FOREIGN POLICY IN F CUS

INTERHEMISPHERIC RESOURCE CENTER and INSTITUTE FOR POLICY STUDIES

Vol. 4, No. 8 • March 1999

Human Rights and U.S. Policy

By Joe Stork, Human Rights Watch

Rights are claims that people make on political authorities—states or coercive institutions generally. Historically such claims, especially those that limit the legitimate actions of a state and protect those of its citizens, have been associated with particular sectors or classes of people. Human rights are those claims and protections to which all people are entitled as human beings. The articulation and legal codification of such claims and protections—and their expansion to cover persons without regard to race, gender, nationality, religion, or other distinguishing characteristics—result from a process of political struggle.

Key Points

- The U.S. promotes itself as the world's foremost proponent of human rights but often objects to scrutiny of its own practices.
- The U.S. has failed to ratify many key international human rights treaties and covenants.
- Those treaties it has ratified are encumbered with reservations designed to exempt the U.S. from international standards that go beyond existing constitutional guarantees.

The period since World War II has seen an expanding international consensus around fundamental human rights. The U.S. has played a leading role in this unfolding dynamic, at least with regard to political and civil rights, but this role has been fraught with tension. Assertions that human rights are central to U.S. foreign policy are undermined both by Washington's reluctance to criticize the practices of commercially or strategically important countries and by a strong sense of exceptionalism—that the U.S. constitution and justice system can't be improved upon, and that efforts to hold the U.S. accountable to international standards are unacceptable infringements on sovereignty.

U.S. diplomats were influential in drawing up the 1948 Universal Declaration of Human Rights and the two primary international covenants—on political and civil rights (ICCPR) and on economic, social, and cultural rights (ICESCR)—that transformed the principles of the nonbinding declaration into treaty-based legal obligations. This leading diplomatic role coexisted alongside a fundamental ambivalence about the promotion and protection of human rights. Partly out of concern about the implications of human rights standards for U.S. racial segregation policies, for instance, legislators—attempting to shield individual states from international human rights treaty obligations—nearly passed a constitutional amendment in the 1950s (the Bricker amendment) that would have denied independent legislative force to any treaty signed by the U.S. and would have given Congress the power to regulate all executive agreements with foreign countries or international organizations.

The Eisenhower administration, determined to avoid such constraints on its ability to craft foreign policy, avoided the Bricker amendment by signaling Congress, in the words of Secretary of State John Foster Dulles, that it "was committed to the exercise of the treaty-making power only within traditional limits," and that this did not include ratification of the human rights covenants under negotiation. Although the two international covenants were opened for signature in 1966, the U.S. did not ratify the ICCPR until 1992 and still has not ratified the ICESCR. In 1994, the Clinton administration secured ratification of the Convention Against Torture (CAT) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). But Washington still has not ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) or the Convention on the Rights of the Child (CRC). Nor has the U.S. joined any of the major International Labor Organization (ILO) conventions guaranteeing core labor rights to organize and engage in collective bargaining.

This exceptionalism is also manifested in the reservations the U.S. attached to those treaties it has joined. U.S. ratification of the ICCPR included a reservation to the prohibition against executions for crimes committed under the age of eighteen. The U.S. ratification of the CERD rejected that treaty's inclusion of effect as well as intent in determining whether laws and practices are discriminatory. In all such ratifications, moreover, the U.S has insisted that the treaties are not self-executing—in other words, specific implementing legislation is required—and has refused to introduce enabling legislation. Thus Americans cannot claim any of these extra protections in a U.S. court of law. As a result, those ratifications that have occurred are largely empty gestures in terms of providing any additional enforceable rights for U.S. citizens and residents. For good measure, the U.S. has also failed to ratify optional protocols to the treaties that create international oversight committees.

U.S. constitutional safeguards ensure de facto compliance with international human rights standards in many areas, but the divergences are serious. Federal, state, and local politicians and political commentators frequently denigrate international standards, and some U.S. laws violate those standards. The "expedited removal" procedures of the 1996 immigration reform act, for example, conflict with U.S. obligations under the 1951 U.N. Convention Relating to the Status of Refugees. U.S. detention of asylum seekers contravenes the international standard which allows for detention only in exceptional circumstances. The government has failed to incorporate the U.N. Standard Minimum Rules for Treatment of Prisoners—not a treaty but an authoritative interpretation of treaty standards on what constitutes cruel and unusual treatment in custodial settings—into the policy guidelines of corrections departments. In April 1998, the U.S. publicly rejected the finding of the U.N. Special Rapporteur for extrajudicial executions that the death penalty was being applied in an unfair, arbitrary, and discriminatory manner.

