

NOTES

UNITED STATES RATIFICATION OF THE AMERICAN CONVENTION ON HUMAN RIGHTS*

I. INTRODUCTION

On June 26, 1945, a delegation from the United States Department of State met in San Francisco with representatives from fifty countries to sign the Charter of the United Nations.¹ Affirming "faith in fundamental human rights"² and pledging to promote "universal respect for, and observance of . . . fundamental freedoms for all,"³ the members of the United Nations elevated individual rights to the level of international concern, and the United States formalized its commitment to the protection of human rights worldwide.

The human rights provisions in the U.N. Charter were largely a result of efforts by the United States⁴ toward "the day when all worthy human beings may be permitted to live decently as free people."⁵ This effort soon led to the Universal Declaration of Human Rights,⁶ a cornerstone of contemporary human rights law and the first part of an international bill of rights modeled after the U.S. Constitution.

Americans were prominent among the architects and builders of international human rights, and American constitutionalism was a principal inspiration and model for them. As a result, most of the Universal Declaration of Human Rights, and later the International Covenant on Civil and Political Rights, are in their essence American constitutional rights projected around the world.⁷

* This work has benefited from the generous advice and contributions of Professor Benedict Kingsbury, Exeter College, Oxford; Christina Cerna, Inter-American Commission on Human Rights; Professor Tom Farer, American University School of Law; Pat Rengel, Chief Counsel, Amnesty International, U.S.A.; Lynn Boyer, Legislative Counsel to Senator Jesse Helms; Dr. Robert Friedlander, Chief Legislative Counsel to Minority Members, United States Senate Foreign Relations Committee; Melisandre Hodges, Perkins Library, Duke University.

1. For a discussion of events surrounding the signing of the Charter, see John H. Crider, *Truman Closes U.N. Conference with Plea to Translate Charter into Deeds*, N.Y. TIMES, June 27, 1945, at A1.

2. U.N. CHARTER, pmb1., para. 2.

3. *Id.* art. 55, para. c.

4. Louis Sohn, *A Short History of United Nations Documents on Human Rights*, in COMMISSION TO STUDY THE ORGANIZATION OF PEACE, THE UNITED NATIONS AND HUMAN RIGHTS 39, 43-56 (1968).

5. Harry S. Truman, Address to the Closing Session of the United Nations Conference, San Francisco, Program Closing Plenary Session, June 26, 1945, 1 U.N.C.I.O. Docs. 687, 717 (1945).

6. G.A. Res. 217A (III) U.N. GAOR, 3d Sess. at 71-77, U.N. Doc. A/810 (1948) [hereinafter Universal Declaration].

7. Louis Henkin, *Rights: American and Human*, 79 COLUM. L. REV. 405, 415 (1979). See generally Richard B. Lillich, *The United States Constitution and International Human Rights Law*, 3 HARV. HUM. RTS. J. 53 (1990) (arguing United States constitutionalism contributed significantly to the development of international human rights law).

During the drafting of the U.N. Charter and the Universal Declaration, the United States took the lead in shaping international human rights programs and policies.⁸ It was among the most diligent nations in promoting U.N. efforts toward human rights protection throughout the late 1940s.⁹ In fact, it was an American, Eleanor Roosevelt, who was the driving force behind the Universal Declaration of Human Rights.¹⁰

The momentum to formalize international human rights protection soon carried into regional organizations which created their own instruments to safeguard human rights. The European nations were the first to undertake legally binding obligations by adopting the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention).¹¹ Likewise, the Organization of American States (OAS) formalized a regional system of protection in the Americas with a similar instrument, the American Convention on Human Rights (American Convention).¹²

While the European Convention enjoys support among all the principal European nations,¹³ the American Convention lacks the support of one of the most influential nations of the Americas — the United States. With twenty-three American nations already parties to the American Convention,¹⁴ the United States has yet to ratify it. Although the Convention was signed by President Carter in 1978, it has yet to attain a two-thirds vote in the Senate as required for ratification

8. *Hearings Before the Subcommittee on International Organizations and Movements of the House Committee on Foreign Affairs*, 93d Cong., 1st Sess. 188 (1973) (testimony of Professor Thomas Buergenthal).

9. J. GREEN, *THE UNITED NATIONS AND HUMAN RIGHTS* 28-29, 37 n.20 (1956).

10. For an account of Mrs. Roosevelt's participation in drafting the Universal Declaration of Human Rights, see Richard Gardner, *Eleanor Roosevelt's Legacy: Human Rights*, N.Y. TIMES, Dec. 10, 1988, at 27.

11. Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter European Convention]. For a discussion of the development of regional systems, see Thomas Buergenthal, *International Human Rights Law and Institutions: Accomplishments and Prospects*, 63 WASH. L. REV. 1 (1988).

12. American Convention on Human Rights, *opened for signature* Nov. 22, 1969, 9 I.L.M. 101 (1970) (OAS Doc. OEA/SER. K/XVI/1.1 Doc. 65 (1970)) [hereinafter American Convention]. For a discussion of the evolution of the American system for human rights protection and the American Convention, see Thomas Buergenthal, *Introduction to the Inter-American System, in PROTECTING HUMAN RIGHTS IN THE AMERICAS: SELECTED PROBLEMS* 1-22 (Thomas Buergenthal et al. eds., 3d ed. 1990).

13. Jean-Bernard Mairie, *International Instruments Relating to Human Rights: Classification and Chart Showing Ratifications as of 1 January 1990*, 11 HUM. RTS. L.J. 175, 184 (1990). Signatories include Austria, Belgium, Cyprus, Denmark, France, Germany/Fed. Rep., Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. *Id.*

14. The following states are parties to the American Convention as of January 1, 1990: Argentina, Barbados, Bolivia, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela. *Id.* at 186.

by Article VI of the United States Constitution.¹⁵ While the Senate held hearings to discuss the issues surrounding ratification in 1979,¹⁶ it has not taken action on the Convention for the past thirteen years.¹⁷

Senate action on the American Convention requires more than a willingness to endorse a general declaration of human rights. It mandates a commitment to accept the human rights norms in the Convention as legally binding obligations; a commitment which raises diplomatic, political, and legal concerns that have forestalled ratification.¹⁸

This Note advocates ratification of the American Convention. Through an examination of legal issues surrounding ratification, it demonstrates that there are no significant legal barriers blocking the United States from becoming a party, and that participation in this international treaty would best serve the interests of the United States.

II. THE AMERICAN CONVENTION

Negotiated at San José, Costa Rica in 1969, with the active participation of the United States,¹⁹ the American Convention is an international agreement that operates within the framework of the OAS. The Convention catalogs human rights to be protected in the region and provides for international monitoring and enforcement of those rights.²⁰ The current Inter-American human rights system is based on three legal sources: the OAS Charter (Charter),²¹ the American Declaration of Human Rights (Declaration),²² and the American Convention. The

15. U.S. CONST. art. VI.

16. *International Human Rights Treaties: Hearings Before the Comm. on Foreign Relations*, 96th Cong., 1st Sess. 1 (1979) [hereinafter *Human Rights Hearings*].

