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10 December 2016

President-Elect Trump
Trump Tower
725 Fifth Avenue
New York
NY 10022
USA

**OPEN LETTER TO THE PRESIDENT-ELECT OF THE UNITED STATES DONALD J TRUMP
FROM THE INTERNATIONAL BAR ASSOCIATION'S HUMAN RIGHTS INSTITUTE**

Dear President-Elect Trump,

The International Bar Association's Human Rights Institute (IBAHRI) congratulates you on your election as the 45th President of the United States.

The country which you will soon lead has a proud tradition in individual liberty and human rights. In this regard it led the world in 1776 with the Declaration of Independence, declaring that 'all men are created equal' and that 'they are endowed... with certain unalienable Rights'. Despite the inherent inconsistencies between the words and the social situation at that time (we refer to the treatment of women and slaves), the sentiment expressed was preeminent for that period.

There followed the Bill of Rights in 1791, which limited the power of government and tipped the balance in favour of the individual. The *Constitution of the United States* contains additional freedoms. However, the United States has ratified only four of the major international human rights treaties: the *Convention on the Prevention and Punishment of the Crime of Genocide*; the *International Convention on the Elimination of All Forms of Racial Discrimination*; the *International Covenant on Civil and Political Rights*; and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. As it will appear from the contents of this letter, there are other significant treaties to which one would expect the United States to be a party. Moreover, in recent years there also appears to have been a retreat from many rights and liberties, particularly on the ground of the so-called 'war on terror' – a very unfortunate misnomer.

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The IBAHRI met at the Annual Conference of the International Bar Association in Washington, DC, on 19 September 2016, in a session convened especially to consider the situation of human rights in the United States and the American region. This session comprised a panel of experts who debated these issues with international lawyers, including lawyers who came from the United States. We respectfully draw the following principal concerns of the International Bar Association's Human Rights Institute that were highlighted during the session to your attention, with the earnest hope that you will address these issues during your administration.

Non-ratification of important treaties for the protection of human rights

The United States has not ratified the *International Covenant on Economic, Social and Cultural Rights*, one of the core treaties for the protection of human rights to which there are now 164 parties.

The United States is one of the few countries in the world that have not ratified the *United Nations Convention on the Rights of the Child*. This is the most widely ratified treaty in history. The United States, instead of being a leader in this endeavour, now stands apart from the rest of the world in not being a party to it. Ratification could be the basis for a systematic review of domestic efforts in the US on children's rights, as well as contributing to the development of international law in this area, encouraging the promotion of the well-being of children both in the US and abroad.

Today, there are only a handful of countries in the world that have not ratified the *Convention on the Elimination of All Forms of Discrimination against Women*, including the Islamic Republic of Iran, the Federal Republic of Somalia and the Republic of Sudan, as well as the United States. The missing US ratification of this treaty stands out as an extraordinary lacuna in our common effort to empower women around the world. The need for empowerment of women cannot be over-emphasised, in particular since it is one of the most important contributions to international peace and security.

These are just three examples of human rights treaties where one would expect the United States to be at the forefront. We call upon you to make a determined effort to address these serious shortcomings.

The International Criminal Court

The United States is also not a party to the *Rome Statute of the International Criminal Court*. Nearly two-thirds of the nations of the world are parties to this statute, including almost all of the United States' NATO allies. The International Criminal Court

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(ICC) is the future of international criminal justice, a field which the US pioneered with the post-World War II Nuremberg and Tokyo tribunals. The ICC tries the three core atrocity crimes of genocide, war crimes and crimes against humanity, issues which are particularly important to many Americans. We appreciate that current US policy is to provide in-kind assistance to the Court in cases that serve US national interests. So far, all of the ICC's cases have been found to be in that interest. The relationship between the United States and the ICC should be developed and strengthened. This will provide the United States with a crucial opportunity to provide global leadership on rule of law and human rights issues. We urge you to promote US accession to the Rome Statute.

Torture and rendition

The United States is a party to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Yet the treatment of prisoners in Guantanamo Bay detention camp and Abu Ghraib prison, including alleged waterboarding, sexual abuse and forced feeding, are clearly contrary to the obligations under this convention. Countering terrorism is necessary; however, counter-terrorism policies – including rendition – are ultimately ineffective as well as immoral and illegal when in breach of fundamental human rights principles.

In this regard, the lack of transparency by the US government, such as expressly opposing the right of the public to view footage of atrocities in Guantanamo Bay detention camp and denying the occurrence of rendition, runs counter to the international obligations the United States has publicly undertaken to uphold. We call upon you to end the creeping culture of secrecy that has emerged in the US. Moreover, we urge you to close the facility at Guantanamo Bay altogether.

Discrimination

Discrimination is clearly unlawful in the treaties to which the United States is already a party, as well as under many US federal and state laws. Yet, there have been appalling recent examples of racial discrimination. Gender and transgender discrimination are also currently controversial issues. Discrimination on the basis of sexual orientation and gender identity remains a significant, but solvable, problem. Despite the decision of the Supreme Court of the United States in *Lawrence v Texas* 539 U.S. 558 (2003), sodomy laws remain on the statutes of many states. This is not simply an issue of rights: it is in many cases an issue of violence against members of the LGBTIQ community, as the frequent use of the homosexual panic defence illustrates. This persists despite the conviction of the murderers of Matthew Shepard in 1999 and the

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passing of the *Hate Crimes Prevention Act* in 2009 as a direct response to this. The United States still needs to keep moving in a positive direction in order to truly fulfil its international obligations and promote the rule of law domestically.

