomacy, and precedents and procedures for monitoring human rights were

79. Memorandum of Conversation, Ambassador Popper’s Meeting with The Secretary, July 18, 1975, Department of State, Chile Declassification Project, DOS FOIA ERR.

80. “Pat M. Holt” Interview, 253–54.

81. One former Carter official states that although no determination of “gross violator” status was made formally, such determinations were made implicitly. Cohen, “Conditioning U.S. Security Assistance,” 269. Note that the reporting requirements of Section 502B were binding.

established. Eventually, as the preparation of “country reports” became routine, many officials in the Department grew skilled at the production of unbiased, thorough, and accurate reports. But in 1975, the idea was novel, and few in the department had more than a vague idea of what was involved in human rights monitoring.⁸² Wilson’s deputy, Ron Palmer, later recalled that in his efforts to educate colleagues about why they needed to collect information on human rights, he ran into “a great deal of resistance. [Or] not so much resistance, but a rather unbelieving attitude,” because officials believed that human rights abuses in other countries “were matters that were beyond the control of the American government to do anything about.” “I did the best I could,” Palmer said. “Rather like Willy Loman in ‘The Death of the Salesman,’ I had my clean white shirt and a shine on my shoes going from door to door.”⁸³

The learning process that occurred was described, for example, by Ambassador to Indonesia David Newsom, who wrote that the 502B reports forced him to think about how to gather accurate information on abuses. He also had to find a way to legitimize inquiries about human rights with a regime highly sensitive about matters it regarded as internal affairs and to prepare the Indonesian government for the eventual release of 502B country reports.⁸⁴ Section 502B was mentioned in many discussions between U.S. and Uruguayan officials, in a country where torture of political opponents was rampant. Human rights and Section 502B were raised in discussions with the ministers of foreign affairs and defense and very senior military and police officers, helping to push the minister of foreign affairs to get involved in investigating human rights abuses for the first time.⁸⁵ Jessica Tuchman, a Carter administration official in charge of human rights issues at the National Security Council, also underlined the importance of the 502B reports: “[H]aving to do them . . . transformed the whole apparatus inside the [State] Department. When we began there were few countries about [whose human rights situations] we knew a great deal. . . . Having to do these things really helped to get the embassies informed and get the information back to the Department.”⁸⁶

Section 502B thus provided a key impetus for the collection of information, and simply having information often resulted in an issue being identified as a

82. “Interview with James M. Wilson, Jr.”

83. “Interview with Ronald D. Palmer.”

84. David D. Newsom, “Release in Indonesia,” in *Diplomacy of Human Rights*, ed. Newsom, 74–77. On the kind of meetings held, see, for example, Telegram, Newsom to Washington, March 17, 1975, “Presentation of Latest U.S. Human Rights Legislation to GOI,” Central Foreign Policy Files, Electronic Telegrams, Access to Archival Databases, National Archives and Records Administration, <http://aad.archives.gov> (accessed June 10, 2008) (hereafter AAD).

85. Telegram, Embassy Montevideo to Washington, “Human Rights in Uruguay: An Update,” October 8, 1975, AAD. The telegram also reveals massive ignorance of the extent of human rights violations in Uruguay. Indeed, at congressional hearings in 1975, the State Department’s apparent ignorance of the situation in Uruguay elicited scorn. Sikkink, *Mixed Signals*, xvi, 73.

86. Interview with Jessica Tuchman, quoted in Muravchik, *Uncertain Crusade*, 41–42.

problem and solutions sought.⁸⁷ The development of human rights activism in this period was fundamentally dependent on the collection and dissemination of information.⁸⁸ As one diplomat remarked, “How can we make policy about political prisoners if we don’t even have an idea how many there are?”⁸⁹ The push from Congress meant that State Department officials would become aware of issues they had hitherto seen as peripheral—or, more accurately, not seen at all.