17. In addition to the American Convention, President Carter signed three other human rights conventions that were also sent to the Senate for their advice and consent. See President's Message to the Senate on Human Rights Treaties, PUB. PAPERS 395-96 (1978). The other conventions are the following: *The International Covenant on Economic, Social, and Cultural Rights*, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1967); *The International Covenant on Civil and Political Rights*, G.A. Res. 2200 (XXII), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966); *The International Convention on the Elimination of All Forms of Racial Discrimination*, G.A. Res. 2106A (XX), U.N. GAOR, 20th Sess., Supp. No. 14, at 47, U.N. Doc. A/6014 (1965). Although the United States Senate recently gave its advice and consent to the International Covenant on Civil and Political Rights, the United States has yet to ratify any of these conventions. 138 CONG. REC. S4781 (daily ed. Apr. 2, 1992).

18. For a discussion of diplomatic, political, and legal concerns regarding U.S. ratification of human rights treaties, see Bruno Bitker, *U.S. Policy on Ratification of Human Rights Covenants*, 11 HUM. RTS. J. 653 (1969). See also David Weissbrodt, *United States Ratification of the Human Rights Covenants*, 63 MINN. L. REV. 35 (1978) (discussing the background of human rights covenants and reasons why U.S. citizens should be interested in their ratification).

19. For drafting history, see Buergenthal, *supra* note 12, at 4-6.

20. American Convention, *supra* note 12, art. 41, 9 I.L.M. at 112.

21. Charter of the Organization of American States, Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3.

22. American Declaration on the Rights and Duties of Man, Res. XXX of the Ninth

Charter serves as the constitution of the OAS and includes a legally binding obligation on the part of member states to "respect the rights of the individual and the principles of universal morality."²³ This phrase, however, is vague, and neither individual rights nor principles of morality are defined in the Charter. The Declaration, originally drafted as a nonbinding conference resolution,²⁴ has come to serve as the authoritative interpretation of the "fundamental rights of the individual" included in the Charter.²⁵

The American Convention creates legally binding obligations for OAS member states that have signed and ratified it. The Convention specifies the basic civil and political rights to be protected throughout the western hemisphere.²⁶ It protects many of the same basic liberties guaranteed by the United States Bill of Rights,²⁷ including freedom of religion, speech, assembly,²⁸ the right to a fair trial,²⁹ the right to property,³⁰ freedom from slavery,³¹ and equal protection of the law.³² The American Convention also establishes an Inter-American Court³³

International Conference of American States, OEA/Ser. L/V/II.50 doc. 6, rev. 1, (1953), *reprinted* in HANDBOOK OF EXISTING RULES PERTAINING TO HUMAN RIGHTS 237 (1953).

23. OAS CHARTER art. 13.

24. Thomas Buergenthal, *The Revised OAS Charter and the Protection of Human Rights*, 69 AM. J. INT'L L. 828, 829 (1975).

25. Buergenthal, *supra* note 11, at 16.

Although the American Declaration, not unlike the Universal Declaration, was not deemed to be legally binding at the time it was proclaimed in 1948, it has now been accepted as a normative instrument of the Inter-American System that contains the authoritative catalogue of the Human Rights which all State Parties to the OAS Charter are required to promote.

Id.

26. American Convention, *supra* note 12, 9 I.L.M. at 101.

27. Although the wording of the provisions of the American Convention differs from that of the U.S. Constitution, the United States Department of Justice has determined that with the appropriate reservations, the provisions of the Convention accord with U.S. Constitutional law. U.S. Dept. of State, *Letter to President Carter, Dec. 17, 1977*, in RICHARD B. LILICH, U.S. RATIFICATION OF THE HUMAN RIGHTS TREATIES: WITH OR WITHOUT RESERVATIONS? 105 (1981) [hereinafter *Letter to President Carter*]. See also *Human Rights Hearings, supra* note 16, at 7 (statement of Warren Christopher) ("In essence, the [pending human rights] treaties create an international commitment to the same basic human rights that already are guaranteed to citizens of the United States by our own laws and constitution.")

28. Compare U.S. CONST. amend. I with American Convention, *supra* note 12, arts. 12-13, 9 I.L.M. at 105-06 (granting rights to freedom of religion, expression, and assembly).

29. Compare U.S. CONST. amends. V-VI with American Convention, *supra* note 12, arts. 7-8, 9 I.L.M. at 103-04 (granting freedom from arbitrary arrest and the right to fair trial).

30. Compare U.S. CONST. amend. XIV with American Convention, *supra* note 12, art. 21, 9 I.L.M. at 107 (granting right to property).

31. Compare U.S. CONST. amend. XII with American Convention, *supra* note 12, art. 6, 9 I.L.M. at 103 (granting freedom from slavery).

32. Compare U.S. CONST. amend. XIV with American Convention, *supra* note 12, art. 24, 9 I.L.M. at 108 (granting right to equal protection).

33. The Inter-American Court of Human Rights (Court) was established by Article 33 of

and expands the authority of the Inter-American Commission (Commission)³⁴ to serve as the enforcement mechanism for the rights provided by the Convention. The effectiveness of this human rights protection system depends upon the participation of all American countries.³⁵

The American Convention reflects an effort by its drafters to provide a minimum standard of decency among American countries in their treatment of individuals. In many ways this effort resembles that of the drafters of the Universal Declaration, in which the United States played a significant role.³⁶ The crucial difference, however, is that the

the Convention to oversee the application and interpretation of the Convention. American Convention, *supra* note 12, art. 33, 9 I.L.M. at 111. It consists of seven judges elected from the OAS member states. Only state parties to the Convention have *locus standi* before the Court; however, complaints brought by individuals may be forwarded to the Court through the Inter-American Commission on Human Rights. *See id.* art. 61, para. 1, 9 I.L.M. at 117. The Court has advisory jurisdiction to interpret the provisions of any OAS treaty concerning human rights. It also has jurisdiction to render judgment against states in breach of the Convention provided that those states have recognized the Court's jurisdiction through declaration or agreement. *Id.* art. 63, 9 I.L.M. at 118. It may determine the rights to be accorded an injured party and the amount of damages due. It may also grant temporary injunctions. Decisions by the Court are final and are not subject to appeal. *See* Thomas Buergenthal, *The Inter-American Court of Human Rights*, 76 AM. J. INT'L L. 231 *passim* (1982).