In your speech immediately following your election, you stated that you would be the 'president for all Americans'. The FBI has reported a rise in hate crimes, especially against Muslims. By supporting and enforcing non-discrimination measures against all minorities, you would then show in an important and practical way that your election night statement was fact rather than rhetoric.

The use of the death penalty

The IBAHRI opposes the use of the death penalty. Many states in the United States continue to use the death penalty as a punishment for crimes, using methods that in some cases have clearly been shown to be cruel due to their inefficiency. We appreciate that the United States is not a party to the Second Optional Protocol to the *International Covenant on Civil and Political Rights*, under which States agree not to inflict the death penalty at all. Nevertheless, the US is a party to the covenant itself, which in Article 6(2) provides that it may only be used for the most serious of crimes. The IBAHRI acknowledges that the United States has made a reservation to this provision, including allowing the execution of persons who committed crimes when they were children. The United States has the fifth highest rate of executions in the world. Reducing the imposition of this penalty to only the most serious of crimes, allowing judicial discretion in sentencing and expressly eliminating execution for acts committed by children would be a positive step leading to a complete prohibition. This would place the United States at the forefront of human rights defenders.

International relations and the use of force

In the past, the United States has twice helped democratic countries in times of war. These were instances of heroism and solidarity against unlawful aggression. However, in more recent times the United States has not always acted in such lawful and courageous ways. A recent example was the invasion of Iraq in March 2003, which the IBAHRI believes was a clear violation of Article 2(4) of the *Charter of the United Nations*. This is despite the provisions of Article 6(2) of the *Constitution of the United States* which makes treaty obligations the supreme law of the land.

This also brings to the forefront the need for the rule of law in international relations. The United Nations (UN), of which the United States is the main engineer, was

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established in 1945 by a generation that had experienced two world wars. The overriding purpose was 'to save succeeding generations from the scourge of war' as stated in the preamble of the UN Charter. As a permanent member of the UN Security Council, the United States has a special responsibility in exercising the mandate conferred on the council by the UN member states, namely 'the primary responsibility for the maintenance of international peace and security'.

In the past, both the UN General Assembly and the UN Security Council have emphasised the importance of democracy and the rule of law for international peace and security. Suffice it to mention in this context the resolution adopted by the UN General Assembly on 24 September 2012: *Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels*. Reference can be made to the following two paragraphs in this resolution:

1. We reaffirm our solemn commitment to the purposes and principles of the Charter of the United Nations, international law and justice, and to an international order based on the rule of law, which are indispensable foundations for a more peaceful, prosperous and just world.
5. We reaffirm that human rights, the rule of law and democracy are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations.

The manner in which the permanent members of the Security Council fulfil their obligations under the *UN Charter* has a foundational effect on international peace and security. It goes without saying that the United States and the other Western democracies must take the lead here.

May we also remind you of what your predecessor, President Dwight D Eisenhower said about the importance of the UN. In his Second Inaugural Address on 21 January 1957, the President and former General said:

Yet this peace we seek cannot be born of fear alone: it must be rooted in the lives of nations. There must be justice, sensed and shared by all peoples, for, without justice the world can know only a tense and unstable truce. There must be law, steadily invoked and respected by all nations, for without law, the world promises only such meager justice as the pity of the strong upon the weak. But the law of which we speak, comprehending the values of freedom, affirms the equality of all nations, great and small.

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...

We recognize and accept our own deep involvement in the destiny of men everywhere. We are accordingly pledged to honor, and to strive to fortify, the authority of the United Nations. For in that body rests the best hope of our age for the assertion of that law by which all nations may live in dignity.

Nuclear disarmament

Another question of great importance is that states respect the *Treaty on the Non-Proliferation of Nuclear Weapons* (NPT). The objective of this landmark international treaty, which entered into force in 1970, is to prevent the spread of nuclear weapons and weapons technology, to promote cooperation in the peaceful uses of nuclear energy and to further the goal of achieving nuclear disarmament. The treaty represents the only binding commitment in a multilateral treaty to the goal of disarmament by the nuclear-weapon states recognised under the NPT (the People's Republic of China, the French Republic, the Russian Federation, the United Kingdom and the United States of America). These states undertake to disarm their nuclear weapons and not to transfer nuclear weapons to other states. Non-nuclear weapon states undertake not to develop, acquire or spread nuclear weapons. But all states that are parties to the treaty are granted the right to peacefully develop and use nuclear energy under the NPT. Today, all UN Member States except the Republic of India, the State of Israel, the Democratic People's Republic of Korea, the Islamic Republic of Pakistan and the Republic of South Sudan are parties to the NPT.

The NPT is one of the greatest achievements of the United States in the UN. It is of the utmost importance that the United States fulfils its obligations under the NPT and sets the example in order to avoid the humanitarian consequences that follow the use of nuclear weapons. Nuclear weapon detonation produces catastrophic effects which endanger the very survival of humanity. We urge you to exert all efforts to eliminate those weapons of mass destruction to which the NPT is directed, for the sake of not only the United States but for the entire planet.

Conclusion

We know that many countries face challenges with these issues. However, we consider that the world looks to the United States as a lodestar on the rights of the individual and we urge you to reassert America's leadership role. It is sad to say that the United States is no longer the leading model for the rule of law and democracy, as it once was.

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Your election slogan was: 'Make America Great Again'. A step towards this would be to strengthen American adherence to human rights principles so that it is an example to the whole world.

We respectfully ask you to consider and act upon these issues.

Yours sincerely,

A handwritten signature in black ink that reads 'Helena A. Kennedy'.

Baroness Helena Kennedy QC
IBAHRI Co-Chair

A handwritten signature in black ink that reads 'Hans Corell'.

Ambassador (ret.) Hans Corell
IBAHRI Co-Chair

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