RATIFICATION OF INTERNATIONAL HUMAN RIGHTS TREATIES; UNITED STATES' ATTITUDE IN PESPECTIVE.

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Abstract

At the forefront of the clamour for sanctions for violations of international human rights treaties is the United States'. The US traditions of support for human rights in the forms of judicial enforcement of human rights at home and the unilateral actions to promote civil and political rights abroad calls for a closer look of US attitudes towards ratifications of human rights treaties. The US government's approach to international human rights treaties is unique. The package of reservations, understandings and declarations (RUDs) the US attaches to its ratifications of human rights conventions appears to be guided by several "principles". The underling crux of all the principles is the fact that U.S approach limit international treaties only to the pre existing U.S citizen rights or rendered it practically non implementable. This poses a paradox giving the US attitude of wielding human rights as a tool of its foreign policy and preaches the universality of human rights, and on the other, it refusal to incorporate international human rights law in its own domestic system, preferring to stand by its constitutional standards. This paper explores the United States' attitude towards ratification of international human rights treaties by examining the reservations, understanding and declarations (RUDs) approach.

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INTRODUCTION

Despite having played an active role in the creation of the United Nations, and the drafting of the UN Charter, the Universal Declaration on Human Rights, and the core UN human rights treaties, the United States' has failed to ratify a significant number of those human rights treaties.[2] The United States' remains unparalleled in the international community in its failure to signal intent to ratify some of the internationally perceived land mark human rights treaties. This however poses a paradox. The paradox lies in the curious tension between the consistent rejections of the applications of international norms on the one hand and the venerable U.S traditions of support for human rights in the forms of judicial enforcement of human rights at home and the unilateral actions to promote civil and political rights abroad.[3]

Be that as it may, the United State attitude to ratifications of international human treaties signifies approach to human rights law of fear and arrogance.[4]

Fear that international standards might constrain the unfettered latitude of the global superpower, and arrogance in the conviction that the United States', with its long and proud history of domestic rights protections, has nothing to learn on this subject from the rest of the world.[5]

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[2] See UN Commission on Human Rights, Promotion and Protection of Human Rights: Human Rights Defenders, submitted by Hina Jilani, Special Representative of the Secretary General on the status of human rights defenders, E/CN.4/2004/94/Add.3, 23 March 2004, p. 151, par. 476, http://www.unhchr.ch/pdf/chr60/94add3AV.pdf Accessed on the 8th February 2013.

[3] For useful overview of U.S unilateral policies, See The paradox of U.S human rights policies by Andrew Moravcsik: in American Exceptionalism and human rights. Edited by Micheal Ignatieff. 2005. Princeton University Press. Pg. 147 to 48.

[4] See Kenneth Roth; The charade of US ratification of international human rights treaties. Chicago journal of international law, fall 2000. Available at http//www.globalpolicy.org/empire/un/2003/0806charade.htm. Accessed 8th of February 2013.

[5] Ibid.

The aim of this paper is to analytically explore the United States' attitude towards ratification of international human rights treaties. To achieve this aim, the paper is divided into three parts. The first part examines the approach of United States' to ratification of international human rights by discussing the RUDs (reservations, understanding and declarations) approach. The second part examines the paradox in the U.S support for international human rights treaties by her unilateral actions both at the home front and abroad. The third part concludes the paper.

UNITED STATES' APPROACH TO RATIFICATION OF INTERNATIONAL HUMAN RIGHTS TREATIES

The US government's approach to the ratification of international human rights treaties is unique. The package of reservations, understandings and declarations the United States' has been attaching to its ratifications of human rights conventions appears to be guided by several "principles" these principles are as follow:

1. The United States' will not undertake any treaty obligation that she will not be able to carry out because it is inconsistent with the United State's Constitution.

2. United States' adherence to an international human rights treaty should not effect-or promise-change in existing U.S. law or practice.

3. The United States' will not submit to the jurisdiction of the International Court of Justice to decide disputes as to the interpretation or application of human rights conventions.

4. Every human right treaty to which the United States' adheres should be subject to a "federalism clause" so that the United States could leave implementation of the convention largely to the states.