34. The Inter-American Commission on Human Rights consists of seven members elected by the OAS General Assembly from a list of candidates submitted by the governments of member states. It was established under the Convention as a body to receive complaints from private individuals concerning human rights violations by OAS member states. American Convention, *supra* note 12, arts. 34, 41, 9 I.L.M. at 111-12. Its authority has expanded under the Convention and it now serves as a body to: develop an awareness of human rights issues in the Americas; make recommendations to governments for the progressive adoption of human rights measures; conduct studies and prepare regular reports; request information from member states regarding the measures they have taken to further human rights; and take action on complaints brought under the Convention. Complaints (communications) may be brought before the Commission either by a state against another state or by an individual or non-governmental organization against a state. When presented with a communication from an individual or member state alleging a violation of the Convention, the Commission will forward relevant portions of the communication to the government of the member state involved and request a response, usually within sixty days. The Commission then establishes the facts involved in the case and seeks a friendly settlement. If no settlement is reached, it may send the case to the Inter-American Court of Human Rights for a decision, or it may set forth its own conclusions and opinions, making recommendations and setting a time limit for state compliance. If a state fails to comply, the Commission may choose to publish a report on the situation. *See generally* Robert Norris, *The New Statute of the Inter-American Commission on Human Rights*, 1 HUM. RTS. L.J. 379 (1980) (discussing the background and content of the statute establishing the Inter-American Commission on Human Rights).

35. Thomas Buergenthal, *The American Convention on Human Rights*, in U.S. RATIFICATION OF HUMAN RIGHTS TREATIES, *supra* note 27, at 47, 51 ("[I] doubt very much that without full U.S. participation the Inter-American system will realize its full potential, and that would be a great pity indeed.").

36. *See supra* note 27 and accompanying text. *See also* Bruno Bitker, *The United States and International Codification of Human Rights: A Case of Split Personality*, in NATALIE KAUFMAN HEVENER, *THE DYNAMICS OF HUMAN RIGHTS* 77, 77 (1981) (stating that the history of United States policy on human rights treaties reflects a classic case of split personality; although

standards set out in the Universal Declaration were intended to be nonbinding, whereas the American Convention carries with it legal obligations that the United States is reluctant to assume.

The principal reason for this reluctance is fear that international obligations created by the Convention will interfere with the domestic affairs of the United States. These obligations would place the supervision and control of human rights in the hands of an international body over which the United States does not have exclusive control.³⁷ The most common arguments against ratification can be divided into three categories.

The first of these categories is comprised of federalist arguments which assert that ratification by the United States would legitimize federal interference in areas that are within the exclusive jurisdiction of the states.³⁸ The second category of objections are sovereignty arguments. This debate centers around the idea that human rights are exclusively a domestic issue and therefore beyond the jurisdiction of an international organization.³⁹ Finally, the third type of argument consists of objections to the "right-to-life" provision in Article 4 of the Convention, since this Article raises questions about the legality of the death penalty and abortion.⁴⁰

III. FEDERALIST CONCERNS: THE ISSUE OF STATES' RIGHTS

One of the most prevalent arguments against ratification of the American Convention is based on the belief that it would interfere with the federalist system to allow the President to enter into an international agreement that would legally bind the states. Because Article VI of the United States Constitution establishes that treaties become the "supreme law of the land,"⁴¹ certain provisions of the Convention potentially could interfere with state legislation or force the states to rearrange their current criminal codes.⁴²

leading multinational crusades for human rights in the 1940s, the U.S. has ratified only one human rights treaty since then).

37. Arthur Rovine, *Defense of Declarations, Reservations, and Understandings, in U.S. RATIFICATION OF THE HUMAN RIGHTS TREATIES*, *supra* note 27, at 55, 61. See also Natalie Hevener Kaufman & David Whiteman, *Opposition to Human Rights Treaties in the United States Senate: The Legacy of the Bricker Amendment*, 10 HUM. RTS. Q. 309 (1988) (discussing Cold War fears that led to the Bricker Amendment).

38. See discussion *infra* part III.B.

39. See discussion *infra* part IV.

40. See discussion *infra* part V.A.

41. U.S. CONST. art. VI.

42. See American Bar Association, *Report of the Standing Committee on Peace and Law Through United Nations Human Rights Conventions and Recommendations*, 1 INT'L LAW. 600, 616

The United States traditionally has been reluctant to change domestic laws through international treaties.⁴³ Rather than welcome international human rights treaties as potential improvements of domestic law, it has taken measures to weaken the domestic effect of ratified international human rights instruments in general, and of this Convention in particular.

A. Self-Executing Treaties

A primary means used by the United States to undercut the domestic effect of human rights treaties has been to classify these treaties as not self-executing. The judicial doctrine of self-executing treaties first became a standard part of United States treaty interpretation in *Foster & Elam v. Neilson*.⁴⁴ In *Foster*, the Supreme Court considered the domestic effect of an 1819 treaty conveying West Florida from Spain to the United States. Chief Justice Marshall stated that,

[A treaty is] to be regarded in Courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract before it can become a rule for the Court.⁴⁵

Thus, a self-executing treaty automatically gains domestic force once it is ratified. In contrast, an agreement which is not self-executing requires legislative enactments by Congress in order to gain domestic application in the United States.

Deciding whether a treaty is self-executing is largely a matter within the interpretive discretion of the judiciary.⁴⁶ In its analysis, the court will look to the wording of the treaty for any language which expressly calls for implementing legislation.⁴⁷ Courts will consider the intent of

(1967) (The federal government, being a government of limited powers, is still precluded from regulating large areas of intrastate matters. It is unnecessary and unsound to cut down this area of intrastate jurisdiction over human rights through the medium of international agreements). See also *Rovine*, *supra* note 37, at 60 (comparing genocide to murder, which is a matter of domestic jurisdiction and not international law).

43. LOUIS HENKIN, *FOREIGN AFFAIRS AND THE CONSTITUTION* 151-56 (1972).

44. *Foster & Elam v. Neilson*, 27 U.S. (2 Pet.) 253 (1829).

45. *Id.* at 314.

46. *United States v. Postal*, 589 F.2d 862, 876 (5th Cir.), *cert. denied*, 444 U.S. 832 (1979). See also *Whitney v. Robertson*, 124 U.S. 190 (1888) (holding that a treaty must stipulate that it is self-executing).

47. *Aerovias Interamericanas de Panama, S.A. v. Bd. of County Comm's*, 197 F. Supp. 230 (S.D. Fla. 1961), *rev'd on other grounds sub nom. Bd. of County Comm's v. Aerolineas Peruanasa, S.A.*, 307 F.2d 802 (5th Cir. 1962), *cert. denied*, 371 U.S. 961 (1963).

the drafters to determine what the parties intended the domestic effect of their agreement to be.⁴⁸ Treaty drafters are usually able to structure the language of a treaty so that the executing nature of the treaty is predetermined. In fact, a major issue in the United States of many, if not most, international treaties is whether the document will be self-executing. The general position that the United States maintains on the nature of human rights treaties is that they are not self-executing and do not supersede state law in the absence of implementing legislation by Congress.⁴⁹

While many countries do not make this distinction,⁵⁰ the United States has used this judicial doctrine as a method to prevent human rights treaties from creating domestic legal obligations in the absence of Congressional legislation. Without such legislation, no individual may sue in a United States court to enforce the provisions of the Convention.

