

THE ROLE OF N.G.O.S IN U.S. RATIFICATION OF HUMAN RIGHTS TREATIES

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I. INTRODUCTION

The United States has been ambivalent in its attitude toward the United Nations and toward human rights in particular. On the one hand United States legal experts have been instrumental in helping to craft the United Nations Covenants and Conventions. On the other, the Senate did not give its advice and consent to the Convention on the Prevention and Punishment of the Crime of Genocide until 1986, nearly thirty-seven years after it was first submitted by President Truman.

The role of non-governmental organizations (N.G.O.s) has been essential in the development and implementation of international human rights law. In the United States, the N.G.O. community has provided legal expertise to both the Department of State and Congress, has lobbied Capitol Hill, and has developed a nationwide constituency for ratification of the various human rights treaties.

In 1984, a Washington-based Human Rights Treaty Ratification Working Group (hereinafter "Working Group") was formed to pursue ratification of the United Nations human rights treaties. The Working Group was composed of representatives of N.G.O.s from the legal, human rights, and religious communities, including the American Bar Association, Amnesty International U.S.A., B'nai Brith International, the

* Bahá'is of the United States; Organization listed for purposes of identification only. This article is based on a presentation given at a panel discussion entitled *U.S. Ratification of Human Rights Treaties* at the International Law Weekend '96, sponsored by the American Branch of the International Law Association, November 1, 1996, in New York City. The author wishes to thank Ms. Patricia Rengel, Chief Legal Counsel of Amnesty International U.S.A., and Ms. Kit Cosby, Deputy Director for External Affairs of the National Spiritual Assembly of the Bahá'is of the United States for their assistance in the preparation of this article.

International Human Rights Law Group, United Nations Association of the United States, Lawyers Committee for Human Rights, the Bahá'is of the United States, the Lutheran Office, and others. Over the years additional working groups that focused on specific treaties were formed. These treaties included the conventions on genocide, torture, race, children, and women, as well as the Covenant on Civil and Political Rights.

This paper will focus on the experience of the Washington, D.C. human rights community. Other human rights coalitions based in New York, the West coast, and the Midwest have also played an essential role in the ratification of human rights treaties. While it is beyond the scope of this paper to provide a comprehensive overview of the N.G.O. efforts to promote ratification during the past decade, the general political strategy of the Working Group will be summarized with examples of decisions and action taken to illustrate each point.

A. Political strategy

The political strategy of the Human Rights Treaty Ratification Working Group may be summarized as follows:

- 1) Lobby for ratification of at least one treaty during each Congress.
- 2) Start with those treaties narrowest in scope and establish broad bipartisan support thereby building momentum for each subsequent treaty.
- 3) Push for ratification with a minimum of limiting reservations, declarations and understandings.
- 4) Work closely with allies in Congress and the Executive Branch to accomplish ratification and appeal to popular support when necessary.
- 5) Support passage of implementation legislation when necessary.

1. Lobby for Ratification of at Least One Treaty During Each Congress

The Carter Administration made human rights the center of its foreign policy. In 1978 the Administration submitted four human rights

treaties¹ to the Senate Foreign Relations Committee, and in 1980 it submitted the Convention on the Elimination of All Forms of Discrimination Against Women. Following the 1980 election of President Reagan, the treaties remained in Committee without further consideration. In retrospect, the action taken by the Carter Administration appeared to be a gesture with no strategy behind it.

In 1984, after consultation with the Legal Advisor's Office in the State Department and with key members of Congress, the Working Group agreed upon the goal of seeking ratification of at least one human rights treaty during each Congress. Allies in Congress warned that the Senate would consider only one human rights treaty at a time. Treaty supporters also felt that if more than one treaty at a time were submitted, the opponents of any one treaty could stop the others that were tied to it. The members of the Working Group recognized that it was engaged in a long-term education process in both the Congress and throughout the nation.

2. Start with Those Treaties Narrowest in Scope and Establish Broad Bipartisan Support Thereby Building Momentum for Each Subsequent Treaty

There is a creative tension between the demands and expectations of the Executive Branch, Congress and of N.G.O.s. Depending on the season, electoral politics, domestic politics, and the politics of the international community all come into play.