Another result of 502B was that the State Department began to encourage activities that directly or indirectly promoted human rights. In an August 1975 directive to all diplomatic and consular posts, for example, Deputy Secretary Ingersoll noted that 502B was not merely about levels of security assistance but that the reporting requirements made it important to take proactive measures in support of human rights. Ingersoll therefore instructed U.S. embassies and consulates to “begin educational and cultural exchange programs clearly supportive of human rights” and to review current exchange plans “with a view toward building in significant elements to promote human rights”; to attend important trials; and “to begin informal official and unofficial contacts” with government officials, legislators, and judges, as well as university professors and students, missionaries, lawyers, churchmen, and minority and opposition groups connected with human rights issues (because “experience suggests that we cannot rely on the ‘establishment’ to give us a balanced and complete picture”).⁹⁰ Similar cables instructed posts to provide economic and technical assistance for groups that directly or indirectly increased respect for human rights, to assist multilateral efforts, and to support NGOs like the International Committee for the Red Cross.⁹¹ At the same time, officials in Washington began to establish regular contacts with human rights organizations, including the new Washington office of Amnesty International (AI).⁹²

While the diplomatic corps began to give human rights a place on the agenda and a level of visibility that represented a striking departure from past practice, Kissinger ensured that cutting off or reducing aid to serious human rights abusers would not be an option. On May 3, 1975, Maw sent a memo to Kissinger informing him that they had identified seven countries as having human rights problems serious enough that the new legislation might apply to

87. Drezner, “Ideas, Bureaucratic Politics,” 746.

88. Kenneth Cmiel, “The Emergence of Human Rights Politics in the United States,” *Journal of American History* 86, no. 3 (December 1999): 1231–50.

89. Lawrence Pezzullo, quoted in Sikkink, *Mixed Signals*, xvi.

90. Telegram 182813, Ingersoll to All Diplomatic and Consular Posts, August 2, 1975, “Human Rights: Use of 12320 Reports and Promotion Human Rights,” AAD [emphasis removed]. The telegram also appears as doc. 253 in *FRUS 1969–1976 E-3*.

91. Telegram, Washington to Madrid, April 17, 1975, “Human Rights in Spain,” AAD.

92. See, for example, Memorandum, Ginger to Rick Wright, October 6, 1976, “Meeting with Charles Runyon,” series II.1, box 5, Amnesty International USA Archives, Center for Human Rights Documentation and Research, Columbia University, New York, New York, (hereafter AIUSA).

them: Brazil, Chile, South Korea, Indonesia, the Philippines, Spain, and Uruguay. In Wilson's language, "all would appear to fall within the spirit" of Section 502B.⁹³ The State Department's Office of the Legal Adviser and the Office of Congressional Relations recommended reductions in aid levels to these countries in order to comply with Section 502B. The geographic bureaus opposed reductions on the grounds that security interests should take precedence. Maw's memo proposed various options for revising aid levels to these countries. In Wilson's recollection, after a long delay, Kissinger "made it clear he did not want to be presented with these types of options." In other words, the department should not acquiesce in making any connections between aid and human rights.⁹⁴

Shortly before a 502B report was to be presented to Congress, Director of Policy Planning Winston Lord made one last attempt to persuade Kissinger to reconsider his refusal to modify levels of aid. "We face an extremely important moment both in our relations with Congress and on the substance of [the human rights issue]. I believe both require your urgent attention," Lord began. He explained that though he shared Kissinger's skepticism about the efficacy of using security assistance as a tool for effecting human rights improvements and agreed with the inclination to do the minimum necessary to meet Congress's requirements, he nevertheless believed that decisions to maintain or increase military aid in virtually all cases and to refuse to classify any countries as "gross violators" would be unwise. "We are faced with a law about whose intent its supporters are very clear. If we ignore the spirit of this law we may well pay a substantial price."⁹⁵

Lord suggested that the State Department's 502B report should follow the spirit and the letter of the law. In a Policy Planning Staff memo forwarded by Lord, Chile was singled out for proposed reductions. Given that Congress had cut aid to Chile in the previous year and would likely do so again, it would be preferable, the memo argued, if the initiative came from the department. The costs of such a move would be "minimal"; the benefits would include "a more favorable reaction in Congress to our whole foreign aid package." It might also

93. See also Action Memorandum, James Wilson to Carlyle Maw, July 7, 1975, "Report to Congress on Section 502 B," box 1, "General" folder, HA, NARA. Wilson was referring to Brazil, Indonesia, Uruguay, Chile, and Korea.