The plain language of the American Convention, however, strongly supports an interpretation that it is self-executing. Article 2 specifically addresses the means by which the American Convention is to be incorporated into the domestic law of state parties:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the

Where a treaty is incomplete either because it expressly calls for implementing legislation or because it calls for the performance of a particular affirmative act by the contracting sovereigns, which act or acts can only be performed through a legislative act, such a treaty is for obvious reasons not self-executing and subsequent legislation must be enacted before such treaty is enforceable by the courts. . . . On the other hand, where a treaty is full and complete, it is generally considered to be self-executing by the courts.

Aerovias Interamericanas, 197 F. Supp. at 245-46.

48. *Postal*, 589 F.2d at 876 ("As in the case of all matters of interpretation, the courts attempt to discern the intent of the parties to the agreement so as to carry out their manifest purpose.").

49. HENKIN, *supra* note 43, at 159-60. For an example of the United States position towards human rights treaties, see *Sei Fujii v. State*, 217 P.2d 481 (Cal. Dist. Ct. App. 1950) *rev'd* 242 P.2d 617 (1950). The California Court of Appeals held California's Alien Land Law unenforceable since it was discriminatory towards Asians in violation of the human rights provisions of the U.N. Charter. The Court reasoned that the Charter, as a treaty of the United States, was equal in rank to federal statutes and was "supreme law of the land" thus superseding any inconsistent state legislation. *Id.* at 486-88. Senator John Bricker of Ohio was one of the most vocal opponents of this interpretation of the domestic effect of the U.N. Charter. 98 CONG. REC. 911 (1952) ("If the Fujii case (Court of Appeals ruling) should eventually be affirmed by the United States Supreme Court, or if the principle announced therein should be sustained, literally thousands of federal and state laws will automatically become invalid.").

Fujii was overturned. The California Supreme Court determined that the human rights provisions of the U.N. Charter were not self-executing, that is, they could not supersede state laws unless they were implemented by Congressional legislation. *Sei Fujii*, 242 P.2d at 617.

50. HENKIN, *supra* note 43, at 156 (stating that the distinction between self-executing and not self-executing treaties is characteristic of Western parliamentary systems).

State Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.⁵¹

This language does not call for implementing legislation before the rights and freedoms of the American Convention are applicable domestically. It states, unambiguously, that if the enumerated rights are not already ensured by domestic legislation, states are required to take legislative action to give effect to those rights.⁵² The United States, however, has interpreted this Article to mean that the Treaty is not self-executing, thus barring domestic application until the legislature takes action to translate its provisions into domestic law. According to the United States:

The article is sufficiently flexible so that each country can best implement the treaty consistent with its domestic practices. . . . Some countries may choose to make the articles of the treaty directly effective as domestic law and this article would permit them to do so. In the U.S. we would interpret this article as authorizing . . . us to refer, where appropriate, to our Constitution, to our domestic legislation already in existence, to our court decisions and to our administrative practice as carrying out the obligations of the Convention. In other words, it is not the intention of the U.S. to interpret the articles of the treaty in Part I as being self-executing.⁵³

Nothing in the language of the Treaty or the intent of the drafters indicates that a state may, at its leisure, refer to its domestic legislation, its court decisions, or its administrative law and practice before determining which rights of the American Convention to implement, how to incorporate them into domestic law, and when to make them domestically applicable. Both the plain language of the Treaty and the intent of its drafters indicate that once a state becomes a party, the provisions of the Convention become binding and the state is required to provide its citizens with the rights and freedoms enumerated therein.⁵⁴

51. American Convention, *supra* note 12, art. 2, 9 I.L.M. at 102.

52. *Id.*

53. *Conferencia Especializada Interamericana Sobre Derechos Humanos, San Jose, Costa Rica, 7-22 de Noviembre 1969, Actas y Documentos*, 146-47, OEA/SER. K/XVI/1.2 (1973) [hereinafter *Conferencia Especializada Interamericana*] (United States delegation statement). See also Donald T. Fox, *The American Convention on Human Rights and Prospects for United States Ratification*, 3 HUM. RTS. 243, 259-60 (1973) (saying the United States delegation explained that United States law would not consider the Convention self-executing).

54. American Convention, *supra* note 12, art. 1, para. 1, 9 I.L.M. at 101 ("The State Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction, the free exercise of these rights and

B. Federal Clause

Interpreting the treaty as not self-executing, however, is only one method pursued by the United States to weaken the potential domestic effect of the Convention. The United States has also relied on a "federal clause" in the treaty to lessen the federal government's responsibility for compliance by the individual states.⁵⁵ At the insistence of the United States delegation, a clause was included in the American Convention which limits the obligations of a national government in a federal system to assure compliance with the treaty by the local governments of its constituent units.⁵⁶

In an effort to protect the legislative power of its fifty states, the United States interprets the federal clause to relieve the federal government of the duty to prevent violations of the American Convention by state governments and from interfering in affairs which are within the exclusive jurisdiction of the states.⁵⁷

This interpretation allows the states to retain their existing laws, adopt changes on their own terms, and does not require the United States government to exercise its jurisdiction "over subject matter over which it would not exercise authority in the absence of the Convention. The United States is merely obligated to take suitable measures to the end that state and local authorities may adopt provisions for the fulfillment of this Convention."⁵⁸

freedoms.").

For the drafters' intent that the treaty be self-executing, see Thomas Buergenthal, *The Self-Executing Character of the Convention*, in PROTECTING HUMAN RIGHTS IN THE AMERICAS: SELECTED PROBLEMS, *supra* note 12, at 51, 52-53.

55. Fox, *supra* note 53, at 250-54.

56. Thomas Buergenthal, *The Federal Clause of the American Convention*, in PROTECTING HUMAN RIGHTS IN THE AMERICAS: SELECTED PROBLEMS, *supra* note 12, at 49, 49-51. The Convention states:

1. Where a State Party is constituted as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction.
2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention.

American Convention, *supra* note 12, art. 28, 9 I.L.M. at 109.

57. *United States: Report of the Delegation to the Inter-American Specialized Conference on Human Rights (April 22, 1970)*, 9 I.L.M. 710, 733 (1970).