The Genocide Convention was the first human rights treaty to be considered for ratification. Because it was the first human rights treaty submitted to the Senate in 1948 by President Truman and because the treaty narrowly addressed only the issue of genocide, the subject elicited universal condemnation and generated little domestic opposition. During the presidential election campaign of 1984, President Ronald Reagan announced his support for ratification of the Genocide Convention at the National Convention of B'nai B'rith International. The timing and conception of his statement of support were not coincidental as the American Bar Association, Amnesty International U.S.A., and B'nai B'rith International had recommended that he take such action. Senator William Proxmire submitted statements into the Congressional Record every day for years calling for United States ratification of the Genocide

1. International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (entered into force Mar. 23, 1976); Covenant on Economic, Social & Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3, 6 I.L.M. 360 (entered into force Jan. 3, 1976); Convention on the Elimination of All Forms of Racial Discrimination, 5 I.L.M. 352 (1966); American Convention on Human Rights, 9 I.L.M. 99 (1970).

Convention. In this instance the Working Group worked closely with Senator Proxmire's office as well as with key members of the Senate Foreign Relations Committee to ensure the Senate's advice and consent of the Treaty.

Of special significance at the time was the fact that following the Republican takeover of the leadership of the Senate in 1984, Senator Richard Lugar, as Chairman of the Foreign Relations Committee, persuaded a majority of Republicans to support the Convention while ensuring the continued support of Democratic Senators. In addition, the Working Group coordinated constituent visits with key members of the Senate, including Senator Symms in Idaho, Senator Thurmond in South Carolina, and Senator Hecht in Nevada, to urge them to vote for the Convention on its own merits and not against it out of an exaggerated concern for national sovereignty. As a result, in November 1988, almost forty years after the United States had signed the Genocide Convention, President Reagan signed implementing legislation thus completing the process of ratification.

Having opened the door to the ratification process, the Reagan Administration proposed for Senate consideration the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, or Punishment which the Bush Administration subsequently brought to the Senate for its advice and consent in October 1990. Subsequent treaties brought before the Senate by the Bush and Clinton Administrations included the Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination Against Women.

3. Push for Ratification with a Minimum of Limiting Reservations, Declarations or Understandings

Political considerations have had a profound influence not only on the timing and order of treaties to be considered by the Senate but also on the package legal provisions proposed by the State Department for each of the treaties. In principle, the members of the Working Group agreed that the human rights treaties could be ratified by the United States with a minimum of limiting legal provisions. Each organization had to decide for itself what legal issues were amenable to compromise. While the Working Group recognized that compromises would have to be made with the State Department and the Senate on legal issues of concern to get the ratification process started with the Genocide Convention, the overall strategy was to decrease the impact of limiting legal provisions negotiated for each subsequent human rights treaty.

For example, Senator Jesse Helms had insisted that a reservation on national sovereignty be attached to the Genocide Convention. The reservation stated “[n]othing in the Convention requires or authorizes legislation or other action by the United States of America prohibited by the Constitution of the United States as interpreted by the United States.”

Many members of the Working Group found this reservation objectionable and unnecessary. The Working Group agreed, however, that it was not worth stalling the momentum for ratification by insisting that the reservation be taken out and thus perhaps delaying indefinitely the proceedings. Subsequently, the Working Group cited the negative reaction of other governments against the sovereignty reservation in insisting that the reservation should not be included in the legal package negotiated for the Convention Against Torture.

Although Senator Jesse Helms, ranking Minority Leader of the Foreign Relations Committee, strongly favored the inclusion of the sovereignty reservation in the instrument of ratification for the Convention on Torture, a bipartisan compromise was subsequently reached to reduce the sovereignty reservation to that of a proviso to be sent to all state parties which stated that “no legislation or action is required that is prohibited by the U.S. Constitution.” Significantly, the proviso was not included with the instrument of ratification deposited by the President at the United Nations. Similar provisos were sent upon ratification of the Covenant on Civil and Political Rights in 1992 and the Convention on the Elimination for All Forms of Racial Discrimination in 1994.

Modification in the language of other provisions has occurred over the history of the ratification of human rights treaties. For example, the federal-state reservation under the Convention Against Torture has become an understanding under the Covenant on Civil and Political Rights and the Race Convention. However, the United States continued to take a reservation on the compulsory jurisdiction of the International Court of Justice under the Race Convention as it had under the Genocide Convention. In addition, the Conventions on torture and race, and the Covenant on Civil and Political Rights each had understandings stating the treaties were not self-executing.²

In the package submitted by the Clinton Administration to the Senate Foreign Relations Committee for the Women’s Convention in October 1994, the reservation on the compulsory jurisdiction of the International Court of Justice taken under the conventions on genocide and race has been reduced to a declaration. The freedom of speech reservation

2. KIT COSBY, *MULTILATERAL TREATIES: RATIFICATION AND IMPLEMENTATION* (Nov. 1994).

taken under the Covenant on Civil and Political Rights and the Race Convention has been proposed as an understanding.

