The United States' Reservations to the ICCPR

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The United States' Reservations to the ICCPR; International Law *versus* God's Own Constitution

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1 Introduction

In June 1992, the United States ratified the International Covenant on Civil and Political Rights (ICCPR). It did so with a great deal of understandings, declarations and reservations. In this contribution, the position of the United States will be discussed, primarily from the perspective of whether and to what extent the conditions attached to ratifying the ICCPR prevent the treaty from influencing the internal human rights practice of the United States.

2 The United States' Ratification of the ICCPR

The ICCPR was adopted by the United Nations General Assembly on 16 December 1966. The United States was one of the then 106 Member States of the United Nations to vote in favour of adoption of the Covenant (no State abstained from voting or voted against). The United States also belonged to the 66 States voting in favour of the First Optional Protocol to the ICCPR, establishing an individual complaint procedure.[1]

President Carter submitted the Covenant for ratification to the United States Senate in February 1978, with a series of conditions attached. The Foreign Relations Committee held hearings on the issue in November 1979, but, to use Senator Pell's words, 'domestic and international events at the end of 1979, including the Soviet invasion of Afghanistan and the hostage crisis in Iran, prevented the Committee from moving to a vote on the Covenant'.[2]

The Reagan Administration, coming into power in 1980, did not show any interest in ratifying the Covenant.[3]

In August 1991, President Bush, however, sent a letter to the Foreign Relations Committee urging the Senate to renew its consideration of the Covenant 'with a view to providing advice and consent to ratification'. In November of that year, the Bush Administration submitted a package of proposed United States conditions to the Senate. The list was more or less equal to the list that had been proposed before by the Carter Administration.[4]

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[1] United Nations, *Yearbook of the United Nations 1966*, Martinus Nijhoff Publishers, Dordrecht/London/Boston, 1966, p. 418.

[2] See the report by Senator Pell on behalf of the Committee on Foreign Relations, *International Legal Materials*, 31, 1992, p. 645, at p. 649.

[3] *Idem*.

[4] *Ibidem*, pp. 649 and 651.

M. Castermans, F. van Hoof and J. Smith (eds), *The Role of the Nation-State in the 21st Century*, 35-46.

When finally ratifying the ICCPR, the United States attached a series of reservations, understandings and declarations to its ratification. I here would like to mention the two most important provisions on this list, seen from the perspective of the possible functions of the ICCPR within the United States' legal system (the full text of the reservations, declarations and understandings is printed as an Annex to this contribution):

> 'That the United States declares that the provisions of Articles 1 through 27 of the Covenant are not self-executing.'

And:

> 'That the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant.'

Other important reservations, understandings and declarations are related to such issues as the right 'to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age', but they will not be discussed here, important as they might be from another perspective.

Further to this, it is important to keep in mind that the United States' ratification of the ICCPR did *not* include ratification of the First Optional Protocol to the ICCPR, being the 'sharpest instrument' to measure a State's readiness to act in conformity with the ICCPR provisions.

3 'Object and Purpose' of the ICCPR; Legitimacy of Reservations in General

As stated in the Vienna Convention on the Law of Treaties of 1969, Article 19(c) – which is in line with the Advisory Opinion of the International Court of Justice in the case on Reservations to the Convention on the Prevention of Genocide (1951) – reservations should not be incompatible with the 'object and purpose' of treaties.

The Human Rights Committee, the supervisory body for the ICCPR, has formulated the object and purpose of the ICCPR as follows:

> 'To create legally binding standards for human rights by defining certain civil and political rights and placing them in a framework of obligations which are legally binding for those States which ratify, and to provide an efficacious supervisory machinery for the obligations undertaken.'[5]

[5] UN Doc. CCPR/C/21/Rev.1/Add.6, p. 3.