58. *Id.* at 733 (citation omitted). "Suitable measures could consist of recommendations to the states, for example. The determination of what measures are suitable is a matter for internal decision. The Convention does not require enactment of legislation bringing new subject matter within the federal ambit." *Id.*

The United States interpretation, however, reduces the effectiveness of the American Convention by relieving the federal government of responsibility for the action of its states. The language of the treaty's federal clause requires a federal government to "take suitable measures" to bring the laws of the constituent units into compliance with the provisions of the Convention. Nowhere does the language imply that a federal government is relieved of responsibility for violations by the individual states. Nowhere does the language of the federal clause assert that a state party may be in compliance with the Convention while its constituent units fail to adhere to its provisions. Theoretically, under the United States interpretation, individual state governments could maintain legislation inconsistent with the American Convention's requirements without risking treaty violations by the national government. States which fail to comply with Convention requirements may, under this interpretation of the federal clause, be advised or persuaded, but not forced to change their laws by the federal government. Thus, noncompliance by an individual state would not hold the United States in violation of the Convention.⁵⁹

C. Declarations, Reservations, and Understandings

The United States Department of Justice has suggested a number of reservations, declarations, and understandings to the Convention which would further weaken the treaty's effect.⁶⁰ For example, to assure that the treaty will not be self-executing, the Justice Department suggests a declaration to accompany ratification stating that "the United States declares that the provisions of Articles 1 through 32 of this Convention are not self-executing."⁶¹ To insure that the federal government need not interfere with state regulation of the death penalty, another reservation is suggested: "United States adherence to Article 4 is subject to the Constitution and other laws of the United States."⁶² These are only two examples of the thirteen reservations or declarations suggested by the Justice Department to accompany United States ratification of the American Convention.⁶³ While such provisions address any fears that United States' participation could minimize state sovereignty, they also weaken the effectiveness of the Convention. Declarations that render the treaty not self-executing prevent individuals from bringing claims in domestic courts for violations of the treaty. They also deprive the Inter-

59. For example, "individual states within the United States with laws that provide for the death penalty could retain them by virtue of Article 28 [Federal Clause] without the United States being in violation of the Convention." *Id.* at 717.

60. *Letter to President Carter, supra* note 27, at 104-13.

61. *Id.* at 105.

62. *Id.*

63. *Id.* at 104.

American Court and Commission of the benefit of United States court decisions that interpret the Convention, preventing interaction between domestic courts in the United States and the Inter-American Court.⁶⁴ A treaty crippled by reservations designed to make the treaty fully consistent with United States law is not a legal obligation at all. The treaty's effectiveness as an incentive for domestic legal reform or improvement is weakened by this attitude. United States ratification of a less forceful version of the Convention will reflect a lack of good faith on the part of the United States to enter into legal obligations that other members of the Convention have already agreed upon.⁶⁵

IV. SOVEREIGNTY CONCERNS: DOMESTIC JURISDICTION OVER HUMAN RIGHTS

The American people want to make certain that no treaty or executive agreement will be effective to deny or abridge their fundamental rights. Also, they do not want their basic human rights to be supervised or controlled by international agencies over which they have no control.⁶⁶

These are the concerns of Senator John Bricker which contributed to his proposed Constitutional amendment in 1953 (Bricker Amendment). The Bricker Amendment was designed to restrict the President's treaty making authority and to impose limits on a treaty's content.⁶⁷ Although the amendment was narrowly defeated in the Senate,⁶⁸ it led

64. Buergenthal, *supra* note 35, at 51-52.

65. *Human Rights Hearings*, *supra* note 16 (statement of Charles Yost, former U.S. Ambassador to the United Nations).

Our refusal to join in the international implementation of the principles we so loudly and frequently proclaim cannot help but give the impression that we do not practice what we preach . . . we seriously undermine our own case when we resist joining in the international endeavor to enforce these rights, which we ourselves had so much to do with launching.

Id.

66. *Hearings on S.J. Res. 1 and S.J. Res. 43 Before Subcomm. on the Judiciary of the United States Senate*, 83d Cong., 1st Sess. 3 (1953) [hereinafter *Hearings on S.J. Res. 1 and S.J. Res. 43*] (statement of Hon. John W. Bricker, Ohio).

67. Thomas Buergenthal, *International Human Rights: U.S. Policy and Priorities*, 14 VA. J. INT'L L. 611, 612 (1974). The Bricker Amendment had three basic aims: 1) to establish that all international agreements require implementing legislation and are thus not self-executing, 2) to reverse the Supreme Court's ruling in *Missouri v. Holland*, 252 U.S. 416 (1920), that the Tenth Amendment does not apply to treaty implementing legislation since the power to make treaties rests with the federal government, and 3) to establish that treaties are subject to the same constitutional constraints which limit the power of the federal government. *Id.* at 612.

68. *Bricker Treaty Amendment Debate, Report on Defeat of Bricker Amendment, 83rd Congress 2nd Session*, in CONGRESSIONAL QUARTERLY ALMANAC X, 254-62 (1954). See also Symposium,

to a statement by former Secretary of State John Foster Dulles that the United States Department of State would not seek ratification of any human rights treaties,⁶⁹ and created a legacy which is still reflected in current Senate deliberations over human rights treaties.⁷⁰ The ideology behind the Bricker Amendment and Secretary of State Dulles' declaration have left a lasting mark on human rights policy in the United States.⁷¹

Arguments against passage of human rights treaties have not changed substantially since the 1950s.⁷² These arguments reflect the attitude that human rights are a matter to be left exclusively to the domestic legislation of a sovereign state. They are not to be controlled through international agreement or monitored by international tribunals.⁷³ Many Senators feel that "there are severe limits to the extent that a nation can and should shape its domestic, social, economic, and political order by making a treaty. These matters are for local communities, towns, cities, and states."⁷⁴ From this perspective, human rights and civil liberties are exclusively within the domestic jurisdiction of the United States and are not the proper subject of an international agreement.⁷⁵ This isolationist perspective, however, is marked by residual fears lingering from the days of the Bricker Amendment which are unfounded and create unnecessary obstacles to ratification of human rights treaties in the United States.⁷⁶

The United States Constitution imposes no limitations on the subject matter of international agreements in which the government may participate. The Constitution refers to treaties and agreements with foreign powers,⁷⁷ but does not define such agreements or limit their subject matter. There is no constitutional requirement that treaties exclusively address matters of "international concern."⁷⁸ In fact, the Supreme Court has upheld treaties on matters that were exclusively

Should the Constitution Be Amended to Limit the Treaty Making Power?, 26 S. CAL. L. REV. 346 (1953) (expressing arguments both for and against the Bricker Amendment).

69. *Hearings on S.J. Res. 1 and S.J. Res. 43*, *supra* note 66, at 825 (statement of Hon. John Foster Dulles, Secretary of State of the United States).