5. Every international human rights agreement should be "non-self-executing.[6]

The underling crux of all the above principles is the fact that U.S approach limit international treaties only to the pre existing U.S citizen rights or rendered it practically non implementable. In each case a reservation, understanding and declarations is drafted to negate the additional rights protection – if any – in the international human rights treaties ratified by the U.S government.[7] A cursory look at each principles of U.S (RUDs) approach to ratifications of international human treaties becomes necessary to foster a further and better understanding of the topic under discuss.

Constitutional Limitations on Treaties

Under accepted United States' constitutional jurisprudence, treaties are subject to constitutional limitations: none of the three branches-the Executive, the Congress, or the courts-can give effect to a treaty provision that is inconsistent with the Constitution.[8]

A reservation is evident when the United States ratified the International Covenant on Civil and Political Rights, in respect of the obligation in Article 20 to prohibit war propaganda and "racial hate speech." In that case, however, had the executive branch been disposed to avoid entering a reservation, it might have contented itself with an "understanding" that would construe Article 20 as requiring only that a state party prohibit speech that incites to unlawful action. That, indeed, is the plausible interpretation of Article 20(2)[9] and as so understood could be implemented by the United States under the Constitution.[10]

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[6] See Louis Henkin. U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker: The American Journal of International Law, Vol. 89, No. 2 (Apr., 1995), pp. 341-350 Published by: American Society of International Law. Available at http://www.jstor.org/stable/2204206. Accessed on the 8th February 2013.

[7] See Kenneth Roth. Op. Cit at note 3.

[8] See Reid v. Covert, 354 U.S. 1, 16-18 (1957) (plurality opinion); restatement (third) of the foreign relations law of the united states at 111 comment a, at 115(3) (1987)

[9] Article 20 provides: " 1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

[10] Reid v. Covert, Op.cit at note 7.

Again, in respect of the Race Convention, the United States by reservation refused any international obligation to ensure against private discrimination on account of race "except as mandated by the Constitution and laws of the United States." If behind that reservation were the fear that the Convention might be construed to forbid discrimination by individuals that falls within their zone of "privacy" (autonomy) protected by the Constitution, a narrow reservation (or understanding) to that effect would have been appropriate. Instead, the United States entered a reservation that seems designed not to avoid constitutional difficulties but to resist change in United States law.

Rejecting Higher International Standards

By its reservations, the United States apparently seeks to assure that its adherence to a convention will not change, or require change, in U.S. laws, policies or practices, even where they fall below international standards. For example, in ratifying the International Covenant on Civil and Political Rights, the United States refused to accept a provision prohibiting capital punishment for crimes committed by persons less than eighteen years of age. In ratifying the Torture Convention, the United States, in effect, reserved the right to inflict inhuman or degrading treatment (when it is not punishment for crime),[11] and criminal punishment when it is inhuman and degrading (but not "cruel and unusual").[12]

The ICJ Reservation

The United States has proposed a reservation to the clause, included in several conventions,[13]pursuant to which a state party may bring a dispute as to the interpretation or application of the convention to the International Court of Justice. The Clinton administration

[11] See Rhodes v. Chapman, 452 U.S. 337 (1981). The reservation refers also to the Fifth and Fourteenth Amendments; perhaps some treatment or punishment, although not barred as cruel and unusual by the Eighth Amendment, might be deemed to deprive a person of life, liberty or property without due process of law. (This reference source is from Louis Henkin. Op.Cit at pp. 341-350)

[12] See US Reservations, Declarations and Understandings, Convention Against Torture and other cruel, inhuman or degrading Treatment or punishment, Amend No 3200-3203, 101st Cong, 2d Sess (Oct 27, 1990), in 136 Cong Rec S 17486 (Oct 27 1990). Cited in Kenneth Roth Op.Cit at note 3.

[13] See Art. IX of the Genocide Convention; Art. 30 of the Torture Convention, GA Res. 39/46 (Dec. 10, 1984); Art. 32 of the Race Convention; Art. 29 of the Women's Convention, GA Res. 34/180 (Dec. 18, 1979).

reserved on the "ICJ clause" in ratifying the Race Convention. President Bush did for the Torture Convention, as President Reagan did in ratifying the Genocide Convention.[14]