In its 1994 'General Comment' on issues related to reservations made upon ratification or accession to the ICCPR, the Committee discussed a series of (types of) reservations that are incompatible with the object and purpose of the Covenant. Some of these are relevant for the United States' case:

> 'Reservations that offend peremptory norms would not be compatible with the object and purpose of the Covenant. Although treaties that are mere exchanges of obligations between States allow them to reserve *inter se* application of rules of general international law, it is otherwise in human rights treaties, which are for the benefit of persons within their jurisdiction. Accordingly, provisions in the Covenant that represent customary international law (and *a fortiori* when they have the character of peremptory norms) may not be the subject of reservations. Accordingly, a State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence, to execute pregnant women or children, to permit the advocacy of national, racial or religious hatred, to deny to persons of marriageable age the right to marry, or to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language. And while reservations to particular clauses of Article 14 may be acceptable, a general reservation to the right to a fair trial would not be.'[6]

> 'Applying more generally the object and purpose test to the Covenant, the Committee notes that, for example, reservation to Article 1 denying peoples the right to determine their own political status and to pursue their economic, social and cultural development, would be incompatible with the object and purpose of the Covenant. Equally, a reservation to the obligation to respect and ensure the rights, and to do so on a non-discriminatory basis (Article 2 (1)) would not be acceptable. Nor may a State reserve an entitlement not to take the necessary steps at the domestic level to give effect to the rights of the Covenant (Article 2 (2)).'[7]

> 'The Covenant consists not just of the specified rights, but of important supportive guarantees. These guarantees provide the necessary framework for securing the rights in the Covenant and are thus essential to its object and purpose. Some operate at the national level and some at the international level. Reservations designed to remove these guarantees are thus not acceptable. Thus, a State could not make a reservation to Article 2, paragraph 3, of the Covenant, indicating that it intends to provide no remedies for human rights violations. Guarantees such as these are an integral part of the structure of the Covenant and underpin its efficacy.'[8]

Although the General Comment is standard in character, at least two remarks of the Human Rights Committee seem to address directly the United States' attitude in ratifying the ICCPR:

> 'The intention of the Covenant is that the rights contained therein should be ensured to all those under a State party's jurisdiction. To this end certain requirements are likely to be necessary. Domestic laws may need to be altered properly to reflect the requirements of the Covenant; and mechanisms at the domestic level will be needed to allow the Covenant rights to be enforceable at the local level. Reservations often reveal a tendency of States not to want to change a particular law. And sometimes that tendency is elevated to a general policy. Of particular concern are widely formulated reservations which essentially render ineffective all Covenant rights which would require

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[6] *Idem.*

[7] *Idem.*

[8] *Ibidem*, p. 4.

> any change in national law to ensure compliance with Covenant obligations. No real international rights or obligations have thus been accepted. And when there is an absence of provisions to ensure that Covenant rights may be sued on in domestic courts, and, further, a failure to allow individual complaints to be brought to the Committee under the first Optional Protocol, all the essential elements of the Covenant guarantees have been removed.'[9]

> 'States should not enter so many reservations that they are in effect accepting a limited number of human rights obligations, and not the Covenant as such. So that reservations do not lead to a perpetual non-attainment of international human rights standards, reservations should not systematically reduce the obligations undertaken only to those presently existing in less demanding standards of domestic law. Nor should interpretative declarations or reservations seek to remove an autonomous meaning to Covenant obligations, by pronouncing them to be identical, or to be accepted only in so far as they are identical, with existing provisions of domestic law.'[10]

I will return to several of the aspects mentioned in the Human Rights Committee's General Comment.

4 The Initial Report of the United States

In the summer of 1994, the United States presented its initial report to the Human Rights Committee.[11] In the report all the reservations, declarations and understandings are presented again, sometimes accompanied by new or newly formulated arguments. All of them, however, once more explain the way the United States approaches the ICCPR. For instance, it has been said that

> 'when elements or clauses of a treaty conflict with the Constitution, it is necessary for the United States to take reservations to those elements or clauses, simply because neither the President nor Congress has the power to override the Constitution.'[12]

In relation to this argument, the report extensively elaborates upon the position of the Constitution and the Bill of Rights (the first ten amendments to the Constitution, adopted in 1791) in the United States' legal system. As the report concludes, many of the rights protected in the Constitution and the amendments thereto 'parallel those addressed in the International Covenant on Civil and Political Rights'.[13]