94. "Human Rights Today"; Wilson, "Diplomatic Theology," 7-8. Kissinger "took no action on the recommendations in the memo" but wrote on page 1, "Can we do it in briefings in executive session?" Telegram, U.S. Delegation Secretary Brussels to Washington, For Bremer and Eagleburger from Gompert and Adams, "Actions Taken on Items Outside S/S System," May 30, 1975, AAD.

95. Winston Lord to Henry Kissinger, September 20, 1975, "Security Assistance and the Human Rights Reports to Congress," Confidential/Exdis, Human Rights Subject File, box 5, HA, NARA. When Kissinger met with Ford, he complained that the State Department wanted to list Chile as a rights violator. "I think we should put Chile back on [the list of military aid recipients] and let Congress knock it off." "I agree," said Ford. Memorandum of Conversation, White House, October 6, 1975, Chile Declassification Project, Pinochet File, Gerald Ford Library, Ann Arbor, Michigan.

reduce human rights abuses. As the memo said, it could lead to “increased caution by governments receiving assistance in regard to taking human rights actions likely to outrage American public and Congressional sensitivities.” At the same time, three other countries about whose human rights records the administration had already publicly expressed some concern in testimony to Congress—South Korea, the Philippines, and Indonesia—could be cited as problems, avoiding the term “gross violators” but at least attempting to set the parameters of discussion, rather than allowing Congress to do so. Noting that “we are faced with a law,” the Policy Planning Staff authors urged a greater effort to comply. In a prescient conclusion, the memo argued, “We are in for grave difficulties,” including a tougher 502B law, “if we are seen as flaunting it.”⁹⁶

The opposition of the Policy Planning Staff was significant. That Congressional Relations, Wilson’s Bureau, and Legal Affairs would propose accommodation was not unexpected: it was partly their function to advocate for adherence to law and good relations with Congress. But the Policy Planning Staff under Lord saw itself as an arbiter of competing interests that stood above the fray, determining the best interests of the State Department and the country in broad terms.⁹⁷ Yet, Kissinger was unbending: aid would not be tied to human rights.

If the secretary of state had settled the question of whether to cut aid to the worst violators, however, the question of how to respond to 502B’s reporting requirement remained open.⁹⁸ A decision on whether to present individual country reports to Congress, with or without classified information, had yet to be made. Cranston, Fraser, and Javits had been asking to see individual country reports for months, and Wilson had “promised some kind of report as soon as possible” after the security assistance package was presented to Congress.⁹⁹ Maw had decided to prepare, with the intention of releasing, an individual country report with classified portions for each country receiving assistance.¹⁰⁰ Each report was to summarize U.S. interests in the country and provide a survey of the human rights situation and of measures taken by the U.S. government to address any problems. Each report would explain the administration’s decision on levels of security assistance, with reference to human rights issues,

96. “Security Assistance and the Human Rights Report to the Congress” [n.d., 19 September 1975], Confidential/Exdis, Human Rights Subject File, box 5, HA, NARA.

97. “Interview with Winston Lord.”

98. “Human Rights Today”; Wilson, “Diplomatic Theology,” 8.

99. Letter, Alan Cranston to Henry Kissinger, November 5, 1975, Human Rights Subject File, 1975, box 5, HA, NARA; Wilson, “Diplomatic Theology,” 17.

