

September 14, 2021

MEMORANDUM

To: Public Safety & Human Services Committee
From: Ann Gorman & Greg Doss, Analysts
Subject: Council Bill 120142 – Prohibiting SPD training with certain foreign governments

On September 14, 2021, the Public Safety & Human Services Committee will discuss [Council Bill \(CB\) 120142](#), which would restrict the Seattle Police Department (SPD) from participating in training with police, military, security, and/or intelligence bodies in foreign countries. This memo provides an overview and an analysis of the legislation as well as some potential policy considerations for Councilmembers.

Prohibiting Training with Certain Countries:

CB 120142 would prevent SPD from participate in any training programs, exchanges, or partnerships with the military forces of any country, or the police forces, intelligence agencies, security services, or other armed forces of any country, or engage in travel to any foreign country:

- A. That is not party to the International Covenant on Civil & Political Rights (ICCPR) and the International Covenant on Economic Social & Cultural Rights (IESCR); or
- B. That has been found in the last ten years by an international court or United Nations body to have been in violation of either of these covenants; or
- C. That has been documented by an international court or United Nations body to have committed violations of the Fourth Geneva Convention that have not been fully remedied to the satisfaction of the court or body that documented those violations.

Analysis:

Staff from the City's Office of Intergovernmental Relations (OIR) and the University of Washington's Center for Human Rights have indicated that the United Nations Human Rights Committee website maintains up-to-date information on nations that are party to the ICCPR and IESCR. However, OIR and UW staff have also indicated that there is no central clearinghouse for data on treaty violators and that it would be difficult for SPD staff to determine whether a country meets the criteria established under CB 120142.

Although narrative findings of both the Human Rights Committee and the Committee for Economic, Social and Cultural Rights (which monitors and administers the ICESCR) are available via the United Nations Jurisprudence Database, the database is not queryable. It would be burdensome for SPD staff first to develop such a list based on their reading of ten years of individual findings and then to keep the list up to date. In addition, some UN findings require a violator country to report back to the treaty's administering committee within a specified

period, describing the actions it took to remedy the finding. CB 120142 is silent on whether the ten-year exclusion as a training partner would still apply when a violation was timely remedied, but in any case, such reports are not available via the Jurisprudence Database so SPD staff would not have access to that information.

Various judicial bodies may adjudicate the Fourth Geneva Convention; but, as with the ICCPR and IESCR, there is no list or database of violators of the Fourth Geneva Convention, nor a central information source for violators who had remedied to the satisfaction of the court or body that documented those violations. The lack of any central information clearinghouse means that SPD staff would need to conduct its own research process prior to entering each new training partnership and to validate the objectivity of information sources.

In the decades since the ICCPR and the IESCR were adopted in 1966, the UN has established eight other bodies that monitor implementation of its core international human rights treaties. These bodies focus in such areas as racial discrimination; the prevention of torture; and the rights of women, children, migrant workers, and people with disabilities. Passing legislation that emphasizes compliance with only the ICCPR and IESCR does not recognize the aspects and subjects of human rights that are not explicitly addressed in those two treaties.

SPD staff have indicated that they have concerns about the language that would prohibit training programs, exchanges, or partnerships with police forces in countries that met the exclusion criteria of CB 120142. SPD staff have indicated that a broad interpretation of this language might mean that SPD would be barred from such activities as conducting collaborative research, learning or teaching best practices, discussing issues of policing and justice that have cross-national import, and providing security and support to an international delegation of City leaders in partnership with a foreign country's uniformed forces.

Potential Policy Considerations:

1. It could be difficult for SPD staff to determine the countries that had violated the ICCPR and IESCR treaties or the Fourth Geneva Convention, or to determine if a country had remedied any such violations.
2. The ICCPR and IESCR are not the only measures of whether a country's core values reflect those of the United Nations Human Rights Committee.
3. The bill's language would prohibit training programs, exchanges, or partnerships with police forces in countries that met the exclusion criteria of CB 120142. The bill does not define these terms, so it is unclear what specific activities or practices would be proscribed.

