

floor time and delays to consider even nominations that could be confirmed easily, grinding our progress to a halt. I hope that the Republican Senators and leadership will relent and end the year by making progress on these important nominations to put us on a better path for the next session.

THE TORTURE VICTIMS PROTECTION ACT

Mr. LEAHY. Mr. President, the U.S. Supreme Court recently granted certiorari in a case involving the Torture Victim Protection Act of 1991, TVPA, a law I supported from the earliest days following its introduction by Senator SPECTER in the summer of 1986. Senator SPECTER and I worked for years to see this historic human rights bill become law in 1991. Yet today I am concerned that the TVPA's crucial role in protecting human rights may be weakened or even rendered meaningless. The Supreme Court case, *Samantar v. Yousuf*, may decide the fate of this landmark law.

The TVPA provides a Federal cause of action against any individual who subjects any person to torture or extrajudicial killing. This cause of action is available where the individual acts under actual or apparent authority, or under color of law of any foreign nation. Congress passed the TVPA in response to widespread use of official torture and summary executions that took place around the world, despite the universal consensus condemning such practices. Congress recognized that neither Federal nor international law was strong enough to curb such egregious human rights abuses. We enacted the TVPA to ensure accountability for those who commit atrocious violations of human rights.

The case currently before the Supreme Court, *Samantar v. Yousuf*, raises the question of whether the Foreign Sovereign Immunities Act, FSIA, allows an action filed under the TVPA to be brought against a former government official of a foreign country who is now living in the United States. The answer is clear in the TVPA and its legislative history. The answer is yes. Congress expressly intended the TVPA to apply against former government officials. In enacting the TVPA, Congress made it explicit that the FSIA would almost never provide a defense to such persons. They can be sued under the TVPA to recoup damages caused by their torturous actions.

The Senate clearly stated its intention to ensure that the TVPA operated in concert with existing law, specifically taking into account the FSIA, the Alien Tort Claims Act, and the United Nations Convention Against Torture, which the United States signed in 1988. This point was discussed extensively as we drafted and refined the legislation. The operation of the TVPA was considered in a hearing held by the Judiciary Committee's Subcommittee on Immigration and Ref-

ugee Affairs in June 1990. The committee was not oblivious to the concerns raised at the time by the executive branch regarding sovereign immunity. We were cognizant of the role of the executive to manage foreign policy. We addressed each of these concerns in turn, but we were not persuaded that they outweighed the importance of creating a private cause of action under the TVPA. The full Congress agreed when it enacted the TVPA in March 1992.

The TVPA was drafted, in part, in response to gaps in two existing laws: the Alien Tort Claims Act and the Convention Against Torture. In deciding whether the Alien Tort Claims Act could be used by victims of torture committed abroad, one Federal judge expressed concern that separation of powers principles required an explicit grant by Congress of a private right of action for lawsuits that affect foreign relations. The Alien Tort Claims Act did not have such an explicit grant. Congress responded by enacting the TVPA with an unambiguous basis for a cause of action.

Similarly, the United States signature on the Convention Against Torture was an important and symbolic step in the prevention of torture, but the Convention fell short of the TVPA in at least two important respects. First, the Convention required that signatories open their courts to suits for damages caused by torture in their own countries. That policy was welcome but insufficient. The TVPA allows torture victims to sue their abuser without returning to the country of abuse. Congress took this step because it believed that governments that had allowed torture to occur within their jurisdiction would not necessarily provide meaningful redress to victims. Furthermore, torture victims who escaped from the country of abuse would not eagerly return to that country to file suit. Congress designed the TVPA specifically to respond to that situation by opening U.S. courts to these cases and providing a civil cause of action here in the United States for torture committed abroad.

Second, by creating a Federal cause of action in our own courts, Congress ensured that torturers would no longer have a safe haven in the United States. The legislation served notice to individuals engaged in human rights violations that their actions were anathema to American values and they would not find shelter from accountability here.

Congress explicitly drafted the TVPA to strengthen and expand the scope of action that victims of torture could take in our courts, but Congress was nonetheless conscious of the bill's limits. The TVPA was not meant to override traditional diplomatic immunities or the FSIA's grant of immunity to foreign governments. The act struck a balance. It protected well established notions of sovereign and diplomatic immunities for current political actors without creating a safe haven for the

perpetrators of horrible acts after they left their official positions and settled in, or fled to, the United States.

For example, Congress carefully created the cause of action against an "individual" to ensure that foreign states or their entities could not be sued under the act under any circumstances. Similarly, we discussed at length the fact that the legislation would not permit a suit against a former leader of a country merely because an isolated act of torture occurred somewhere in that country. But Congress neither intended nor imagined that the FSIA would provide former officials with a defense to a lawsuit brought under the TVPA. Such an interpretation would undermine the purpose of the law. The TVPA was not intended to cover the torturous acts of private individuals. To the contrary, in order for a defendant to be liable under the TVPA, the torture must have been taken "under actual or apparent authority or under the color of law of a foreign nation." The Judiciary Committee explicitly stated in its report on the bill that, "the FSIA should normally provide no defense to an action taken under the TVPA against a former official."

I hope that the Supreme Court studies this definitive and comprehensive history as it considers the case of *Samantar v. Yousuf*. Congress clearly intended the TVPA to extend to former officials of foreign countries if they choose to come to the United States after leaving their positions of authority. Congress also stated that the FSIA does not extend immunity to such individuals. Claims that a suit brought against a former official would undermine the FSIA and endanger foreign relations are simply inaccurate. Congress properly weighed the foreign policy concerns when it passed the TVPA. The Supreme Court should not overrule the well-considered judgment of Congress.

DETERIORATING SITUATION IN NEPAL

Mr. LEAHY. Mr. President, over the years, both during and since the end of the monarchy in Nepal, I have urged the Nepal Army to respect human rights and cooperate with civilian judicial authorities in investigations of its members who abuse human rights. I spoke on this subject a few days ago in relation to the horrific case of Maina Sunuwar, a 15-year-old Nepali girl who was tortured to death by Nepal Army officers who then sought to cover up the crime.

I have also, similarly, urged the Maoists to stop committing acts of violence and extortion against civilians, respect human rights, and work to improve the lives of the Nepali people through the political process. The fact that the Maoists laid down their arms and entered into a peace agreement gave the Nepali people the first chance in Nepal's history to build a democratic government that is responsive to their needs.