



National Lawyers Guild International Committee www.nlginternational.org

February 17, 2011

Michael Posner, Assistant Secretary of State,
Bureau of Democracy Labor and Human Rights, U.S. Department of State

Harold Hongju Koh, Legal Adviser,
Office of Legal Adviser, U.S. Department of State

David Sullivan, Attorney-Adviser,
Office of the Legal Adviser,
U.S. Department of State

2201 C Street, NW
Washington, DC 20520

Scott Busby, Director for Human Rights,
Office of Multilateral Affairs and Human Rights,
National Security Council

The White House
Washington, DC 20504

Dear Mr. Posner, Mr. Koh, Mr. Sullivan and Mr. Busby:

As authors of a UPR civil society report relating to how U.S. foreign policy violates our government's human rights obligations (see attached report), we are writing to urge you and the U.S. government to accept the country recommendations (92.75 ; 92.76; 92.77; 92.78; 95.153; 92.171; 92.172 et al) relating to:

- The failure of the State Department to extradite the admitted terrorist Luis Posada Carriles and for permitting the impunity granted to him in the U.S.

The State Department should accede to Venezuela's request for Posada Carriles' extradition and the Department of Justice should prosecute him for his crimes against humanity and/or extradite him to Venezuela for his crimes, and

- The U.S. government's prosecution and incarceration of Gerardo Hernandez, Antonio Guerrero, Ramon Labanino, Fernando Gonzalez and Rene Gonzalez --aka the "Cuban Five" -- for their efforts to protect their country from terrorist attack.

The administration should agree to stop resisting their appeals, permit their family members visas to visit, and allow them to return to their families in Cuba

- The Cuban embargo/blockade

The administration should use its executive authority to eliminate the embargo/blockade or at least mitigate its effect and advocate for its repeal before Congress .

It is our understanding that you will be dismissing out of hand all of the recommendations relating to these issues, and we urge you to reconsider. We consider all of these issues to involve serious violations of international human rights norms for which those responsible should be held accountable . It is incumbent upon President Obama, the U.S. State Department and U.S. Department of Justice to ensure accountability.

You have presumably categorized all of these issues as relating to the intersection between human rights and national security. But, in fact, they should be seen only as human rights issues. Cuba presents no national security threat to the United States. Rather it is the U.S. --by its embargo/blockade, its impunity with respect to the admitted terrorist Luis Posada Carriles, and its dogged prosecution of the five Cubans who risked their lives to protect their homeland from Miami-based terrorists -- that threatens the national security of Cuba, and the human rights of Cuban citizens, with no benefit to the national security of the U.S.

Members of the National Lawyers Guild have represented the aforementioned Cuban anti-terrorists, known as the Cuban 5, and have seen the U.S. justice system compromised by the powerful Cuban exile community in Miami, where their trial was held. These five men, heroes to the Cuban people for working to protect them and their president from assassination and terrorist attack, have spent over 12 years in U.S. prisons, and languish under lengthy and unjust sentences. The conditions of their unjust imprisonment have included extensive solitary confinement and prohibition of family visitation, in violation of their internationally recognized human rights.

Meanwhile, the U.S. government has allowed Luis Posada Carriles -- a man who has admitted responsibility for numerous terrorist acts against the Cuban people, their leadership and the tourists who stayed in their hotels -- walk the streets of Miami with impunity, while awaiting trial for a minor immigration offense. Despite the on-going efforts of Attorney Jose Pertierra, the State Department has persistently ignored the extradition claims of Venezuela -- the country where Posada-Carriles was convicted of plotting the October 1976 bombing of the Cubana airliner that killed 73 civilians, including the entire young Cuban fencing team, before his escape.

It is your own department, the U.S. Department of State, that has failed and refused to accede to the Venezuelan government's valid request for extradition of Posada Carriles for his crimes -- in violation of General Assembly Resolution 3074. And it is the U.S. Department of Justice that

has persisted in its political prosecution of the Cuban 5 and has continued to refuse visas for family members to visit them in prison.

Simply stated, the U.S. government cannot, consistent with its obligations under international human rights law, harbor terrorists and imprison counter-terrorists at the same time, and the above-mentioned UPR recommendations relating to the Cuban 5 and Luis Posada Carriles must be taken seriously in your March 18th response.

With respect to the embargo/blockade of Cuba, the Obama administration could use executive action and advocate for repeal of the embargo/blockade before Congress.

The effects of the U.S. embargo/blockade on the people of Cuba have been well documented by various UN agencies and have been summarized in a 2009 report by Amnesty International, “The US Embargo Against Cuba, Its Impact on Economic and Social Rights.” The report points out that not only is the main regional economic power and main source of new medicines and medical technologies – the U.S. – denying access to Cubans its medical and other resources, but through the 1992 Torricelli Act, the U.S. has sought to—and has effectively – prohibited third parties from providing much needed medicines and supplies to Cuba.

A 1997 report by the American Association for World Health (AAWH) is perhaps the most comprehensive study on the negative impact of the US embargo on the Cuban health care system during the 1990s. Based on a fact-finding mission to Cuba, the AAWH identified that the embargo contributed particularly to malnutrition affecting especially women and children, poor water quality, lack of access to medicines and medical supplies, and limited the exchange of medical and scientific information due to travel restrictions and currency regulations. The AAWH found that “a humanitarian catastrophe has been averted only because the Cuban government has maintained a high level of budgetary support for a health care system designed to deliver primary and preventive health care to all of its citizens... Even so, the U.S. embargo of food and the de facto embargo on medical supplies has wreaked havoc with the island's model primary health care system.” By maintaining its embargo/blockade against Cuba, the US violates the rights of the Cuban people self-determination as well as their rights to health and well-being protected by the UN Charter and the UNDHR.

We hope to see an affirmative response to the UPR recommendations on all of these issues. There is much that the Obama Administration could and should do to right these wrongs. and it would be inappropriate to reject these recommendations because they come from countries whose people have themselves suffered under U.S. foreign policy.

Sincerely,

Susan Scott, Jeanne Mirer, and Azadeh Shahshahani

Co-Chairs of the National Lawyers Guild International Committee

Judy Somberg,

Chair of the NLG Task Force on the Americas

Marjorie Cohn

NLG International Committee author of UPR Foreign Policy Report

cc:

Ambassador Susan Rice, United States Ambassador to the United Nations
Samantha Power, Senior Director, Office of Multilateral Affairs and Human
Rights, National Security Council

Catherine Powell, Policy Planning Staff Member, Office of Policy Planning
Department of State;

Suzanne Nossel, Deputy Assistant Secretary, Bureau of International
Organization Affairs, Department of State