Background:

It is only the Human Rights Committee and the Committee for Economic, Social and Cultural Rights that have the authority to adjudicate the ICCPR and the IESCR. Other international courts, such as the International Court of Justice, may find violations of international law or issue non-binding advisory opinions that reference human rights violations. This work is separate from administration of these two treaties specifically.

The United Nations Human Rights Committee monitors and administers the ICCPR. This covenant applies to all entities and agents of the governments that are party to it, including all state and local governments and all private contractors who carry out government functions.¹ A substantiated complaint to the ICCPR at any of these levels would result in a country-level judicial finding by the Human Rights Committee even though the violation may be an extreme outlier in terms of general national practice.

Countries that have signed the ICCPR do not all have robust human rights protections. Several of them have made interpretive declarations – similar to United States presidential signing statements – that effectively undercut the covenant. As an example, Bahrain interprets the ICCPR articles addressing sexual discrimination, freedom of religion, and family rights within the context of Islamic Sharia law.² The United States' 1992 signing of the ICCPR was contingent on five Reservations, five Understandings, and four Declarations, each of which establishes a limitation on its commitment to compliance³.

Amendment A – Sponsor: Committee Chair Herbold

Amendment A simplifies the proposed standards that would be used to exclude foreign police agencies as training partners with SPD. In doing so, it establishes more easily verified criteria that are both based in the foregrounding of human rights and are easy for City staff to apply. Because there is no centralized public resource that contains data about violations of the two covenants to which training partners must be party, enforcing the legislation would be difficult absent this amendment.

This amendment also bars all training with foreign militaries, regardless of a country's human rights record.

The ICC operates separately and independently from the two bodies that administer the ICCPR and the IESCR and it has a different purview. It does, however, focus on identifying and holding accountable those who have committed the type of human rights violations which would also rise to the level of ICCPR and IESCR violations. Due to the ICC's high standard of cause for raising an investigation from the preliminary to the non-preliminary level, this change aligns

¹ [FAQ: The Covenant on Civil & Political Rights \(ICCPR\) | American Civil Liberties Union \(aclu.org\)](https://www.aclu.org/faq/the-covenant-on-civil-political-rights-iccpr)

² https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en

³ <https://ijrcenter.org/2017/05/31/canada-violated-iccpr-in-denying-salvadorian-asylum-on-gang-related-claim/>

with the legislation's intent and goal. The ICC maintains a current list of all countries and territories in which its investigations are ongoing as well as a record of its past findings.

Next Steps:

If the Committee votes to recommend passage of CB 120142, then the Council could vote on the bill at its September 27, 2021, meeting.

Attachments:

1. United Nations Treaty Signatories and Ratifiers
2. Amendment A (CM Herbold)
3. Amendment B (CM Sawant)

cc: Esther Handy, Director
Dan Eder, Deputy Director
Aly Pennucci, Policy and Budget Manager

Attachment 1: United Nations Treaty Signatories and Ratifiers

United Nations Treaty Signatories and Ratifiers

As of September 2019, 173 countries are signatories to the ICCPR. An additional six countries have ratified but not signed this covenant, which means that they are not fully bound to uphold the protections it names. Those countries are China, Comoros, Cuba, Nauru, Palau, and Saint Lucia. Fifteen other states have neither ratified nor signed the covenant (Bhutan, Brunei, Kiribati, Malaysia, Micronesia, Myanmar, Oman, Saint Kitts and Nevis, Saudi Arabia, Singapore, the Solomon Islands, South Sudan, Tonga, Tuvalu, and the United Arab Emirates).

As of July 2020, 171 countries are signatories to the IESCR. Comoros, Cuba, Palau, and the United States have ratified but not signed this covenant. Andorra, Botswana, Bhutan, Brunei, Kiribati, Malaysia, and the Federated States of Micronesia have neither ratified nor signed it.