United States reservations to "ICJ clauses" are traceable largely to the sad history of the Nicaragua case. In that case, after the Court decided that it had jurisdiction, the United States refused to appear; it also terminated its declaration accepting the Court's compulsory jurisdiction. Since the end of Cold war, the Judgment against the United States in the Nicaragua case has been suspended by agreement, and promises to concede to the court jurisdiction has yielded no visible fruit. To date, there has been no new declaration by the United States accepting the compulsory jurisdiction of the Court. The executive branch has repeatedly denied that it fears impartial judgment and is hostile to the Court, noting that the United States has accepted the Court's jurisdiction in more than seventy treaties; but the United States has now repeatedly refused to add to that number the few human rights conventions that contain an ICJ clause.[15]

The "Federalism" Clause

The "federalism" clause attached to U.S. ratifications of human rights conventions has been denominated an "understanding," a designation ordinarily used for an interpretation or clarification of a possibly ambiguous provision in the treaty.[16] The federalism clause in the instruments of ratification of the human rights conventions is argued not to be an understanding in that sense, but intended to alert other parties to United States intent in the matter of implementation.[17]

The United States proposed "federalism" clauses presumably is to assuage "states' rights" sensibilities. What it entails is that the United States sought to limit its obligations under

[14] The International Covenant on Civil and Political Rights does not include an ICJ clause.
[15] At his confirmation hearings Secretary of State Warren Christopher decried such refusals to submit to judgment by the ICJ. See Nomination of Warren M. Christopher to be Secretary of State: Hearing before the Senate Comm. on Foreign Relations, 103d Cong., 1st Sess. 72-73 (1993).
[16] See Louise Henkin. Op.cit at Pg. 345 to 346.
[17] Ibid. at Pg. 345

particular treaties to those matters that were "within the jurisdiction" of the federal Government, and to exclude any international obligation as to matters subject to the jurisdiction of the states.

Some early versions of the federal-state clause reflected a misapprehension about "the jurisdiction" of the federal Government, as regards the reach of both its treaty power and congressional legislative power. However, there are no significant "states' rights" limitations on the treaty power.[18] There is little that is not "within the jurisdiction of the United States," i.e., within the treaty power, or within the legislative power of Congress under the Commerce Power, under its authority to implement the Fourteenth Amendment, or under its power to do what is necessary and proper to carry out its treaty obligations.[19]

The Non-Self-Executing Declaration

The United States has been declaring the human rights agreements it has ratified to be non-self-executing i.e. without an implementing legislations. The U.S. practice of declaring human rights conventions non-self-executing is commonly seen as of a piece with the other RUDs, also as the reservations designed to deny international obligations, immunizing the United States from external judgment. The declaration that a convention shall be non-self-executing is designed to keep its own judges from judging the human rights conditions in the United States by international standards.

It was argued that this step is not necessary objectionable, having regard to the fact that it ensures that the new rights are endorsed by both the two houses of congress through the traditional legislative process, rather than through the unicameral ratification process, which requires the consent of only the senate.[20] But what stands condemn is the refusal of the US

[18] Ibid at pg. 345
[19] Ibid at Pg 345 to 346.
[20] See Kenneth Roth. Op.cit at note 3.

government to give in deserving cases implementing legislations to many international human rights treaties, arguing that these rights are already protected under US law.[21]

UNITED STATE SUPPORT FOR INTERNATIONAL HUMAN RIGHTS TREATIES – A PARADOX.

The impression that the United States is a strong backer of international human rights law lie in the obvious fact that it has often vigorously promoted human rights overseas as part of its foreign policy and because it has also linked trade privileges to human rights performance.[22]In addition, the US State Department publishes annually very detailed reviews of the human rights performance of countries around the world.[23] The sharp and visible contrast between US chastisements of other countries for failing to adhere to human rights and the US resistance to incorporating international standards in its domestic system are remarkable. The United States has a long history of resistance to international human rights law, often for distinctive reasons as already examined in this paper, and also sometimes on grounds that have echoes in the rationalizations used by other countries for their non-acceptance of certain principles.

Reservations designed to reject any obligation to rise above existing law and practices are of dubious propriety: if states generally entered such reservations, the convention would be futile. The object and purpose of the human rights conventions, it would seem, are to promote respect for human rights by having countries mutually assume legal obligations to respect and ensure recognized rights in accordance with international standards. Even friends of the

[21] Ibid.

[22] See generally Ann Elizabeth Mayer. Clashing Human Rights Priorities: how the united states and muslim countries selectively use provisions of international human rights law. published in india in 9 Satya Nilayam: Chennai Journal of Intercultural Philosophy 44 (2006). 44-77.