There is also a creative tension within the N.G.O. community in the negotiation of political strategy and legal policy. Clearly, the active members of the Working Group were all committed to the overall goal of ratification. Some organizations have wanted to use the treaties to condemn the government's domestic record while others felt it more politic to emphasize the international influence the treaties would have in establishing basic universal human rights standards at home and abroad. Each organization had to decide what it could live with and what it could not when it came to consulting with the State Department on the United States package of provisions for each treaty. Some organizations such as the Bahá'is of the United States upheld ratification of the treaties in support of the general principle of the rule of law without taking legal positions on the specific provisions of the treaties. In this regard the Bahá'is could help facilitate a consensus on issues where various organizations differed. Other organizations such as Amnesty International U.S.A., which condemns the use of the death penalty under all circumstances, had to decide when they could accept a compromise and when they had to threaten to oppose ratification of a treaty all together because of a proposed position of the government on a given treaty provision. On many of these difficult issues, the American Bar Association was instrumental in helping to hammer out a compromise solution acceptable to all parties.

For example, in 1988 the Administration had proposed a reservation for the Convention Against Torture that would have changed the definition of torture by introducing specific defenses for torture. Amnesty International U.S.A. decided that it would have to oppose ratification unless this reservation were eliminated. In the fall of 1989, following President Bush's election, Amnesty International's then Legal Director, Nigel Rodley, a world expert on torture, met with the Legal Advisor and staff of the State Department and members of the Criminal Division of the Department of Justice. After the meeting, the Administration created a new package for submittal to the Senate. On the other hand, when the Administration proposed a reservation for the Covenant on Civil and Political Rights that permitted capital punishment, Amnesty International U.S.A. decided, after extensive debate, that they would not oppose ratification on this issue, recognizing that Congress was reluctant to resolve domestic controversies through the adoption of international treaties under the Constitution.

Finally, limiting provisions for treaty ratification are not only a source of controversy domestically, but internationally as well. A number

of State Parties have submitted to the United Nations their objections to United States provisions.

4. Work Closely with Allies in Congress and the Executive Branch to Accomplish Ratification and Appeal to Popular Support When Necessary

Over the years, national organizations with grassroots constituencies have requested their membership to write or call relevant members of Congress and the Administration in support of the ratification of various human rights treaties. Letter writing campaigns have been timed to urge the Administration to actively support ratification, to urge the Senate to hold hearings or vote on a given treaty, or to request sponsorship of congressional resolutions or letters that recommend such action be taken.

The first two treaties on genocide and torture that were ratified by the United States could not have been ratified without the support of key national organizations such as the American Bar Association, Amnesty International U.S.A., B'nai B'rith International, and others who lobbied on Capitol Hill and provided essential legal expertise. Neither treaty had great popular support. The same was true to a great extent for ratification of the Covenant on Civil and Political Rights.

The issues addressed by the remaining treaties, however, particularly those dealing with children and women, and the Covenant on Social, Economic and Cultural Rights, are not so clear cut precisely because of the legacy of the Cold War and the opposition against the social, economic, and cultural provisions in each of them. In addition, many of the provisions of these treaties deal more directly with state law than with just federal law.

In this instance, it has become necessary to build a grassroots constituency for both the Convention on the Rights of the Child and for the Women's Convention.

The role of the United Nations World Summits and Conferences has been crucial in helping to develop such a constituency in the United States, particularly the World Summit for Children in New York in 1990, the Human Rights Conference in Vienna in 1993, and the World Conference on Women in Beijing in 1995.

B. Convention on the Rights of the Child

Following the World Summit for Children in New York in 1990, InterAction, the organization that took the lead in coordinating N.G.O. support for the Convention on the Rights of the Child, developed a very

effective legislative and grassroots campaign which included a National Advisory Council on the Rights of the Child co-chaired by Senators Bradley and Lugar. House and Senate resolutions were passed in the 101st Congress with eighty-five and sixty cosponsors respectively. Nine governors and states issued proclamations or passed resolutions in support of the Convention. Other resolutions were passed at the city and local levels. Sign-on letters addressed to President Bush and the Congress from corporate leaders and N.G.O.s were sent. Periodic letter writing campaigns were initiated by the members of the Working Group on the Rights of the Child. In Washington, the American Bar Association sponsored a working group to do an analysis of the Convention and its impact on United States domestic law.