100. Briefing Memorandum, Carlyle Maw to Kissinger, July 16, 1975, “Report to Congress on Human Rights,” Human Rights Subject File, box 1, HA, NARA; Memorandum, Charles Runyon to All Assistant Legal Advisers for Geographic Bureaus, July 18, 1975, “502B Reporting,” Human Rights Subject File, box 1, HA, NARA; Wilson, “Diplomatic Theology,” 18. See also Briefing Memorandum, Maw to Kissinger, September 8, 1975, doc. 254 in *FRUS 1969–1976 E-3*.

although—as Kissinger had ordered—none would propose any changes in aid levels. As Wilson noted to Maw, these reports “would provide a clear and frank summary of the facts and the conclusions reached, thus satisfying the expectations of Congress” and “would put countries concerned on notice and show Congress that the U.S. is seriously concerned with violations of human rights anywhere and intends to pursue the subject even if U.S. security assistance to the country may be continuing.”¹⁰¹

The drafting of the country reports, a process that took much of the year, was fraught with contention. Reports from the field in the eighty-two countries slated to receive assistance came in and were digested and summarized by the geographic bureaus in Washington. Runyon in Legal Affairs and Maw’s staff in Security Assistance then produced country summaries.¹⁰² Wilson remembered “long arguments with the geographic bureaus over what should and should not appear . . . and what should and should not be classified. In many sticky cases there were sharp cable exchanges with posts in the field.” The geographic bureaus, always prone to “clientism,” naturally wanted to maintain good relations with friendly governments and retreated to their default position: that public criticism would only harm relations and not help human rights.¹⁰³

The reports were extremely circumspect in their discussions of human rights violations. Indeed, to a reader used to the candor of contemporary human rights reports, these first, tentative ventures seem astonishingly timid. The three-page South Korea report, for example, went through a process of stripping down details until it became what is best described as a whitewash. State Department lawyers were so disturbed by the lack of candor in the draft prepared by the Korea desk that they proposed an alternate version.¹⁰⁴ Their version included a one-and-a-half-page, richly detailed account of repression in South Korea:

President Park enjoys virtually dictatorial powers. . . . Korea has a long record of human rights violations. . . . From September 1972 to July 1974 many persons were arrested for political or security reasons and about 1100 were charged or convicted. Early in 1974, several emergency measures were enacted that punished actions *ex post facto* and subjected persons to indefinite detention incommunicado and secret trial without adequate safeguards of fairness. . . . Fear and intimidation are tools of government.

It concluded that U.S. assistance should continue because meeting South Korea’s security needs was “a *sine qua non*” for the advancement of human

101. Action Memorandum, James Wilson to Carlyle Maw, July 7, 1975, “Report to Congress on Section 502 B,” box 1, “General” folder, HA, NARA; Wilson, “Diplomatic Theology,” 19. The memo also appears as doc. 252 in *FRUS 1969–1976 E-3*.

102. Wilson, “Diplomatic Theology,” 7.

103. *Ibid.*, 21.

104. Runyon to All Assistant Legal Advisers, 2.

rights in Korea, noting that even many South Koreans who opposed “current violations” supported this position.¹⁰⁵

After what Wilson recalled as a “bloody fight,” the East Asian Bureau (EA) produced a final version, one that Wilson’s Bureau used as a model report as it prepared summaries for other countries.¹⁰⁶ Although it was regarded in the State Department as “frank,” it was in fact highly evasive.¹⁰⁷ It was supposed to have included concessions to the legal team, but in fact it was even less forthcoming than EA’s original draft; indeed, it appears almost to describe a different country than the South Korea portrayed in the lawyers’ draft. In three short paragraphs, the approved Korea report outlined in the blandest of terms the “significantly restrictive measures” in place under Park Chung-hee’s dictatorship, including arbitrary arrests of political opponents. In its only reference to quantitative figures, the report noted that thirty-five “persons” had been tried and convicted under statutes prohibiting criticism of the constitution and unauthorized student activity.¹⁰⁸ This sentence constituted the report’s sole attempt to describe the extent of human rights violations.