[23] . See U.S. Department of State, Country Reports on Human Rights, published annually. Available at www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper. Accessed on 11th Febuary 2013.

United States have objected that its reservations are incompatible with that object and purpose and are therefore invalid.[24]

By adhering to human rights conventions subject to reservations, the United States, it is charged, is pretending to assume international obligations but in fact is undertaking nothing. It is seen as seeking the benefits of participation in the convention (e.g., having a U.S. national sit on the Human Rights Committee established pursuant to the Covenant) without assuming any obligations or burdens. The United States, it is said, seeks to sit in judgment on others but will not submit its human rights behaviour to international judgment.[25]To many, the attitude reflected in such reservations is offensive: the conventions are only for other states, not for the United States.[26]

As in the case of "constitutional" reservations, moreover, U.S. reservations designed to refuse higher international standards are more extravagant than called for by their purpose. For example, in ratifying the Covenant, the United States did not reserve only the right to execute a person who committed a capital crime at age seventeen; by the terms used, the United States reserved the right to execute any child, of any age.[27]In ratifying the Race Convention, the United States reserved not only an individual's right to discriminate on matters within his/her constitutional zone of privacy; what was reserved would seem to allow the United States to permit, even to require, private racial discrimination and de facto segregation in any circumstances.[28]

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[24] See Louis Henkin. U.S. Ratification of Human Rights Conventions. Op. Cit at note 5 at Pg 343.
[25] Yet U.S is at the forefront of attack on countries she perceived to be in violations of human rights treaties. This is a perfect case of complaining about the snow on one neighbour's roof when one's own doorstep is unclean.
[26] For example, the legal scholar Cherif Bassiouni has highlighted the plethora of reservations that the United States has placed on the three major human rights treaties that it has belatedly ratified, the Genocide Convention, the Convention Against Torture, and the ICCPR, burdening them with nine reservations, fifteen understandings, seven declarations, and two provisos. See M.Cherif Bassiouni, "Reflections on the Ratification of the International Covenant on Civil and Political Rights by the United States Senate," *Depaul Law Review*, vol. 42 (1993), 1176-77. Cited in Ann Elizabeth Mayer. Op.cit at note 21. Pg. 6.
[27] See Art. 6(5) of ICCPR. As cited in Kennth Roth. Op. Cit at note 3.
[28] See Louis Henkin. U.S. Ratification of Human Rights Conventions. Op. Cit at note 5 at Pg 344.

Aside many factors already identified in this paper behind the US failure to keep abreast of international human rights law, the conviction that the US Constitution – meaning the Constitution as interpreted by the Federal Courts – must be upheld as the definitive statement of rights is of practical significant. However, the danger is that even when the US Constitutional standards are clearly less protective of human rights than international human rights law is, they are treated as definitive.[29]

The deficiencies of the Constitution in the domain of human rights have troubled many including US progressives. Scholarly specialists in international law, who are exposed to modern rights concepts, are more likely than other Americans to notice the gap that has opened up between US Constitutional interpretations and US domestic law on one side and contemporary international human rights law on the other.[30]

The international law expert Richard B. Lillich once observed that: "to the extent that the Constitution embraced slavery and countenanced the denial of women's rights, it actually was anti-human rights in content."[31]

Having studied both US constitutional rights and their international counterparts, Lillich maintained: While contemporary observers of the United States constitutional system praise its concern with individual human rights, it should be recalled that the Constitution itself does not begin to address such concerns in what one today would consider an acceptable manner.[32]

[29] Kennth Roth is of the view that such American Arrogance will have been understandable if US human rights practice are beyond reproach, but it is not. See Kennth Roth Op.cit at note 3. See also Human rights Watch. Wolrd report 2012. Available at www.hrw.org/world-report-2012/world-report-2012-united-state. Accessed on the 9th of febuary 2013. Wherein thee is a vivid and detailed instances of Human rights violations in the U.S.

[30] The problem US has with human rights has correlations with her consistent refusal to ratify international human rights treaties. Human rights treaties if ratified might serve as backlog should constitutional or statutory guarantees fails. See Kennth Roth. Op. Cit at note 3.

