

**UNITED STATES EXPLANATION OF VOTE TO THE UN GENERAL ASSEMBLY
THIRD COMMITTEE: RESOLUTION ON EXTRAJUDICIAL, SUMMARY OR
ARBITRARY EXECUTIONS (NOVEMBER 25, 2008)**

Thank you, Mr. Chairman,

Although we abstained on the adoption of this resolution today, we wish to join the sponsors of the text in condemning extrajudicial, summary or arbitrary executions against all persons, irrespective of their status. We agree that all States have the obligation to protect the human rights and fundamental freedoms of all persons in their territory and should take effective action to combat extrajudicial killings and punish the perpetrators. We agree that countries such as ours, which have capital punishment, should abide by their international obligations, including those related to due process, fair trial, and use such punishment for only the most serious of crimes.

Indeed, we agree with much of the text of this resolution, although there are paragraphs that could be improved to be consistent with the language of pp3 which notes that there are two bodies of law that regulate unlawful killings of individuals by governments - international human rights law and international humanitarian law. The different bodies of law apply to different circumstances. As noted in pp7, there are situations in the context of armed conflict where terrorist groups and governmental actors use that conflict as an excuse for wide-spread killings. And, as confirmed in PP6, the two bodies of law, human rights law and international humanitarian law, are complementary and mutually reinforce one other. But because the resolution's focus is, as stated in PP9, those extrajudicial, summary or arbitrary executions which violate human rights, we do not believe that the resolution needs to touch upon situations where international humanitarian law is applicable. Under the Geneva Conventions of 1949, it is a grave breach to kill prisoners of war or protected persons willfully or to sentence them without appropriate judicial process. Thus, the law of war provides a related but different framework for addressing that abhorrent conduct. Although we believe that OP8 and some other paragraphs could be improved to clarify that there are two different bodies of applicable law, we appreciate the co-sponsor's willingness to work on problematic language on this issue in this resolution and recognize that this resolution is an improvement in this respect over previous versions.

The resolution welcomes the International Criminal Court as an important contribution to ending impunity concerning extrajudicial, summary or arbitrary executions. Even supporters of the Court should be willing to acknowledge that that statement is factually inaccurate. Under the Rome Statute, the International Criminal Court has jurisdiction over genocide, war crimes and crimes against humanity; it has no jurisdiction over extrajudicial, summary or arbitrary executions as such. We find it unfortunate that we could not find neutral agreed wording that

could have been used for the ICC references in this resolution. There was a separate resolution already adopted this fall at the 6th Committee on the ICC. We regret that our division on matters pertaining to the ICC has to spill into resolutions unrelated to the ICC.

Finally, we are dismayed that the resolution has become unduly politicized with a reference to foreign occupation in a highly charged paragraph. It is an extremely unfortunate development. We hope that in coming years we can continue to work with sponsors on removing such unacceptable text, as well as on textual clarifications to paragraphs pertaining to international humanitarian law, in order to be in a position to vote affirmatively in support of the text.

Thank you,