The Korea model report carefully avoided authoritative judgments. Whereas an AI report in mid-1975 had described extensive use of torture on political prisoners, and the lawyers’ draft report had included a detailed paragraph on allegations of torture, the final report’s language was deliberately vague: “Although prohibited by law, and denied by the government, there have been some reports of torture.” The report, moreover, patronizingly suggested that South Koreans welcomed repression. “While we recognize concern over the long term impact of these human rights developments,” the report said, South Koreans value internal cohesion as a means of resisting North Korean aggression. “What is most important to the Koreans is the preservation of their national identity.”¹⁰⁹ (Other draft reports took a similar tack: “Uruguayans believe present restrictions are necessary”; “most of the Philippine people appeared to accept martial law.”¹¹⁰)

All the infighting over wording ultimately came to naught, however. When Maw sent Kissinger eight draft country reports, Kissinger refused to provide any of them to Congress. All but a few countries committed human rights abuses, he

105. “Korea,” L/HR 3-page draft, Human Rights Subject File, box 1, HA, NARA.

106. The Korea report presented a condensed version of Deputy Assistant Secretary in the East Asian Bureau Philip Habib’s testimony to Fraser’s subcommittee and the country study done earlier for the Security Assistance review. See Wilson, “Diplomatic Theology,” 18–21.

107. For the characterization of the Korea report as good and frank, see Memorandum, Morton J. Holbrook to James Wilson, “Comments on Human Rights Papers,” August 7, 1975, Human Rights Subject File, box 4: 502B Report-Runyon, HA, NARA.

108. “Korea” [country report], undated [1975], Human Rights Subject File, 1975, box 5, HA, NARA.

109. *Ibid.* On the AI report on Korea, see Statement of William P. Thompson to the Fraser Subcommittee, June 10, 1975, Human Rights Subject File, box 3, HA, NARA.

110. Memorandum, Morton J. Holbrook to James Wilson, “Comments on Human Rights Papers,” August 7, 1975, Human Rights Subject File, box 4: 502B Report-Runyon, HA, NARA.

told aides, so there was no point in singling out U.S. allies for criticism.¹¹¹ He directed instead that a general report be prepared that evaded the 502B requirements. Drafted by Palmer and delivered to Congress on November 14, 1975, the report did not discuss specific violations of human rights in individual countries, nor did it attempt to determine which countries engaged in repeated “gross violations” of human rights. It merely stated that human rights violations were common around the world. “Human rights abuses follow no pattern” and occur in countries receiving U.S. security assistance and those that do not, it said. Belying the State Department’s finding that some violators were more egregious than others, the report concluded that “in view of the widespread nature of human rights violations in the world, we have found no adequately objective way to make distinctions of degree between nations.” Neither human rights nor U.S. security would be served by “the public obloquy and impaired relations” that would follow the making of “inherently subjective” decisions about levels of abuses.¹¹²

In testifying to Congress on the aid package, Kissinger was asked about the reports. “We support the objective [of improving human rights],” he said. But “it would raise profound foreign policy issues if we submitted a . . . report on 100 foreign countries and started categorizing the domestic practices and then got into a debate with the Congress on a country-by-country basis.” Senator Eagleton noted that the drafters of the 502B legislation had clearly intended for individual country reports to be provided to Congress. Eagleton asked if Kissinger had consulted with his legal advisers on how to comply. “Yes,” Kissinger replied, neglecting to mention that his legal advisers had urged compliance rather than evasion. Contradicting what he had told his staff, he said, “it is not a matter I want to have settled by confrontation.”¹¹³ Maw, who was questioned on the issue more closely during his testimony, similarly defended the decision not to name violators, reportedly saying that “it was difficult and perhaps wrong for any country to accuse another of ‘gross violations’ of human rights.”¹¹⁴

As many State Department officials had feared, the failure to accommodate Congress sparked a strong reaction. Fraser, Humphrey, and others who had been told repeatedly that individual reports would shortly be forthcoming “went through the roof,” as Wilson recalled.¹¹⁵ “I found the report to be primarily a defense of the State Department’s apparent intention not to comply with the law,” Fraser commented. Cranston said “it amounts to a cover-up.”¹¹⁶

111. Bernard Gwertzman, “U.S. Blocks Rights Data on Nations Getting Arms,” *New York Times*, November 19, 1975, 1.

112. Quoted in *ibid.*

113. Untitled excerpt of transcript typescript, 82, in Human Rights Subject File, 1975, box 5, HA, NARA.

114. Gwertzman, “U.S. Blocks Rights Data,” 1.

115. “Interview with James M. Wilson, Jr.”