The position of the Constitution can not be dissociated from that other main issue on the United States' list of reservations, understandings and declarations: the relation between the federal and the state level. The report:

> 'While originally formulated as limitations on the authority of the Federal government, these protections have to a great extent been interpreted over time to apply against all forms of government action, including the governments and officials of the 50 constituent states and subordinate governmental entities. The Constitution thus provides

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[9] *Ibidem*, pp. 4-5.
[10] *Ibidem*, p. 8.
[11] UN Doc. HRI/CORE/1/Add.49 and CCPR/C/81/Add.4.
[12] UN Doc. HRI/CORE/1/Add.49, p. 31.
[13] UN Doc. CCPR/C/81/Add.4, p. 3.

> binding and effective standards of human rights protection against actions of all levels of government throughout the nation.'[14]

At the same time, the report points out that the United States' governmental system also causes some 'troubles' as to the implementation of the ICCPR. For example, it is stated that many powers and responsibilities are not delegated to the federal Government but are reserved to the states, and, according to the report, 'some areas covered by the Covenant fall into this category'.[15] The report then again stresses that the United States will carry out its obligations under the ICCPR 'in a manner consistent with the federal nature of its form of government'.[16] In that connection the report underlines that the relevant 'understanding' – see the Annex, Understanding no. 5 – serves

> 'to emphasize domestically that there was no intent to alter the constitutional balance of authority between the federal government on the one hand and the state and local governments on the other, or to use the provisions of the Covenant to federalize matters now within the competence of the states'.[17]

The report states again – of course – that the provisions of Articles 1 through 27 of the ICCPR are not self-executing, or, to quote the report: 'The Covenant does not, by itself create private rights directly enforceable in U.S. court.'[18] By way of explanation of this issue, the report contains some background information on the United States' legal system. As the report says: whether (provisions in) treaties are self-executing or not, is a matter of interpretation by the Supreme Court and is therefore a matter of 'domestic law only'. The report:

> '... in either case, the treaty remains binding on the United States as a matter of international law. Thus, in the case of human rights treaties, a "non-self-executing" treaty does not, in and of itself, accord individuals a right to seek enforcements of its protections in a domestic court, even though the United States continues to be bound to recognize those protections. (...) The United States considers that it remains generally free to determine the specific modalities of treaty implementation under domestic law. In other words, unless it has specifically agreed to make the provisions of a given treaty part of the judicially enforceable body of domestic law, the United States may follow the alternatives available to it under its own law for implementing treaty obligations in domestic law.'[19]

And in direct relation to the same issue:

> '... because the basic rights and fundamental freedoms guaranteed by the International Covenant on Civil and Political Rights (other than those to which the United States took a reservation) have long been protected as a matter of federal constitutional and statutory law, it was not considered necessary to adopt special implementing legislation to give effect to the Covenant's provisions in domestic law.'[20]

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[14] *Idem.*
[15] *Idem.*
[16] *Idem.*
[17] *Ibidem*, p. 4.
[18] *Idem.*
[19] UN Doc. HRI/CORE/1/Add.49, p. 32.
[20] *Idem.*

According to the introduction to the report given before the Human Rights Committee by the United States' delegation, this point of view is not to be seen as 'a refusal to adapt domestic laws to the Covenant', because 'both the executive branch and the United States Senate were reluctant to use the unicameral treaty power under the Constitution to introduce direct changes in domestic law'.[21] However, no mention has been made of concrete examples of such legislation.