70. Hevener Kaufman & Whiteman, *supra* note 37, at 310.

71. *Id.*

72. *Id.* at 334.

73. Henkin, *supra* note 7, at 422.

74. Rovine, *supra* note 37, at 60.

75. *Report of the Standing Committee on Peace and Law Through United Nations, Human Rights Conventions and Recommendations*, *supra* note 42, at 601. See also John M. Raymond, *Don't Ratify the Human Rights Conventions*, 54 A.B.A. J. 141 (1968) (arguing that the treaties will be ineffective against oppressive governments and would meddle in domestic affairs).

76. Bitker, *supra* note 36, at 90.

77. U.S. CONST. art. I, § 10, art. II, § 2, art. VI.

78. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 302 cmt. c (1986) [hereinafter RESTATEMENT (THIRD) OF FOREIGN RELATIONS].

domestic in nature and generally regarded to be within state, rather than federal, authority.⁷⁹ The Court, in defining the scope of the President's treaty making power has never held a treaty invalid because it dealt with an "improper" subject, nor has the President or Senate ever rejected a treaty because the subject matter was not constitutionally "proper."⁸⁰

Furthermore, international law imposes no limitations on the purpose or subject matter of international agreements other than that they may not conflict with a peremptory norm of international law.⁸¹ While the principle of "non-interference in domestic affairs" as defined by Article 2(7) of the U.N. Charter does limit the jurisdictional authority of the U.N. over matters of domestic concern,⁸² human rights have been carved out as a specific exception.⁸³

In addition, the Vienna Convention on the Law of Treaties recognizes the "ever-increasing importance of treaties" as a means of assuring "universal respect for, and observance of human rights and fundamental freedoms."⁸⁴ In light of the wording of the Vienna Convention, it is clear that human rights are a proper subject of international agreements.

By becoming parties to human rights treaties, states have acknowledged that their treatment of individuals is not solely a matter of domestic concern.⁸⁵ The principle of noninterference in domestic affairs does not shield states from scrutiny or censure should they torture, murder, or arbitrarily imprison their citizens.⁸⁶ The modern development of an international body of human rights law, the existence of universal and regional structures to monitor human rights protection and the increasing influence of nongovernmental human rights organizations in the international community grow out of the ideology

79. *Missouri v. Holland*, 252 U.S. 416 (1920) (protection of migratory waterfowl); *De Geofrey v. Riggs*, 133 U.S. 258 (1890) (rights of inheritance in land).

80. Louis Henkin, *The Constitution, Treaties and International Human Rights*, 116 U. PA. L. REV. 1012, 1020 (1968).

81. RESTATEMENT (THIRD) OF FOREIGN RELATIONS, *supra* note 78, § 302 cmt. c. See also LASSA OPPENHEIM, 1 INTERNATIONAL LAW § 21 (Hersch Lauterpacht ed., 8th ed. 1955) (stating both international and domestic law regulate the same individual conduct; international law, however, attributes this individual conduct to the state).

82. U.N. CHARTER art. 2, para. 7 ("Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.").

83. See generally Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 AM. J. INT'L L. 866 (1990) (arguing that no serious scholar maintains that human rights are a purely domestic concern).

84. Vienna Convention on the Law of Treaties, Apr. 24, 1970, pmbl., 8 I.L.M. 679, 680 (1969) (sent to the Senate Nov. 22, 1971).

85. "Today, human rights are of deep 'international concern;' they have an important place in the foreign relations of the United States. Human rights in other countries have become, ineluctably, this country's business." Henkin, *supra* note 80, at 1030.

86. *Id.* (human rights in a given nation have become ineluctably the business of other nations).

that fundamental human rights are of universal concern.⁸⁷ International agreements which protect individual rights, therefore, have a primary place in international law.⁸⁸

V. SPECIFIC OBJECTIONS

A. Abortion

Specific provisions of the American Convention have caused concerns in the United States over the potential effect on legal abortions and the death penalty. The American Convention describes the right-to-life in the following terms: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."⁸⁹

The unique wording of Article 4 differs from the right-to-life provisions in either the Universal Declaration, the U.N. Covenant on Civil and Political Rights, or the European Convention.⁹⁰ Undertaking the protection of life "from the moment of conception" has caused concern that ratification could result in a prohibition of legal abortions in the United States.

Some have argued⁹¹ that the United States has failed to protect life "from the moment of conception" by permitting abortions in accordance with the Supreme Court ruling in *Roe v. Wade*.⁹² Ratification of the Convention, therefore, may expose the United States to an international lawsuit and potentially unfavorable ruling by the Inter-American Court or Commission.

In fact, because of its participation in the American Declaration, the United States already has faced such a challenge before the Inter-

87. *Id.* at 1012.

88. "For decades now, 'in the ordinary intercourse of nations,' human rights have 'been made subjects of negotiation and treaty.' Surely, the Constitution does not prohibit the United States from negotiating and adhering to such treaties." *Id.* at 1031.

89. American Convention, *supra* note 12, art. 4, para. 1, 9 I.L.M. at 102.

90. Marco Gerardo Monroy Cabra, *Rights and Duties Established by the American Convention on Human Rights*, 30 AM. U. L. REV. 21, 26 (1981) (discussing differences between the wording of the Convention and the International Covenant on Civil and Political Rights).

91. On January 19, 1977, the group "Catholics for Political Action" filed a petition with the Commission against the United States and the Commonwealth of Massachusetts for permitting legal abortions in violation of the American Declaration's "right to life provision." Case 2141, Inter-Am. C.H.R. 25, OEA/Ser.L/V/II.54, doc. 9, rev. 1, para. 1 (1981) (*White, Potter v. United States*, commonly known as the *Baby Boy Case*). The Inter-American Commission rejected this argument and suggested that neither the Declaration's nor the Convention's right to life provisions prohibited abortion. *Id.* para. 19(e)-(h). For a discussion of the *Baby Boy Case*, see Dinah Shelton, *Abortion and the Right to Life in the Inter-American System: The Case of Baby Boy*, 2 HUM. RTS. L.J. 309 (1979).

92. *Roe v. Wade*, 410 U.S. 113 (1973).