116. Gwertzman, “U.S. Blocks Rights Data,” 1.

Humphrey called the report unresponsive and “about as bland as swallowing a bucket of sawdust.”¹¹⁷ The report was immediately leaked to the *New York Times*, which headlined the refusal to provide individual country reports as front-page news.¹¹⁸ The *Washington Post* promptly filed a Freedom of Information Act request for the reports, which the State Department denied on the grounds that disclosure would “damage United States foreign relations.”¹¹⁹

Cranston, Humphrey, and Fraser immediately decided to introduce tougher amendments that would give Congress a role in determining which countries engaged in “gross violations” and make cutoffs in aid mandatory unless justifications were provided.¹²⁰ Delayed by Ford’s veto of the bill, a significantly strengthened version of Section 502 (now part of the International Security Assistance and Arms Export Control Act of 1976) came into effect in June 1976. Still focused on military aid, the revised version prohibited assistance to governments engaged in gross violations unless certain extraordinary circumstances could be demonstrated. It mandated a “full and complete report . . . with respect to . . . internationally recognized human rights in *each* country proposed as a recipient of security assistance.” Congress could additionally request a report on a specific country at any time; if such a report were not delivered within thirty days, aid would automatically be terminated.¹²¹ As one State Department staffer later recalled, “Kissinger [was] responsible for [making country reports mandatory] because he was so adamant about not playing ball at all.”¹²² Congress also strengthened the Human Rights Bureau, making the coordinator a presidential appointment subject to Senate confirmation.¹²³

Despite the clarity of the new language on reporting, Kissinger still managed to evade its provisions, partly by luck. Unrelated events caused such delays in the submission of the fiscal year 1976 security assistance program that it was decided to combine the 1976 and 1977 packages into one bill, which Congress passed.¹²⁴ The result of the unusual confluence of events was that the first full set of country reports mandated by the 1976 502B were delivered to Congress only in connection with the 1978 fiscal year package, after the Carter administration had taken office. Before this outcome had materialized, however, Wilson’s office had prepared reports in 1976, which some congressional leaders wanted to see.

117. Quoted in Wilson, “Diplomatic Theology,” 24.

118. Gwertzman, “U.S. Blocks Rights Data,” 1.

119. Letter, William H. Lewis to Marilyn Berger of the *Washington Post*, December 6, 1975, in Human Rights Subject File, 1975, box 5, HA, NARA. See also Briefing Memorandum, Maw to Kissinger, November 28, 1975, doc. 256 in *FRUS 1969–1976 E-3*.

120. Gwertzman, “U.S. Blocks Rights Data”; Marilyn Berger, “Aid Ban Urged for Nations Violating Human Rights, Lands,” *Washington Post*, November 20, 1975, A3.

121. Salzberg and Young, “Parliamentary Role,” 273.

122. Interview with Lawrence Pezzullo, quoted in Sikkink, *Mixed Signals*, 106.

123. Cranston had pushed for a semi-independent Director of Human Rights to act as a kind of watchdog on the Department, but the end result was a position subordinate to the Secretary of State. Wilson, “Diplomatic Theology,” 27–28.

124. “Interview with James M. Wilson, Jr.”

At the urging of the liberal lobbying group Americans for Democratic Action, Humphrey's Senate Foreign Relations Committee proposed that reports on thirteen countries be made available on a classified basis. Kissinger refused. The House Committee on International Relations meanwhile invoked the formal 502B procedure and requested detailed reports on six countries (Argentina, Haiti, Indonesia, Iran, Peru, and the Philippines).¹²⁵ These were turned over, and at Fraser's request, they were declassified and published. Like the 1975 versions, they were models of understatement and evasion.