The Fourth Geneva Convention, which 196 countries have ratified, addresses protections for civilians in a war zone or an area in which armed conflict is taking place. The International Criminal Court (ICC) or an ad hoc UN tribunal can adjudicate potential violations. Many countries also have the statutory jurisdiction to prosecute war crimes, including violations of this Convention, at the federal level and/or in military courts. The ICC has over 20 potential cases in some stage of review, which include situations in the “State of Palestine” (for alleged crimes committed since 2014) and in Afghanistan (for alleged crimes committed since May 2003; this investigation may lead to a finding against United States actors), among many others. Some of these situations have been under review for over 10 years due to the strict investigative requirements of the ICC statute. The United States and Israel, among other countries, have informed the UN Secretary General that they do not recognize the ICC’s statute as currently written thus do not have legal obligations before the Court.

- 1) [FAQ: The Covenant on Civil & Political Rights \(ICCPR\) | American Civil Liberties Union \(aclu.org\)](#)
- 2) https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en
- 3) <https://ijrcenter.org/2017/05/31/canada-violated-iccpr-in-denying-salvadorian-asylum-on-gang-related-claim/>
- 4) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23750&LangID=E>
- 5) <https://www.housingrightswatch.org/content/recent-decision-un-cescr-committee-deems-spain-violation-right-adequate-housing-third-time>

Amendment A

to

CB 120142

Sponsor: Councilmember Herbold

Change standards for exclusion as a training partner to improve enforceability

Amend Section 1 of the bill, to add the following language as shown:

Section 1. A new Section 3.28.141 is added to the Seattle Municipal Code as follows:

3.28.141 Training with certain countries prohibited

The Seattle Police Department (SPD) shall not participate in any training programs, exchanges, or partnerships with the military forces of any country, ~~((or the police forces,)) intelligence agencies, security services, or other armed forces of any country~~, or engage in travel to any foreign country or territory for the purpose of training with a foreign military. SPD shall not participate in any training programs, exchanges, or partnerships with the police forces, intelligence agencies or security services of any country or engage in travel to any foreign country or territory:

A. That is not party to the International Covenant on Civil & Political Rights and the International Covenant on Economic Social & Cultural Rights; or

B. ~~((That has been found in the last ten years by an international court or United Nations body to have been in violation of either of these covenants))~~ That within the country or territory's boundaries exists: a situation under non-preliminary investigation by the International

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Criminal Court; or an actor against which that Court has found a violation in the last ten years.

(;of

~~C. That has been documented by an international court or United Nations body to have committed violations of the Fourth Geneva Convention that have not been fully remedied to the satisfaction of the court or body that documented those violations.))~~

Effect: The proposed amendment simplifies the proposed standards that would be used to exclude foreign police agencies as training partners with SPD. In doing so, it establishes more easily verified criterion that are both based in the foregrounding of human rights and are easy for City staff to apply. Because there is no centralized public resource that contains data about violations of the two covenants to which training partners must be party, enforcing the legislation would be difficult absent this amendment.

This amendment also bans all training with all foreign militaries, regardless of a country's human rights record.

Background: The ICC operates separately and independently from the two bodies that administer the ICCPR and the IESCR and it has a different purview. It does, however, focus on identifying and holding accountable those who have committed the type of human rights violations which would also rise to the level of ICCPR and IESCR violations. Due to the ICC's high standard of cause for raising an investigation from the preliminary to the non-preliminary level, this change aligns with the legislation's intent and goal. The ICC maintains a current list of all countries and territories in which its investigations are ongoing as well as a record of its past findings.

Legal review pending.

Amendment B to CB 120142 SPD TRAINING LEGISLATION

Sponsor: Councilmember Sawant

Modify Geneva Conventions exclusions criteria to include Task Force Findings

Amend 3.28.141, subsection C, as follows:

C. That has been documented by an international court, ~~((or))~~ United Nations body, or a fact-finding mission by an intergovernmental or international human rights organization to have committed violations of the Fourth Geneva Convention that have not been fully remedied to the satisfaction of the court or body that documented those violations (where applicable).

* * *

Effect: Adds fact finding missions to the exclusion criteria specified for the fourth Geneva Convention. This amendment may result in more nations meeting the criteria of a country that has violated the Fourth Geneva Convention and would not be allowed to train with SPD.