[31] See Richard B. Lillich, "The United States Constitution and International Human Rights Law," Harvard Human Rights Journal,vol. 3 (1990), 54. Cited in Ann Elizabeth Mayer. Clashing Human Rights Priorities: how the united states and muslim countries selectively use provisions of international human rights law. Op.cit at note 21. Pg 9.

[32] Ibid at pg. 9 to 10.

Commenting on US attitudes towards international human rights law, a generally sympathetic British observer noted in 1988 how the United States remained “sadly isolated" from the direct impact of the rapidly developing corpus of international human rights law.[33] He expected that, absent improvements in the 1990s, the US Constitution would be found deficient "as a charter of ordered liberty, suitable to the needs and values of the citizens of the United States in the twenty-first century."[34]

Sadly the opportunities to redeem presented itself to the US government in January 2000 by the optional protocol to the convention on the rights of child that sought to enact a prohibition against the use of child in conflict. However, this opportunity was squandered[35] by the US attitude to ratifications of international human rights treaties. To the dismay of many, the US government at first opposed the protocol because it wanted to continue recruiting youth whether or not they are eighteen years of age. Even when the US finally reach a compromise, the compromise viewed as problematic in the sense that it only ban the voluntary recruitment which in a way allowed the US to proceeds further in it agenda of recruiting youth into its Army. This attitude of US further entrenched the view that the US government ordinarily did not embrace international human rights law except insofar as it parallels existing US practice.[36]

Thus, one sees that the United States has a deeply conflictual relationship with the international human rights system. On the one hand, it wields human rights as a tool of its foreign policy and preaches the universality of human rights, and on the other, it refuses to

[33] See Anthony Lester, “The Overseas Trade in the American Bill of Rights,” *Columbia Law Review*, vol. 88 (1988), 539. Cited in Ann Elizabeth Mayer. Clashing Human Rights Priorities: how the united states and muslim countries selectively use provisions of international human rights law. Op.cit at note 21. Pg 9.

[34] Ibid., 560-61.

[35] . Kenneth Roth referred to this US attitude as a mere Charade of External consumption with no impact on these or other human rights problems in the US. See Kenneth Roth. Op.cit at note 3.

[36] Ibid. Need to state further that The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is the world’s primary legal document on women’s equality. It reflects the consensus of the international community on the specific protections and actions states are obliged to take to ensure equality between men and women. CEDAW and the CRC—have been signed by the US but not yet ratified. CEDAW was submitted to the Senate for consideration in 1980.

incorporate international human rights law in its own domestic system, preferring to stand by its constitutional standards, which retain 18th-century characteristics. (This portends the element of cultural relativism). It is a sign of the insularity and parochialism that typically shape Americans' vision of rights issues that is aptly captured by the words of the German Sage Gothe that; "*Things which matter most must never be at the mercy of things which matter least.*"

CONCLUSION

As already indicated in this paper, the United States has an embedded history in the habits of clinging to traditions in it domestic legal systems and limiting international human rights treaties to pre existing US law and/or resisting upgrading it laws to meet international human rights standards. At the governmental level, US have philosophies that posit that international human rights law is not necessarily binding, meaning that it can be trumped by domestic laws. One might expect that these policies of only selectively embracing human rights (Cultural relativism) would lead the US to become a vanguide of other countries rights to do so in terms of the priorities that they accord to particular human rights. However, the United States acting as if its distinctive human rights agenda (Universality) should be accepted by other countries, has aggressively promoted human rights overseas, using rights in a highly politicized manner – herein lies the paradox of US attitude towards International human rights treaties.

The US emphasis on religious freedom (liberal society or democracy) suggests that it portends that as it campaigns to reshape the world and that religious freedom (Liberalism) is the central problem afflicting contemporary society's most particularly Africa and Middle Eastern societies, which is far from what the typical assessment within these societies would be.

The people of the United States are also currently deprived of many of the protections (good or bad) afforded under international human rights law due to the US insistence on upholding traditions that impede adjustments to that law. Yet, to date US failed to embrace the idea that all international human rights matter has primarily had harmful effects in the domestic sphere. Opinion wise, it seems now that it has embarked on an ambitious project to remake the world according to its own vision, the United States further the exacerbating tensions in an already volatile atmosphere by pressing its distinctive and limited human rights priorities in societies where human rights priorities are assessed very differently and where resentments of US double standards on human rights issues have been magnified by recent events.