5 The Reaction of the Committee to the United States' Report

The initial report of the United States has been welcomed by several members of the Human Rights Committee as 'excellent', which is a well-deserved compliment, given the usual quality of States' reports. At the same time, however, members of the Committee strongly criticised the United States' list of reservations, understandings and declarations. Mr Prado Vallejo, for example, said that 'unfortunately, few countries had made more declarations, reservations and interpretations upon ratification'.[22] Mr El-Shafei spoke about the risk that the Covenant 'might become a "dead letter" in the United States'.[23] Others, such as Mr Mavrommatis, stated that 'the considerable number of reservations, declarations and understandings undermined, to a certain extent, the credibility of the reporting State's efforts to encourage respect for international minimum standards in the field of human rights'.[24]

The main points of concern within the Human Rights Committee, as far as the set of reservations, understandings and declarations of the United States is concerned, had to do with the issues of the object and purpose of the ICCPR, the self-executing character of the treaty provisions and the division of competence between the federal Government and the states.

In relation to the issue of the object and purpose of the ICCPR, Committee member Mr Prado Vallejo said:

> 'The United States Government did not seem to have a high degree of commitment to changing domestic legislation if it conflicted with the provisions of the Covenant, although its Article 2, paragraph 2, spelled out that obligation clearly. Moreover, some of the reservations could indeed affect the object and purpose of the Covenant. For example, the ability to impose the death penalty on minors would affect the application of Article 24, paragraph 1, concerning the right of minors to appropriate measures of protection.'[25]

As to the self-executing character of the treaty provisions several Committee members took the floor. For example Mrs Evatt stated that

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[21] UN Doc. CCPR/C/SR.1401, p. 4.
[22] *Ibidem*, p. 9.
[23] *Ibidem*, p. 11.
[24] UN Doc. CCPR/C/SR.1402, p. 7.
[25] UN Doc. CCPR/C/SR.1401, p. 9.

'if the United States held that the rights recognized under the Covenant were already guaranteed in domestic law, it would be interesting to know why the courts had been deprived of the opportunity to refer to the Covenant.'[26]

On the same issue, Mr El-Shafei added that 'it was regrettable that by its decision, the Government had prevented the Covenant from being tested in the United States' courts'.[27]

Concerning the issue of the federal and state competence, also several members expressed their views, among them, again, Mr El-Shafei:

'Another obstacle to the effective implementation of the Covenant was the 'federalism understanding'. It was widely believed in the United States that that understanding was neither necessary as a matter of domestic law, nor desirable. The United States Supreme Court had made it clear that the federal Government could conclude and enforce treaties in respect of matters which would otherwise fall within the jurisdiction of the constituent states.'[28]

In reaction to critical remarks like these, the United States' delegation once again forwarded the already known arguments. Sometimes, however, it used a new wording, thereby partly also introducing a new meaning. In relation to the issue of the non-self-executing character of the treaty provisions, for instance, the United States' delegation stated:

'To clarify an apparent misunderstanding, the courts could refer to the Covenant and take guidance from it, even though it was not self-executing. What the Covenant could not do was provide a cause of action. The United States had not declared the Covenant self-executing because it was not necessary to do so in order to satisfy its international obligations thereunder. Although the distinction between self-executing and non-self-executing treaties was of judicial origin, it was entirely appropriate for the President to propose such a declaration and for the Senate to condition its advice and consent to ratification on that basis.'[29]

The arguments on other issues which have been brought forward by the United States' delegation in reaction to the comments by members of the Human Rights Committee were more or less similar to arguments which have been dealt with before.

In its conclusive reaction to the report and the oral response by the United States' delegation to critical questions by members of the Human Rights Committee, the Committee said on the United States' reservations, declarations and understandings:

'It believes that, taken together, they intended to ensure that the United States has accepted what is already the law of the United States. The Committee is also particularly concerned at reservations to Article 6, paragraph 5, and Article 7 of the Covenant, which it believes to be incompatible with the object and purpose of the Covenant.'[30]

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[26] *Ibidem*, p. 8.
[27] *Ibidem*, p. 11.
[28] *Idem*.
[29] UN Doc. CCPR/C/SR.1405, p. 4.
[30] UN Doc. CCPR/C/79/Add.50, p. 3.