American Commission on Human Rights. In the case of *White & Potter v. United States*,⁹³ United States' laws permitting abortion were challenged as a violation of the right-to-life provision of Article I of the Declaration. Based upon legislative history, the Commission found that the obligations incurred under the American Declaration of Human Rights did not include a prohibition of abortion.⁹⁴ The legislative history of the Declaration reveals that a right-to-life "from the moment of conception" was deliberately excluded by the drafters of the Declaration because such a provision was incompatible with the laws governing the death penalty and abortion in the majority of the American states.⁹⁵

A similar examination of the legislative history of the American Convention reveals the same sensitivity on the part of the drafters toward domestic laws of member states allowing abortion. The original draft of the Convention, submitted to the Commission by the Inter-American Council of Jurists, provided a right-to-life "protected by law from the moment of conception."⁹⁶ Recognizing that this could be interpreted as a prohibition of abortion, the words "in general" were added as a qualification to Article 4. Thus, the phrase, "in general, from the moment of conception," was intended by the drafters to refer to a right-to-life which did not interfere with the status of legal abortions in American countries at the time the Convention was drafted. Accordingly, the legal implications of the terminology "in general from the moment of conception" are substantially different from the shorter phrase "from the moment of conception."⁹⁷

The legislative history behind the Declaration and the Convention indicate that neither document was intended to require member states with laws permitting abortions to alter their domestic legislation. Both the United States and Brazil made statements on the record at the San José Conference affirming this interpretation of the Convention. Both countries interpret the language of paragraph 1 of Article 4 as "preserving to State Parties discretion with respect to the content of

93. *Case 2141*, Inter-Am. C.H.R. 25.

94. *Id.* paras. 19(e)-(h).

95. *Id.*

96. *Opinion Prepared by the Inter-American Commission on Human Rights on the Draft Convention on Human Rights Approved by the Inter-American Council of Jurists at Its Fourth Meeting (Santiago Chile, 1959)*, OEA/Ser.L/V/II.15, doc. 26 at 3-4 (1966) (giving preference to a draft of the Convention submitted by Uruguay but suggesting that the words "in general" be added to the protection of life "from the moment of conception"). See also *IACHR Annotations on the Draft Inter-American Convention on Protection of Human Rights*, OEA/Ser.L/V/11.19, doc. 53 at 10 (1969).

97. *Case 2141*, Inter-Am. C.H.R. 25, para. 30 ("In the light of this history, it is clear that the . . . addition of the phrase 'in general, from the moment of conception' does not mean that the drafters of the Convention intended to modify the concept of the right to life that prevailed in Bogota, when they approved the American Declaration.").

legislation in the light of their own social development, experience and similar factors."⁹⁸ The government of Mexico made a similar interpretive declaration at the time of ratification, stating its belief that the right-to-life language of the Convention would not require Mexico to outlaw abortions.⁹⁹ The legislative history of the American Convention and declarations made by the U.S. at the time of drafting indicate that the wording of Article 4 should not prohibit legal abortions in the United States.

B. The Death Penalty

Another example of the potential for interference with state legislation created by the American Convention is found in Article 4's prohibition of the death penalty for persons under 18 or over 70.¹⁰⁰ Since several states in the United States currently permit the death penalty for persons under the age of 18,¹⁰¹ supporters of current death penalty statutes oppose ratification claiming it would interfere with the legislative discretion of states by compelling the federal government to regulate use of the death penalty among the states.¹⁰²

Despite concerns over the right-to-life language in the American Convention, it is important to note that it does not prohibit the death penalty. Rather, the Convention limits use of the death penalty to only the most serious crimes and explicitly prohibits a sentence of death for political offenders, persons under the age of 18 or over 70, and pregnant women.¹⁰³ It also insures the right of appeal and prohibits the re-establishment of the death penalty in countries where it has been abolished.¹⁰⁴ These restrictions would only affect states that have already abolished the death penalty or that allow execution of juveniles under the age of 18. Opposition to the Convention on the basis that states may have to change their death penalty laws is unwarranted. The changes required under the American Convention are no different than

98. *United States: Report of the Delegation of the Inter-American Specialized Conference on Human Rights*, *supra* note 57, at 717.

99. *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L./V/II.71, doc. 6 rev. 1 at 62 (1987) ("[T]he Government of Mexico considers that the expression 'in general' does not constitute an obligation to adopt, or keep in force, legislation to protect life 'from the moment of conception,' since this matter falls within the domain reserved to the States.").

100. American Convention, *supra* note 12, art. 4, para. 5, 9 I.L.M. at 102.

101. Amnesty International, *The Truth About the Death Penalty in the United States Is Real News*, Briefing Paper, Amnesty International, U.S.A., N.Y. Office, June 1990.

102. Joan Hartman, "Unusual" Punishment: *The Domestic Effects of International Norms Restricting the Application of the Death Penalty*, 52 U. CIN. L. REV. 655, 687 (1983) (discussing United States reluctance to adopt international norms which invalidate inconsistent state legislation).

103. American Convention, *supra* note 12, art. 4, paras. 2-6, 9 I.L.M. at 102.

104. *Id.* art. 4, paras. 1-4, 9 I.L.M. at 102.

those already required under the American Declaration.¹⁰⁵ While the Convention would force the federal government to limit state laws governing application of the death penalty in certain cases, the Declaration has already imposed such obligations on the federal government.¹⁰⁶ The United States is currently in violation of the international human rights obligations it has undertaken in the Declaration for failure to assure uniform, nonarbitrary application of the death penalty nationwide.¹⁰⁷ Accordingly, adoption of the Convention would not impose any greater requirement on the federal government than has already been imposed by United States participation in the Declaration, and would be a means of approaching a uniform standard regulating the use of the death penalty throughout the nation.

VI. REASONS FOR RATIFICATION

Promotion of any human rights treaty in this country requires two steps. First, proponents of ratification must overcome the legacy of the Bricker Amendment and the Cold War era when human rights treaties were immediately suspect in the United States.¹⁰⁸ The foregoing analysis of objections to the Convention has attempted to address these fears by demonstrating that the Convention poses no threat to the domestic legal order of the United States.¹⁰⁹

Overcoming the legal objections to ratification is, however, only part of the process. The central problem behind ratification is a political one.¹¹⁰ Legal barriers to ratification can be overcome if the political

105. The Inter-American Commission on Human Rights has ruled the U.S. is currently in violation of its duties under the American Declaration because of its failure to regulate the laws of those states which allow for execution of juveniles.

For the federal government of the United States to leave the issue of the application of the death penalty to juveniles to the discretion of State officials results in a patchwork scheme of legislation which makes the severity of punishment dependent, not, primarily, on the nature of the crime committed, but on the location where it was committed. . . . The failure of the federal government to preempt the states as regards this most fundamental right—the right to life—results in a pattern of arbitrary deprivation of life and inequality before the law, contrary to Articles I and II of the American Declaration of the Rights and Duties of Man, respectively.

Case 9647, Inter-Am. C.H.R. 30, OEA/Ser. L./V./II.71, doc. 9 rev.1, para. 63 (1987).

106. Donald Fox, *Current Development: Inter-American Commission on Human Rights Finds United States in Violation*, 82 AM. J. INT'L L. 601 (1988).

107. *Id.*

108. Hevener Kaufman & Whiteman, *supra* note 37, at 310.

109. The United States Department of Justice has expressed the opinion that, with the appropriate reservations and declarations, there are no Constitutional or legal objections to ratification of the Convention. *Letter to President Carter, supra* note 27.