Of all of the human rights treaties the Convention on the Rights of the Child enjoyed the greatest widespread constituent popularity. It also enjoyed the support of the First Lady, Hillary Rodham Clinton, formerly affiliated with the Children's Defense Fund. On February 16, 1995, United States United Nations Ambassador, Madelaine K. Albright, signed the Convention on the Rights of the Child on behalf of the United States. However, perhaps because of its relative popularity, the Convention also inspired the most intense organized opposition by such groups as the National Center for Home Education, the Eagle Forum, and the Family Research Council. A second resolution in support of the Convention which was to be introduced in the 104th Congress was stalled because of the withdrawal of support from several senior senators such as Senator Bob Dole. Several Senate offices reported that most constituent phone calls and letters regarding the Rights of the Child treaty were overwhelmingly negative.

C. Convention on Women

The United States signed the Convention on the Elimination of All Forms of Discrimination Against Women on July 17, 1980, and President Carter transmitted it to the Senate Foreign Relations Committee in November 1980. The Committee held hearings on the Convention in the 101st and 103rd Congresses. In the hearing held during the summer of 1990, the State Department, under the Bush administration, testified that it had not yet prepared a legal analysis.

In the Spring of 1993, after intense lobbying by N.G.O.s, sixty-eight senators signed a letter to President Clinton asking him to take the necessary steps to ratify the Women's Convention. In June 1993, Secretary of State Warren Christopher announced at the United Nations World Conference on Human Rights in Vienna that "[g]uaranteeing

women their human rights is a moral imperative.” In the Vienna Declaration and Programme of Action the United States agreed that “[t]he United Nations should encourage the goal of universal ratification by all States of the [Women’s] Convention by the year 2000.” The United States also announced its intention to ratify the Convention on the Rights of the Child and the Covenant on Economic, Social and Cultural Rights. Significantly, the United States and the other nations represented at the Conference agreed that human rights are “universal, indivisible and interdependent and inter-related.”

Administration officials had hoped that ratification of the conventions on race and women would take place by the summer of 1994. Following ratification of the Race Convention in June 1994, the Clinton Administration submitted a package for the Women’s Convention to the Senate Foreign Relations Committee which passed favorably on September 29th by a vote of thirteen-five (with one abstention). At the same time there was an eleventh hour mail and phone campaign against the treaty, fueled in part by radio talk shows. Several senators put a hold on the Convention, thereby blocking it from the Senate floor during the 103rd Congress.

Following the fall 1994 elections, the Republicans took over the leadership of Congress and Senator Jesse Helms became Chairman of the Foreign Relations Committee. When the new Senate convened in January 1995, the Convention on Women reverted to the Senate Foreign Relations Committee, where it remains to this day.

In September 1995, at the Fourth World Conference on Women in Beijing, China, the United States reaffirmed the commitment to seek ratification of the Women’s Convention. With approximately 8,000 Americans attending the Conference, the Beijing Declaration and Platform for Action provided fresh momentum to build popular support for United State ratification. After the Beijing Conference, the Washington D. C. based Working Group on Ratification of the Women’s Convention, currently co-chaired by Amnesty International U.S.A. and the Bahá’is of the United States, offered as a model an effort initiated in 1995 by the Iowa Division of the United Nations Association. That effort resulted in the Iowa City Council passing on August 1, 1995, a resolution endorsing United State ratification of the Women’s Convention. Since its passage, four other Iowa municipality campaigns have been launched. Five state legislatures, California, Iowa, Massachusetts, New York and South Dakota, have also endorsed resolutions in support of ratification.

On April 30, 1996, over one hundred organizations signed a letter addressed to all Senators urging that “the Senate give its prompt advice and consent to ratify” the Convention.

5. Support Passage of Implementation Legislation When Necessary

he process of ratification of human rights treaties does not end with the advice and consent given by the Senate. States Parties are required to undertake measures to adopt and give effect to treaty provisions, through the implementation legislation if necessary, and to participate in the United Nations system for monitoring compliance.