It led the Committee to recommend that the United States should review its reservations, declarations and understandings with a view to withdrawing them, 'in particular reservations to Article 6, paragraph 5, and Article 7'.[31]

In relation to the issue of the self-executive character of the ICCPR provisions, the Committee did not arrive at hard conclusions:

> 'The Committee takes note of the position expressed by the delegation that, notwithstanding the non-self-executing declaration of the United States, courts of the United States are not prevented from seeking guidance from the Covenant in interpreting United States law.'[32]

And:

> 'Whether or not courts of the United States eventually declare the Covenant to be non-self-executing, information about its provisions should be provided to the judiciary.'[33]

The Committee spent only some minor remarks on the issue of 'federalism'. It said, for instance, that the United States' report provides comprehensive information on the human rights practice on the federal level, while it contains 'few references to the implementation of those rights at the state level'.[34] In addition, the Committee notes that

> 'under the federal system prevailing in the United States of America, the States of the Union retain extensive jurisdiction over the application of criminal and family law in particular. This factor, coupled with the absence of formal mechanisms between the federal and state levels to ensure appropriate implementation of the rights guaranteed by the Covenant by legislative or other measures, may lead to a somewhat unsatisfactory application of the Covenant throughout the country'.[35]

It might be good to add that several (other) specific reservations, understandings and declarations have also been discussed by the Human Rights Committee, while many other elements of the United States' human rights practice have been viewed critically, too. Each of these issues might deserve a separate article. It is not the purpose of the present contribution, however, to discuss these elements.

6 Some Conclusions

In the early 1950s, Senator John Bricker introduced an amendment to the United States' Constitution aimed at the protection of the 'sacred rights which [US citizens] enjoy under the Bill of Rights and the Constitution'.[36] One of Bricker's

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[31] *Ibidem*, p. 5.
[32] *Ibidem*, p. 3.
[33] *Idem.*
[34] *Ibidem*, p. 1.
[35] *Ibidem*, p. 2.
[36] Natalie Hevener Kaufman and David Whiteman, 'Opposition to Human Rights Treaties in the United States: The Legacy of the Bricker Amendment', *Human Rights Quarterly*, Vol. 10, No. 3, August 1988, p. 319.

arguments for introducing the amendment, formulated as Section 2 of the amendment itself, was that

> 'no treaty shall authorize or permit any foreign power or any international organization to supervise, control, or adjudicate rights of citizens of the United States within the United States enumerated in this constitution or any other matter essentially within the domestic jurisdiction of the United States'.[37]

Although the Bricker amendment was not adopted (it failed to receive the required two-thirds majority vote for a constitutional amendment: 52 votes in favour, 40 against[38]), it is more or less significant for the United States' current position towards human rights treaties. While the Bricker amendment took position against ratification of human rights treaties, the United States, in the meantime, did ratify some of them. Materially speaking, however, the Bricker amendment and the viewpoints which supported it are still alive. It made Henkin speak in terms of the 'Ghost of Senator Bricker' still hanging above the United States' antagonistic relation to international law.[39]

In this context, it is also important to keep in mind that the United States is one of the inventors of the so-called 'automatic reservation'. It is not, for instance, the International Court of Justice – and in the case of the ICCPR: the Human Rights Committee – which has the right to determine whether a specific article in a specific treaty is in conformity with United States' law. In the opinion of the United States, it is the United States itself which determines whether there is a contradiction. Nevertheless, quoting Shaw, '... it is a well-established principle of international law that the definition of domestic jurisdiction is an issue of international and not domestic law'.[40]

The combination of these elements reflects the United States' position towards human rights treaties. It is basically against any involvement in or control by internationally oriented supervisory instruments and bodies, the instrument of the automatic reservation serving as an extra 'safety belt'.

One wonders why the United States nevertheless occasionally ratifies human rights treaties. Of course there are many reasons. To my mind, the central reasons have been formulated by Senator Pell in one of the meetings the United States Senate devoted to the ratification of the ICCPR:

> 'The United States plays a leading role in the international struggle to promote and protect human rights. However, failure to ratify the covenant has blemished our record and cast doubt, in some quarters, about the seriousness of our commitment to human rights. Ratification will reverse this situation. It will demonstrate that our commitment is serious and sincere and strengthen our voice as a champion of human rights. Ratification will enable the United States to participate in the work of the Human Rights Committee established by the covenant to monitor compliance. The rights guaranteed by the covenant are the cornerstones of a democratic society. By ratifying the covenant

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[37] *Ibidem*, p. 315.

