

Hollow Humans
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Despite the ratification of the International Covenant on Civil and Political Rights (ICCPR) by the U.S. in 1992, it offers little protection for the individual or U.S. citizen against human rights abuses by the U.S. or any of the 50 state governments!

The human being, the individual, and the U.S. citizen have no legal standing to invoke international treaty rights in any federal or state court. This lack of standing is well illustrated in the kidnapping and prosecution by the United States of Panama's former leader General Noriega. "As a general principle of international law, individuals have no standing to challenge violations of international treaties ..." Further jurisprudence states: "Rights under international common law must belong to the sovereigns, not to individuals."¹

The U.S. Constitutional edict (Article VI, Clause 2) that a treaty becomes the "Supreme law of the land" upon ratification by the United States Senate has been perverted by the courts' questioning "whether that law is binding and enforceable in U.S. courts." Relying upon a confounding doctrine of self-execution, the courts' hold that the law of the land is, "not necessarily binding on domestic courts if the treaty requires implementing legislation or does not provide an individual right of action."²

Further illumination of this subject reveals that, "The humane and enlightened objectives of the United Nations Charter are ... entitled to respectful consideration by the courts and legislatures of every member nation, since the document(s) expresses the universal desire of thinking men for peace and equality of rights and opportunities. The Charter represents a moral commitment of foremost importance, and we must not permit the spirit of our pledge to be compromised or disparaged in either our domestic or foreign affairs." Then that spirit is quashed by the court with, "The Charter provisions relied on (by the plaintiff) were not intended to supersede existing domestic legislation."³

Even the basic human right expressed and referred to in a majority of international rights declarations, charters, and covenants as the "right to life" is dealt with flippantly by the California Supreme Court: "None of them compels elimination of capital punishment."⁴ Without life, no other human right can exist.

The problems of standing and the recognition of the most basic human right to life could have been rectified by the United States Senate

if it had lived up to humane and enlightened objectives of the United Nations and, if it had gone a step further in its ratification of the ICCPR by including ratification of the two optional protocols to the Covenant. The first optional protocol would permit a human being, within the borders of the U.S., the right to submit communications to the United Nations Human Rights Commission for consideration and action; that action being binding upon the state parties to the protocol.⁵ The second optional protocol would abolish the death penalty in the U.S. and recognize every human being's right to life.⁶

Given these facts and oversight, it is obvious that the much touted human rights of international treaties are little more than hollow human rights in America. However, despite the fact that human beings within the borders of the United States have no legal standing to invoke provisions of international human rights, treaties and other international instruments in U.S. courts,⁷ there is a way to bring human rights abuses to the attention of the United Nations Human Rights Commission. Because the United States Senate refused to ratify the optional protocol to the International Covenant on Civil and Political Rights when it ratified that document in 1992, only one avenue of protest is open to human beings within the United States - the 1503 Procedure.⁸

Under 1503, human rights abuses which show a consistent pattern of violations in situations affecting a large number of people over a protracted period of time may be brought to the attention of the United Nations Human Rights Commission. Unfortunately, the Commission has no enforcement power and any relief from abuses brought to their attention would be had mostly through the embarrassment caused to the government by the public announcement that the U.N. Commission on Human Rights has the situation under examination and review. The fly in the ointment in this matter, as in most judicial matters of international scope, is that unless it can be shown convincingly that solutions at the domestic level would be ineffective or that they would extend over an unreasonable length of time, all domestic remedies must be exhausted before a 1503 Communication is considered by the Commission.

There are essentially three U.N. documents that pertain to human rights: the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The United States has

only ratified the first, and it did so in such a manner as to usurp the effect and power of the document and the United Nations Human Rights Commission.

By filing a lengthy list of reservations, understandings, and declarations to the International Covenant on Civil and Political Rights (ICCPR)⁹, the U.S. eliminated language and provisions of the Covenant that would have produced substantial changes in its view of human rights. For instance, Part III, Article 5, of the ICCPR states: "Sentence of Death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women." The U.S. Reservation to this article states: "The United States reserves the right, subject to its constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age." Currently, the threshold in the U.S. for execution is sixteen years of age, but by the language of the U.S. Reservation, it could fall even lower and conceivably the U.S. and its states could begin to execute their children unimpeded by international doctrine and scrutiny: an ominous sign in these times with the public outcry to treat juvenile offenders as adults.

Another telling example of the United States' duplicity can be found in its declaration to the ICCPR: "The United States declares the provisions of Articles 1 through 27 of the Covenant are not self-executing," thereby rendering moot the U.S. Constitution's Article VI provision that, "All treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land," and tossing those Articles of the Covenant into the quagmire of law known as "one of the most confounding": the Doctrine of Self-Execution.¹⁰

Despite all these obstacles, embarrassment in the international human rights forum of certain state agencies and state governments, including the United States government, through the 1503 Communications Procedure, may well have some impact on the treatment of human beings within the confines of the United States.

ENDNOTES

1. U.S. v. Noriega, 746 F.Supp 1506 (S.D. FLA. 1990); U.S. v. Hensel, 699 F 2d 18 (1st Cir.), cert. denied, 461 U.S. 95B, 103 S.Ct. 2431, 77 LEd 2d 1317 (1983); *Matta-Ballesteros v. Henman*. 896 F 2d 236; U.S. v. Williams, 617 F 2d 1063 (Sth Cir. 1980).
2. U.S. v. Noriega, 808 F. Supp 791 (S.D. Fla. 1992), U.S. v. Postal, 589 F 2d 862 (Sth Cir. 1979). cert. denied, 444 U.S. 832, 100 S. Ct. 61, 62 LEd 2d 40 (1979).
3. *Sei Fujii v. State of California*, 38 C 2d 718, 242 P 2d 617 (1952).
4. *People v. Ghent*, 43 Cal. 3d 739 (1987).
5. Optional protocol to the International Covenant on Civil and Political Rights (Gen. Assm. Resol. 2200 A (XXI) of 16 December 1966), Article 1, Article 5, Article 11, Sec. 3.
6. Second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Gen. Assm. Resol. 44/128 of 15 Dec. 1989).
7. U.S. v Noriega, 746 F. Supp. 1533 (S.D. FLA. 1990).
8. Human Rights Communications Procedures, Fact Sheet No. 7 (Centre for Human Rights, United Nations Office at Geneva, 1211 Geneva 10, Switzerland); Economic and Social Council Resolution 1503 (XLVII) of 27 May 1970.
9. See Appendix B, U.S. Reservations, Understandings, and Declarations to the ICCPR, filed October 5, 1992.
10. U.S. v Postal, 589 F.2d 862 (5th Cir.1979), cert denied, 444 U.S.832, 100 S.Ct. 61, 62 L.Ed 2d. 40 (1979).