Kissinger's continuing obstructionism led to at least one notable instance of insubordination. In early 1976, apparently frustrated by the denouement of the 1975 country reports exercise, the Bureau's deputy paid a quiet visit to the London headquarters of AI. To circumvent Kissinger's refusal to provide information, Palmer told AI staff to give questions about human rights abuses to sympathetic members of Congress. Congressmen could then pose the questions to the State Department, which was legally obliged to answer all inquiries within two days—a move that would give Palmer's office an excuse to demand more thorough reporting from the field.¹²⁶

As Palmer's visit suggests, Section 502B opened up new opportunities for human rights organizations. The growth of transnational human rights advocacy had been one of the spurs for congressional action beginning in the late 1960s, and many of these groups had developed good contacts with congressmen such as Fraser.¹²⁷ Section 502B worked to extend those contacts and to provide new channels of access to the State Department. Indeed, there were complaints among some in AI's new Washington office about the demands of responding to 502B-related information from Congress, the State Department, and other human rights NGOs. Although some AI officials worried about "taking sides" and about violating the organization's tax-exempt status through legislative activity, others saw 502B as a "vital tool for AI to use." AI worked alongside groups such as Americans for Democratic Action and the Center for

125. Wilson, "Diplomatic Theology," 30–32; David Weissbrodt, "The Influence of Interest Groups on the Development of United States Human Rights Policies," in *The Dynamics of Human Rights in U.S. Foreign Policy*, ed. Natalie Kaufman Hevener (New Brunswick, NJ, 1981), 266n123. On the 1976 reports, see also Briefing Memorandum, Maw to Kissinger, April 13, 1976, doc. 258 in *FRUS 1969–1976 E-3*.

126. Cmiel, "Emergence of Human Rights," 1238–39; Memorandum, "Ronald Palmer," Confidential, March 17, 1976, Morris Papers, box 4, 3. The tactic seems to have been used; see, e.g., the letter conveying information from the State Department about Guatemala, Congressman Lester Wolff to Arthur Michaelson, Great Neck Amnesty International Group, April 8, 1976, Morris Papers, box 4.

127. A month after the coup in Chile, for example, Fraser and Dante Fascell, chairman of the Subcommittee on Inter-American Affairs, held an informal discussion on human rights in Chile for members of their subcommittees, with representatives from the International Association of Democratic Jurists, the International Federation of Human Rights, and the International Movement of Catholic Jurists. Memorandum, Committee on Foreign Affairs, October 15, 1973, RG 233, 93rd Congress, International Relations Committee, Subcommittee on Inter-American Affairs, Center for Legislative Archives, NARA.

International Policy to provide information to the State Department, prepare dossiers for congressmen to use in reviewing the department's country reports, and informally coordinate congressional activity on 502B.¹²⁸

* * *

The holding of public hearings on human rights violations (Fraser's subcommittee alone held hearings on forty countries), the cutoffs in aid, and the public dissemination of information critical of friendly regimes elicited angry reactions in targeted countries. As Kissinger frequently complained, Congress's activities complicated relations with allies. Commiserating with India's foreign minister over Fraser's "outrageous" hearings, Kissinger said, "Every time I see a Foreign Minister, he has some complaint."¹²⁹ In some cases, congressional pressure led to modest improvements in adherence to international human rights standards, and in other cases, it produced nothing but soured relations.¹³⁰

The template Congress constructed in the mid-1970s comprised the use of hearings to shape public opinion and signal concern about human rights abuses, cutoffs in aid to friendly regimes that engaged in systematic violations, and mandates to the State Department to collect information on abuses and to develop contacts with human rights constituencies in violator countries and with international human rights NGOs. Partly as a reflection of the tools Congress had at its disposal, the results tended to appear ad hoc and inconsistent, with some countries and some types of abuses drawing attention and sanctions while others were largely ignored.¹³¹ The opportunity to develop a more coherent and positive approach to human rights, which had support within the State Department, was squandered by Kissinger. Yet, despite his efforts to circumvent or

128. "Report of the Amnesty International (U.S.A.) Washington Committee," n.d. [1976]; Memorandum, Rick Sloan to Rick Wright, "AI's Role in the 502B Process," October 7, 1976; Memorandum, Rick Sloan to Rick Wright, AI Washington Office, "Americans for Democratic Action and the Center for International Policy's Role in the 502B Process," October 8, 1976, series II.1, box 5, AIUSA.