110. Richard Falk, *Ideological Patterns in the United States Human Rights Debate*, in THE DYNAMICS OF HUMAN RIGHTS, *supra* note 36, at 29. In order for a human rights policy to be

will exists to move this treaty through the Senate. Unfortunately, there is an almost universal perception in the Senate that human rights treaties are controversial, politically costly, and lack tangible rewards.¹¹¹ Ratification will depend largely upon how successfully supporters of the Convention can demonstrate the political, diplomatic, economic, and social advantages of participation in the American Convention.

Senate reluctance to act on the Convention can be overcome through popular support for human rights treaties and a growing awareness of human rights issues in the United States. In 1977, the year when President Carter sent the Convention to the Senate for approval, one of the world's foremost human rights organizations, Amnesty International, had 10,000 members in the United States.¹¹² Today that number has grown to 386,000.¹¹³ Recognizing the increasing popular concern with international human rights, the United States administration has found it politically expedient to take an increasingly moralistic stand in its dealings with other countries in this hemisphere. "Operation Just Cause" in Panama,¹¹⁴ the United States "rescue mission" in Grenada,¹¹⁵ and "Operation Desert Storm"¹¹⁶ demonstrate the tendency to couch strategic operations in the language of moral justification to elicit popular support and approval. In addition, the United States has also been quick to criticize many Central American countries for widespread and persistent abuses of human rights¹¹⁷ and regularly conditions its foreign assistance funds on human rights

politically successful in the United States it must be supported by a "right-leaning centrist coalition" and political leaders must reconcile human rights initiatives with the "short and long-term geopolitical interests of the United States." *Id.* at 46.

111. Hevener Kaufman & Whiteman, *supra* note 37, at 332-33.

112. Figures as of July 1, 1991. Telephone conversation with Amnesty International U.S.A., National Membership Office, New York, N.Y. (July 1, 1991).

113. *Id.*

114. Michael R. Gordon, *U.S. Troops Move in Panama*, N.Y. TIMES, Dec. 20, 1989, at A1 (presidential spokesman Marlin Fitzwater saying that the operation was designed to restore democracy in Panama and to bring Noriega to the United States to face drug trafficking charges).

115. Ed Magnuson, *D-Day in Grenada*, TIME, Nov. 7, 1983, at 22 (saying the invasion was intended to protect and rescue 1,000 Americans trapped on the island after a bloody Marxist coup).

116. Ann Reilly Dowd, *How Bush Decided*, TIME, Feb. 11, 1991, at 45.

As the U.N. deadline approached, the President grappled one last time with the morality of going to war. At the Christmas Holidays, he pored over every one of the 82 pages of Amnesty International's agonizing report of arrests, rape and torture in Kuwait. In the first staff meeting after his 12-day respite at Camp David, he told them his conscience was clear. Recalls one who was there: "He said, 'it's black and white, good vs. evil. The man has to be stopped!'"

Id.

117. See generally U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1990, 486-800 (1991) (publishing lengthy analysis of abuses in each Latin American country).

criteria.¹¹⁸ While dictating standards of behavior to other nations and enforcing those standards financially and militarily, the United States refuses to adhere to the basic instrument which represents the generally recognized standard of human rights protection among American nations. The United States threatens the integrity of its posture before the nations of this hemisphere when it fails to bind itself to standards to which it holds others and on which it justifies military intervention or the denial of foreign financial assistance.¹¹⁹ Thus, the United States appears hypocritical in holding the rest of this hemisphere to a standard to which it refuses to adhere.¹²⁰ Recent world events indicate that in this era, if the United States wishes to increase its influence among the nations of this hemisphere, multilateral, rather than unilateral, action must prevail.¹²¹ The Organization of American States is an effective framework for such multilateral action and enables the United States to cooperate with its American allies for mutual gain.

In addition, the long-term economic interests of the United States are best promoted by a foreign policy that assures the continued stability and growth of smaller nations in this hemisphere with which it intends to do business.¹²² Assuring protection of human rights is a means of promoting social and economic progress particularly in countries frequently torn by social injustice and civil disorders.¹²³ Those nations which ratify and adhere to the American Convention will safeguard social and economic progress and create a better climate for business, cultural, and political relations.¹²⁴ More effective human rights protection in many South and Central American countries would help to forestall the possibility of uprising and civil disorders that disturb peace and world security. As U.S. Senator William Proxmire stated: "[W]here human rights are secure, peace is attendant. When the human rights of any people are threatened, peace itself is threatened."¹²⁵

118. See David Weissbrodt, *Human Rights and the United States Foreign Policy*, 7 GA. J. INT'L & COMP. L. 231, 232 (1977). See also Foreign Assistance Act of 1961, 22 U.S.C. § 2151n (1990) ("No assistance may be provided to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights.").

119. Nigel Rodley, *On the Necessity of United States Ratification of the International Human Rights Conventions*, in U.S. RATIFICATION OF THE HUMAN RIGHTS TREATIES, *supra* note 27, at 3, 3-19.

120. Buergerthal, *supra* note 35, at 49 ("[I]f the United States does not ratify the Convention, our political involvement in the American Convention system will, of necessity, decrease, as will our influence."). See also *Human Rights Hearings*, *supra* note 16, at 4 (statement of Hon. Charles Yost, former United States Ambassador to the United Nations).

121. Louis B. Sohn, *International Consequences of United States Human Rights Policy*, in THE DYNAMICS OF HUMAN RIGHTS, *supra* note 36, at 63.

122. Richard N. Gardner, *A Costly Anachronism*, 53 A.B.A. J. 907, 908 (1967) (arguing that peace, economic and social development, and human rights form a triangle of interdependence).

123. Donald Fraser, *Freedom and Foreign Policy*, 25 FOREIGN POL'Y 140 (1977).

124. *Id.*

125. 113 CONG. REC. 30,902, 30,903 (1967) (speech of Sen. Proxmire on the subject of the

VII. CONCLUSION

Promotion and support of human rights treaties is in the best interest of the United States. As the drafters of the Restatement of Foreign Relations Law recognized:

Although such conventions generally specify standards already observed in the United States, it has an interest in seeing that they are observed by as many states as possible, not merely to protect its own standards, but to promote conditions abroad that will foster economic development and democratic institutions that are conducive to prosperity in the United States and achievement of its foreign policy objectives. It cannot effectively urge other states to adhere to such conventions without doing so itself.¹²⁶

In order to increase its credibility as a nation committed to human rights around the world, to enhance the level of its cooperation with other nations in this hemisphere, and to promote an environment of social and economic progress in this hemisphere, the United States should ratify the American Convention.

Joseph Diab

Supplementary Slavery Convention).

126. RESTATEMENT (SECOND) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 118 (1965).

