

ISSUE BRIEF

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Human Rights Committee's Review of U.S. Record: Things to Watch For

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On March 13–14, a U.S. delegation will defend America's human rights record before the Human Rights Committee (HRC), the treaty body that monitors compliance with the International Covenant on Civil and Political Rights (ICCPR). The delegation should expect harsh criticism from the HRC, whose members regularly accuse America of committing gross violations of human rights.

As acknowledged in its report to the HRC, America's human rights record, while imperfect, is far superior to the records of the vast majority of other ICCPR state parties. The delegation should not be shy in refuting spurious criticism or rejecting recommendations that lie outside of the HRC's purview, run afoul of U.S. constitutional rights, or infringe on the U.S. federal system of government.

The U.S. and the ICCPR. The ICCPR was adopted by the U.N. General Assembly in 1966 and entered into force in 1976. The treaty obligates state parties to respect and enforce a wide range of rights, including freedom of expression, freedom of religion, self-determination, due process, and other protections focused on bolstering civil liberties.

Although many obligations in the ICCPR align closely with rights listed in the U.S. Bill of Rights, the treaty is inconsistent with U.S. law in other areas.

The U.S. signed the treaty in 1977 and ratified it in 1992—but subject to 13 “reservations, understandings and declarations” (RUDs) that cumulatively serve to mitigate U.S. concerns that the treaty would supersede U.S. law.¹

The ICCPR obligates state parties to periodically submit reports on their compliance with the treaty for review by the HRC, which is comprised of 18 members elected by ICCPR state parties. The 2014 review session will be the third regarding the U.S. and is based in large part on reports submitted by the U.S. and answers to written questions posed by the HRC, which are often informed by submissions from human rights nongovernmental organizations (NGOs).²

Previous HRC examinations were very critical of the U.S. human rights record. The 1995 concluding observations expressed concern over the breadth of U.S. RUDs, the number of offenses subject to the death penalty, police brutality, the “easy availability of firearms to the public,” racial discrimination, and other issues. The 2006 report expressed similar concerns but was particularly critical of U.S. counterterrorism efforts, interrogation practices, and detention of terrorists.

Issues for Concern. The 2014 delegation should expect more of the same. Specifically, the HRC “list of issues” requests further information on racial discrimination in the criminal justice system, racial profiling, gun violence, targeted killings by drones, treatment of detainees, government surveillance, prohibitions on voting by felons, and efforts to counter voter fraud.

Many of these issues fall within the purview of the ICCPR, and it is proper for the U.S. to engage in

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a discussion with the HRC on specific policies and efforts. However, cooperation is not subservience, and the U.S. should rebuff the HRC when it oversteps its mandate, relies on flawed data, or seeks to intrude on areas cordoned off via U.S. RUDs.

In particular, the United States should emphasize the following:

- **Defend U.S. RUDs.** The HRC has criticized the U.S. on multiple occasions for ratifying the ICCPR only subject to RUDs explicitly rejecting or limiting U.S. acceptance of specific parts of the treaty or clarifying U.S. understanding of treaty provisions, such as ICCPR provisions on application of the death penalty and the definition of “cruel, inhuman or degrading treatment or punishment.” The Administration has been blunt regarding this issue, stating that the RUDs “were crafted in close collaboration with the U.S. Senate to ensure that the United States could fulfill its international obligations under the ICCPR. *We have no current plans to review or withdraw these reservations.*”³ The U.S. delegation should remain firm on this position while in Geneva.
- **Reject extraterritorial application of ICCPR.** For many years, the HRC has attempted to require the U.S. to enforce the covenant’s provisions outside of U.S. territory. This violates the plain language of the ICCPR, which requires a state party

to ensure that the rights set forth in the covenant apply “to all individuals *within its territory* and subject to its jurisdiction.”⁴ Past U.S. Administrations have made it clear that U.S. enforcement of the ICCPR is limited to U.S. territory. The current U.S. report, however, deemphasizes this position and states that it “looks forward to further discussions of these issues when it presents this report to the Committee.”⁵ The U.S. delegation should strongly reiterate the long-standing U.S. position—dating back to Eleanor Roosevelt’s leadership—that U.S. obligations under the covenant are confined to U.S. territory.⁶

- **Rebuff calls to establish a national human rights institution (NHRI).** In its “list of issues,” the HRC asks the U.S. to “clarify whether the State party will establish a national human rights institution with a broad human rights mandate.”⁷ The Administration’s response was that “creating such a mechanism is currently being debated in the United States.”⁸ In fact, there is little substantive “debate” in the U.S. about the prospect of creating an NHRI—and for good reason. An NHRI would most likely be used to advocate for supra-constitutional human rights norms that the U.S. does not recognize and have no support under U.S. law; promote economic, social, and cultural “rights” that lack constitutional or legal foundation and have been rejected for decades by

1. For the text of the U.S. RUDs, see United Nations Treaty Collection, International Covenant on Civil and Political Rights, status as at March 6, 2014, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec (accessed March 10, 2014).

2. The relevant documents include a “(Common) Core Document,” which details basic demographic and geographic information and outlines the constitutional, legal, and political characteristics of the nation and is used by all treaty bodies in their examinations; the *Fourth Periodic Report*, which is specific to the current ICCPR review; the HRC’s “List of Issues” put to the United States; and the U.S. “Reply to List of Issues.” All of these documents may be found on the website relating to the current session of the HRC, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=625&Lang=en (accessed March 10, 2014).

3. U.S. “Reply to List of Issues,” p. 6 (emphasis added).

4. ICCPR, art. 2(1) (emphasis added).

5. *Fourth Periodic Report*, pp. 504–510.

6. During the negotiations over the text of the ICCPR, Eleanor Roosevelt stated, “The purpose of the proposed [‘within its territory’] addition [is] to make it clear that the draft Covenant would apply only to persons within the territory and subject to the jurisdiction of the contracting states. The United States [is] afraid that without such an addition the draft Covenant might be construed as obliging the contracting states to enact legislation concerning persons, who although outside its territory were technically within its jurisdiction for certain purposes. An illustration would be the occupied territories of Germany, Austria and Japan: persons within those countries were subject to the jurisdiction of the occupying states in certain respects, but were outside the scope of legislation of those states.” U.N. ESCOR Hum. Rts. Comm., “Summary Record of the Hundred and Thirty-Eighth Meeting,” 6th Sess., 138th mtg., at 10, U.N. Doc. E/CN.4/SR.138 (1950).

7. HRC “List of issues,” at p. 2.

8. U.S. “(Common) Core Document,” at p. 140.

the U.S. Supreme Court and Congress; and harass U.S. business and industry with subpoenas, investigations, and show hearings for allegedly violating such “human rights” as the “right to a healthy environment” and the “right to water.”⁹

Predictable Process. Appearances before the HRC have become predictable. The committee downplays the fact that the U.S. is among the world’s foremost protectors of civil and political rights and focuses instead on echoing politically based criticism from a left-leaning human rights community. Ratification of the ICCPR, through which the U.S. consented to HRC review, requires the U.S. to endure this process.

However, the U.S. can and should reject specious and biased criticism and decline to entertain recommendations that disrespect or violate RUDs accompanying its ICCPR ratification, inappropriately redefine the treaty’s territorial application, or create vehicles for human rights mischief.

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9. See Steven Groves, “U.S. National Human Rights Institution: A Bad Idea,” Heritage Foundation *Backgrounder* No. 2855, November 15, 2013, <http://www.heritage.org/research/reports/2013/11/us-national-human-rights-institution-a-bad-idea>.