An issue of concern for nearly all human rights N.G.O.s is that to date each of the human rights treaties has been ratified with the declaration of non-self-execution. This means that provisions of the treaty may not be enforced directly by the judiciary in the absence of implementing legislation passed by both houses of Congress. Many object to this declaration because it prevents United Nations treaties from becoming United States law and United States citizens may not invoke treaty provisions in United States courts unless implementation legislation has been passed by Congress.³

The members of the Working Group recognized that there is great reluctance on the part of Congress to change domestic law through treaty law. The Constitution is the supreme law of land, and even though the Constitution makes treaties the supreme law of the land as well, Congress is reluctant to use the treaty process as a means of changing domestic law because only the Senate is given the responsibility for advice and consent to ratification. In contrast, implementation legislation requires the consent of both houses of Congress.

Implementation legislation was required to make specific provisions of the conventions on genocide and torture a part of the United States legal code. For both treaties, the Working Group assisted the relevant congressional committees in drafting the implementing legislation and in helping to ensure that the legislation went through the ordinary legislative process necessary for final passage by both houses of Congress.

Following the Senate's advice and consent of the Genocide Convention in 1986, President Reagan signed, in November 1988, the Genocide Convention Implementation Act,⁴ which made genocide a federal crime, established penalties for commission of that crime, and defined the jurisdiction of the United States over acts of genocide as referred to in article V of the Convention. In June 1994, President Clinton signed the State Department Authorization Bill which included legislation implementing articles 10-14 and 16 of the Convention on Torture. In November 1994, the instrument of ratification to the Convention on

3. *Id.*

4. Genocide Convention Implementation Act of 1987, 18 U.S.C. §1091 (1996).

Torture was deposited at the United Nations after the proviso on national sovereignty had been sent to all governments party to the convention.

In the fall of 1994, the Lawyer's Committee for Human Rights led an effort to introduce legislation that would make United States law the provisions on which the United States took reservations under the Covenant on Civil and Political Rights. The International Human Rights Law Group began an effort to introduce implementation legislation on the Race Convention.⁵ The intent of the proposed legislation was to provide United States citizens a cause of action in United States courts as provided for by the relevant treaty provisions. They failed to find congressional co-sponsors for both measures.

Once a convention is ratified, the United States is obliged to report periodically its progress to responsible United Nations committees that monitor compliance of each treaty. In March 1995, United States representatives appeared before the Human Rights Committee, the treaty monitoring body of the Covenant on Civil and Political Rights, to answer questions about the United States Government's initial report submitted to the Committee in September 1994. Human rights organizations provided information to the State Department for its preparation of that report and in March 1995 made public an N.G.O. report which was also given to the members of the Human Rights Committee. The purpose of the N.G.O. report was to

assess the accuracy and completeness of the United States Report; to identify the subject areas where the most serious compliance problems exist that are not addressed adequately in the U.S. Report; and help the U.S. government and the United Nations agencies responsible for monitoring human rights instruments develop more effective methodology for assessing and reporting on compliance status and needs on a regular basis.⁶

The human rights community has communicated with the State Department officials responsible for preparing the reports required by the conventions on race and torture. However, the United States has not met the deadlines as required by the conventions. The human rights

5. COSBY, *supra* note 2.

6. Joint Working Group of Non-Governmental Civil, Political and Human Rights Organizations in the United States, *The Status of Human Rights in the United States: An Analysis of the Initial U.S. Government Report to the Human Rights Committee Under the International Covenant on Civil and Political Rights*, in SCI. AND HUM. RTS. PROGRAM, AM. ASS'N FOR THE ADVANCEMENT OF SCI. (Morton Scklar, ed., 1995).

community also expects to prepare its own reports for each of these treaties.

II. CONCLUSION

Support of the ratification of human rights treaties has been a dynamic process which has required the cooperation of the executive and legislative branches of government in collaboration with non-governmental organizations. The role of the N.G.O. community has been essential in generating popular support for human rights and in providing legal expertise and applying political pressure to Congress and the Executive Branch to accomplish ratification. While it appears that the anti-United Nations sentiment in Congress has been tempered somewhat since the 104th Congress adjourned, serious obstacles within the Senate must be overcome before ratification of the remaining United Nations human rights treaties can be achieved. These treaties include the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Children, the American Convention on Human Rights, and the Covenant on Social, Economic and Cultural Rights. The challenge before the N.G.O. community is to significantly increase the popular support that already exists for the ratification of human rights treaties through a nationwide grassroots education program while continuing to press for prompt ratification on Capitol Hill.