The Clinton administration's policy has been much like that of its predecessors: namely, prioritize human rights when competing concerns are insignificant or, as with China, when public pressure compels a response. In Rwanda and Bosnia the administration displayed a passivity that was deadly for thousands, although, to its credit, the Dayton Accords ruled out amnesties for those in former Yugoslavia who ordered or committed atrocities. In Haiti, after 16 months of indifference and illegal forced repatriations of boat people, U.S. intervention helped to lessen human rights abuses, but Washington then refused to give Haitian authorities seized documents that would have enabled them to prosecute those security officials responsible for severe human rights violations. Washington has generally blocked efforts to seek truth and justice for past abuses, especially those committed by FRAPH, a paramilitary organization reportedly founded with Central Intelligence Agency assistance.

U.S. policy toward China reflects Washington's core ambivalence on human rights. A major focus of U.S. commercial and strategic interests, China engages in a wide range of severe and systematic abuses, and Chinese human rights activists and political reformers keep the issue prominent. As a presidential candidate, Clinton had vigorously criticized Bush administration policy in the wake of the Tiananmen Square massacre. In May 1993, President Clinton issued an executive order linking renewal of trade benefits to human rights improvements, but over the following year sent mixed signals regarding his intention to hold China to those conditions. In 1994, trade benefits were renewed despite the absence of human rights improvements, and the question of linkage was dropped. To cover its retreat, the administration has asserted a false choice between a policy of isolation and one of engagement, claiming the relationship was too important to be held hostage to a single issue. When the administration more successfully threatened to end trade concessions over issues such as copyright piracy, there was no clamor from the corporate community about holding the relationship hostage to single issue diplomacy.

During U.S.-China summits in 1997 and 1998, Clinton spoke out forcefully on human rights to respond to U.S. constituencies concerned with abuses such as forced prison labor, the denial of freedom of religion, and Tibet. But the administration failed to use negotiations for the summits—which China badly wanted—to secure significant Chinese reforms, settling instead for token gestures such as the release (and immediate forced exile) of prominent dissident Wei Jingsheng and the resumption of a bilateral human rights dialogue.

The most crippling feature of U.S. human rights policy abroad is its transparent selectivity. Nowhere is this so pronounced as in the Middle East. From Morocco to Bahrain, human rights concerns are consistently trumped either by questions of military and corporate access or by the "peace process." The exceptions are Libya, Iraq, Sudan, and Iran, where criticism of their atrocious human rights records meshes with broader U.S. efforts to stigmatize and delegitimize. Israel and Egypt—which account for 91% of global U.S. military and economic aid—and Saudi Arabia—the largest customer for U.S. weapons—are insulated from even the mildest and most indirect forms of public rebuke, and the U.S. has made no discernible effort to use its leading role as donor and arms supplier to promote human rights. This selectivity undermines efforts by Middle Eastern activists and organizations to build strong human rights movements.

In the key areas of international justice and accountability, the Clinton administration has been especially recalcitrant. Washington has supported international tribunals dealing with the atrocities in Rwanda and in former Yugoslavia—where no U.S. citizens are at risk of indictment—but has worked to cripple the proposed International Criminal Court, in order to ensure that no U.S. citizen ever comes under its jurisdiction. The administration argues that the court might take up frivolous or politically motivated charges against U.S. personnel caught up in a conflict as part of an international peacekeeping force, despite the many procedural safeguards against such prosecutions in the ICC treaty. Left unsaid is the resistance of policymakers to having any institution not controlled by the U.S. looking over their shoulders when they contemplate steps such as bombing Iraq's electrical grid system or Hanoi's dikes.

Washington's aversion to international accountability surfaced once again in its response to Spain's effort to try former Chilean dictator Pinochet for crimes against humanity. The administration stonewalled the Spanish prosecutor's request for access (under a U.S.-Spanish Multilateral Legal Assistance Treaty) to information in U.S. files about Pinochet's atrocities. Washington's subsequent "neutrality" regarding Britain's response to Spain's extradition request is quite inconsistent with its tentative support earlier in 1998 for Canada to try Pol Pot for genocide in Cambodia, which would have rested on a "pure" theory of international jurisdiction—there were no claims that Canadian citizens had been among Pol Pot's victims. The Spanish case against Pinochet, by contrast, included the torture and murder of Spaniards. France, Belgium, Switzerland, and other countries have since filed extradition requests against Pinochet. The U.S. direct interest in Pinochet is at least as great, given the murder of U.S. citizens in Chile and the 1976 car bomb assassination of former Chilean foreign minister Orlando Letelier and his American assistant, Ronni Moffitt, in Washington. It is difficult to discern any principled basis for this inconsistency, suggesting that embarrassment over revelation of U.S. complicity with Pinochet's reign of terror is the motivation.