[38] *Ibidem*, p. 320.

[39] L. Henkin, 'U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker', Editorial comments, *The American Journal of International Law*, Vol. 89, 1995, pp. 341-350.

[40] M.N. Shaw, *International Law*, Cambridge University Press, Cambridge, 3rd ed., 1991, p. 669.

> now, we have an opportunity to promote democratic rights and freedoms and the rule of law in the former Soviet Republics, Eastern Europe and other areas where democracy is taking hold.'[41]

In other words: the United States wants to continue its leading role in the international human rights arena, at the same time avoiding to be blamed by the national and the international 'human rights community' for not having ratified key conventions in the field of human rights. But actually human rights conventions are not meant for the United States itself, being the human rights Paradise based on God's own Constitution, but for other States, such as those which had a communist regime only a few years ago.

From the present study it will be clear that the Human Rights Committee is fighting against such a minimalist and haughty position. In doing so, the Committee also discusses the established system in which States Parties to the ICCPR have the task (right/opportunity) to object against specific reservations. The Committee:

> 'The absence of protest by States cannot imply that a reservation is either compatible or incompatible with the object and purpose of the Covenant. Objections have been occasional, made by some States but not others, and on grounds not always specified; when an objection is made, it often does not specify a legal consequence, or sometimes even indicates that the objecting party none the less does not regard the Covenant as not in effect as between the parties concerned. In short, the pattern is so unclear that it is not safe to assume that the non-objecting State thinks that a particular reservation is acceptable.'[42]

Having said this, the Committee then takes the lead by stating that it is the Committee itself which should be made responsible for giving judgments on the question of whether reservations, understandings and declarations are in conformity with the 'object and purpose' of the ICCPR. The Committee:

> '... it is a task that the Committee cannot avoid in the performance of its functions. In order to know the scope of its duty to examine a State's compliance under Article 40 or a communication under the first Optional Protocol, the Committee has necessarily to take a view on the compatibility of a reservation with the object and purpose of the Covenant and with general international law. Because of the special character of a human rights treaty, the compatibility of a reservation with the object and purpose of the Covenant must be established objectively, by reference to legal principles, and the Committee is particularly well placed to perform this task.'[43]

What this means in the case of the United States has been shown before: the Committee is not prepared to accept a series of the United States' reservations, declarations and understandings. The Committee has said so in reaction to the first United States' report under the ICCPR. Seeing this dialogue/discussion between the Human Rights Committee and the United States as an ongoing game of chess,

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[41] 138 Cong. Rec. S4781-01, 102nd Congress, Second Session, 2 April 1992.

[42] UN Doc. CCPR/C/21/Rev.1/Add.6, p. 7.

[43] *Idem.* On the issue of the special character of reservations to human rights treaties see: Catherine J. Redgwell, 'Reservations to treaties and Human Rights Committee General Comment No. 24', *International and Comparative Law Quarterly*, Vol. 46, April 1997, pp. 404-408.

one can now say that the United States is again at play. Let it thereby be challenged by the words of Henkin:

> 'The notion that the United States would adhere to an international human rights agreement only insofar as it would require no change in the way we do things seems – to put it mildly – anomalous. The principal purpose of undertaking obligations is to promise to do what one is not yet doing, in this instance, to improve – if only in small ways – where necessary conform to common international standards.'[44]

Is not this the essence of ratifying a multilateral human rights treaty?

Annex: U.S. Reservations, Understandings, and Declarations to the ICCPR, October 1992[45]

Reservations:

(1) That Article 20 does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States.

(2) That the United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.

(3) That the United States considers itself bound by Article 7 to the extent that 'cruel, inhuman or degrading treatment or punishment' means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.

(4) That because U.S. law generally applies to an offender the penalty in force at the time the offense was committed, the United States does not adhere to the third clause of paragraph 1 of Article 15.