129. In full, Kissinger said, "It is inevitable that the Fraser Committee hears witnesses who are violently opposed to the government in power. You are not the only case. Every time I see a Foreign Minister, he has some complaint. We certainly would not take kindly to India's holding hearings on civil rights in the U.S. These hearings are superficial. It is an outrageous procedure." Memorandum of Conversation, The Secretary's 8 October 1976 Meeting with Indian Foreign Minister Chavan, October 12, 1976, U.S. Department of State, *Foreign Relations of the United States, 1969-1976, Volume E-8, Documents on South Asia, 1973-1976* (Washington, DC, 2007), <http://www.state.gov/r/pa/ho/frus/nixon/e8/97094.htm> (accessed June 20, 2008).

130. For a good overview of recent literature on the effects of international human rights pressure, see Sonia Cardenas, "Norm Collision: Explaining the Effects of International Human Rights Pressure on State Behavior," *International Studies Review* 6 (2004): 213-31.

131. Human rights activists from countries with large populations of exiles and networks with U.S. academics, churches, and NGOs, who delivered complaints about repression in the right kind of language, were more likely to have their voices heard. See Brad Simpson, "'The First Right': The Carter Administration, Indonesia, and the Transnational Human Rights Politics of the 1970s," unpublished manuscript.

ignore congressional intent, the human rights staff he introduced into the department played an important role in establishing procedures, setting precedents, and beginning to inculcate modes of thought that would guide the department in the future. In this way, the congressional initiatives of this period set the basis for Carter's human rights agenda, and in fact Carter himself came to embrace human rights under the influence of the congressional campaigns.¹³²

Despite the failure to comply with 502B by naming "gross violators," State Department officials did make distinctions about levels of violations. The legislation succeeded in its aim in that it led some officials to begin to weigh human rights considerations alongside other factors and, in some cases, to determine that human rights should outweigh other considerations. In the case of Chile, for example, four officials in the U.S. embassy in Santiago concluded in mid-1975 that the costs of continuing to aid Chile—in damage to relations with Congress and with Western allies—outweighed any benefits. In a dissent to an embassy report arguing for the status quo, they suggested that human rights should be "the dominant factor" in relations with Chile and that strong public pressure could affect the regime's behavior.¹³³

In the years that followed, the innovations Kissinger had railed against, denouncing as impermissible and detrimental to national security, came to be a part of normal operating procedure. The Carter administration expanded and developed activities begun in the Bureau's years under Kissinger. Human rights reports were prepared, delivered to Congress, and made public. Within ten years of the first cursory and "bland as . . . sawdust" exercise, the State Department's country reports, by then an annual publication of over one thousand pages that covered not only recipients of military aid but all members of the United Nations, would be widely known and respected.¹³⁴ Human rights concerns became a routine issue in bilateral and multilateral U.S. foreign policy. Public criticisms of other countries' human rights records that would once have been regarded as outside the pale of diplomacy became everyday fare. Despite Kissinger's adamant refusal to accommodate this process, his actions had in fact accelerated it.

132. Scott Kaufman, *Plans Unraveled: The Foreign Policy of the Carter Administration* (DeKalb, IL, 2008), 13. Many of Carter's human rights staff also had worked in Congress. I am indebted to Carl Bon Tempo for this point.

133. Airgram, Santiago to Washington, May 17, 1975, "FY 1976-77 CASP for Chile," in Kornbluh, *Pinochet File*, 306.

134. Judith Innes de Neufville, "Human Rights Reporting as a Policy Tool: An Examination of the State Department Country Reports," *Human Rights Quarterly* 8, no. 4 (November 1986): 681; Muravchik, *Uncertain Crusade*, 41, 231-32. Although de Neufville cites surprisingly high levels of satisfaction among diplomatic officials with the reporting process, it continued to be controversial.