Key Problems

- The U.S. generally exempts key allies from criticism without regard to their abuses, severely undermining the overall credibility of U.S. human rights policy.
- U.S. policy consistently subordinates human rights matters to other policy objectives, such as increased trade and military cooperation.
- For many countries, especially in the Middle East, the abuses documented in the State Department's *Country Reports* have not led to decreased U.S. military and economic aid and weapons sales.

Developing and implementing a coherent and effective human rights policy, striking the right balance between legitimate trade or security concerns and human rights, is no easy task. But what has passed for policy for most of the last two decades consistently exhibits a gross imbalance. Human rights issues are dismissed, ignored, disingenuously deferred, or promised as the eventual outcome of economic liberalization. The U.S. needs to develop a policy that addresses the major failings of this approach: (1) the selectivity that exempts the foreign policies of allies or strategically important countries from scrutiny or rebuke, and (2) the exceptionalism that demands U.S. exemption from international standards and accountability.

Key Recommendations

- The U.S. should express its human rights policy not only in terms of American values but also in terms of international law and universal standards.
- The U.S. should integrate human rights concerns into trade and security negotiations.
- The U.S. should apply existing U.S. human rights law with regard to weapons transfers and military and should work toward an effective multinational code of arms trade conduct.

Such changes will require leadership and commitment, but we should bear in mind that it was Congress, responding to public outrage and citizen campaigns, that initiated the human rights policy reforms of the 1970s and 1980s. And as recently as October 1998, the Republican-dominated 105th Congress set a good example when, as part of the IMF financing bill, it required Treasury Department reports detailing abuses of core labor rights in IMF-recipient countries and assessing impacts of IMF austerity measures on worker rights, especially regarding free association.

Efforts to reform policy should build on accomplishments already in place. The State Department's annual *Country Reports on Human Rights Practices* are now of generally high quality, placing on the record, accurately and comprehensively, the practices of friendly and adversarial governments alike. Typically, though, there is no connection between a report's frank critique and U.S. policy toward that country. In the cases of Israel, Egypt, and Saudi Arabia, for instance, persistent gross human rights violations are publicly ignored and have no discernible effect on levels of U.S. aid or military cooperation—even though the Foreign Assistance Act has required negative consequences for the past twenty years.

To counter this penchant for selectivity, Congress should require that each *Country Report* include a section specifying what the U.S. has done to address the abuses cited. The administration should have to explain why weapons transfers were made or military training provided despite abuses, if such things occurred. If one extenuating factor was the failure of other countries to condition their military aid and sales on human rights issues, this would be an occasion to make that criticism. There should be an explicit expectation that the U.S. ambassador or head of mission presents the *Country Report* to appropriate high officials of her or his country—namely, the minister of interior or foreign affairs or the head of state. Specific cases and patterns of abuse should be cited in high-level meetings of ministers of foreign affairs, defense, and commerce. Human rights should not be just a part-time portfolio of one embassy official: military and trade attachés, for instance, should also be well-versed in human rights issues and should raise them with their counterparts. Abusive governments will pay more attention to human rights concerns if they are not simply compartmentalized as "human rights dialogs"—when they are raised at all.

To counter U.S. exceptionalism and the example of impunity it communicates to other countries, Washington should conduct an annual assessment of human rights—not just legislation, but practices—in the United States. U.S. discourse on human rights should be reframed much more in terms of international standards and less exclusively in terms of "American values." This is essential in any campaign to get the U.S. to ratify the International Covenant on Economic, Social and Cultural Rights. One key objective should be to decouple human rights from democratization and privatization projects, appreciating areas of linkage but contesting the proposition that they are identical or that elections and stock markets are the necessary and sufficient conditions for human rights progress.

Finally, but not least importantly, raising the profile of human rights in U.S. bilateral relations requires devoting the necessary time, resources, and political will to fashion effective multilateral coalitions and establish international institutional frameworks that initiate and sustain successful pressures for reform. Multilateralism does not mean taking refuge in a failure to find consensus or operating on a lowest-common-denominator basis. It means giving serious priority to pressuring allies such as France to cease arming Rwandan or Congolese genocidaires. It means developing strong national and multinational arms sales code of conduct. It means, in other words, challenging some well-vested interests in the corporate and national security establishments both in the U.S. and in closely allied countries.

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Foreign Policy in Focus is a joint project of the Interhemispheric Resource Center (IRC) and the Institute for Policy Studies (IPS). The project depends on sales and subscription income, individual donors, and grants from The John D. and Catherine T. MacArthur Foundation, General Service Foundation, and various church organizations. *In Focus* internships are available.

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