(5) That the policy and practice of the United States are generally in compliance with and supportive of the Covenant's provisions regarding treatment of juveniles in the criminal justice system. Nevertheless, the United States reserves the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2(b) and 3 of Article 10 and paragraph 4 of Article 14.

The United States further reserves to these provisions with respect to individuals who volunteer for military service prior to age 18.

Understandings:

(1) That the Constitution and laws of the United States guarantee all persons equal protection of the law and provide extensive protections against discrimination. The United States understands distinctions based upon race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status – as those terms are used in Article 2, paragraph 1 and Article 26 – to be permitted when such distinctions are, at minimum, rationally related to a legitimate governmental objective. The United States further understands the prohibition in paragraph 1 of Article

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[44] Louis Henkin, 'International Human Rights and Rights in the United States', in: Th. Meron (ed.), *Human Rights in International Law: Legal and Policy Issues*, Clarendon Press, Oxford, 1984, p. 53.

[45] The Annex has been taken from *Human Rights Violations In The United States, A Report on U.S. Compliance With The International Covenant on Civil and Political Rights*, Human Rights Watch and American Civil Liberties Union, New York/Washington, 1993.

4 upon discrimination, in time of public emergency, based 'solely' on the status of race, colour, sex, language, religion or social origin not to bar distinctions that may have a disproportionate effect upon persons of a particular status.

(2) That the United States understands the right to compensation referred to in Articles 9(5) and 14(6) to require the provision of effective and enforceable mechanisms by which a victim of an unlawful arrest or detention or a miscarriage of justice may seek and, where justified, obtain compensation from either the responsible individual or the appropriate governmental entity. Entitlement to compensation may be subject to the reasonable requirements of domestic law.

(3) That the United States understands the reference to exceptional circumstances in paragraph 2(a) of Article 10 to permit the imprisonment of an accused person with convicted persons where appropriate in light of an individual's overall dangerousness, and to permit accused persons to waive their right to segregation from convicted persons. The United States further understands that paragraph 3 of Article 10 does not diminish the goals of punishment, deterrence, and incapacitation as additional legitimate purposes for a penitentiary system.

(4) That the United States understands that subparagraphs 3(b) and (d) of Article 14 do not require the provision of a criminal defendant's counsel of choice when the defendant is provided with court-appointed counsel on grounds of indigence, when the defendant is financially able to retain alternative counsel, or when imprisonment is not imposed. The United States further understands that subparagraph 3(e) does not prohibit a requirement that the defendant make a showing that any witness whose attendance he seeks to compel is necessary for his defense. The United States understands the prohibition upon double jeopardy in paragraph 7 to apply only when the judgment of acquittal has been rendered by a court of the same governmental unit, whether the federal Government or a constituent unit, as is seeking a new trial for the same cause.

(5) That the United States understands that this Covenant shall be implemented by the federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the State and local governments; to the extent that State and local governments exercise jurisdiction over such matters, the federal Government shall take measures appropriate to the federal system to the end that the competent authorities of the State or local governments may take appropriate measures for the fulfilment of the Covenant.

Declarations:

(1) That the United States declares that the provisions of Articles 1 through 27 of the Covenant are not self-executing.

(2) That it is the view of the United States that States Party to the Covenant should wherever possible refrain from imposing any restrictions or limitations on the exercise of the rights recognized and protected by the Covenant, even when such restrictions and limitations are permissible under the terms of the Covenant. For the United States, Article 5, paragraph 2, which provides that fundamental human rights existing in any State Party may not be diminished on the pretext that the Covenant recognizes them to a lesser extent, has particular relevance to Article 19, paragraph 3, which would permit certain restrictions on the freedom of expression. The United States declares that it will continue to adhere to the requirements and constraints of its Constitution in respect to all such restrictions and limitations.

(3) That the United States declares that it accepts the competence of the Human Rights Committee to receive and consider communications under Article 41 in which a State Party claims that another State Party is not fulfilling its obligations under the Covenant.