IN RESPONSE TO THE SECOND AND THIRD PERIODIC REPORTS OF THE UNITED STATES OF AMERICA:

Shadow Report on U.S. Exceptionalism and Lack of Implementation

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Human Rights Advocates

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WILD for Human Rights

EXECUTIVE SUMMARY

The United States has been intrinsically involved in the development of the United Nations from its first incarnation as the League of Nations, to the aftermath of World War II and the development of peaceful diplomacy. The U.S. has also played the role of watchdog for the implementation of human rights around the world. The U.S., however, has faltered in meeting its own international human rights obligations. An example of this is the U.S.'s failure to meaningfully implement the International Covenant on Civil and Political Rights ("ICCPR").

The United States ratified the International Covenant on Civil and Political Rights in 1992. It appears that the signing of the treaty was a ceremonial act, however, rather than a commitment to fully implement and comply with the treaty's provisions. Nearly 15 years after the signing of the treaty, the United States has failed to acknowledge the full extent of the treaty's legal significance and has not taken the active steps necessary to ensure that treaty obligations are enforced as U.S. law. Moreover, when the U.S. signed the treaty, it simultaneously issued broad reservations, understanding and declarations ("RUDs") limiting the scope of its obligations and rendering the treaty unenforceable. In essence, the RUDs strip the ICCPR of all its authority and relevance to the U.S. As such, the U.S.'s RUDs have been criticized both by this Committee and fellow signatory parties to the ICCPR.

This Committee criticized the U.S.'s widely formulated reservations. It noted that the U.S.'s RUDs were "intended to ensure that the United States has only accepted what is already law in the United States."[1] Additionally, 11 fellow signatories and this Committee[2] found the U.S. reservations to Article 6.5 regarding the juvenile death

penalty and Article 7 regarding the use of torture and cruel, inhuman and degrading treatment, as inconsistent with the Covenant's object and purpose, and in direct conflict with the non-derogable provision of the right to life under Article 4.2.

Despite the clear statements by this Committee of what the U.S. needs to do to comply with the ICCPR, the U.S. has not taken any of these considerations into account. It continues to stand by its RUDs, even in situations when the U.S. Supreme Court has rendered them unneccessary, as in the case of banning the execution of juveniles.[3]

The U.S. also continues to assert that the treaty is non-self executing and that it cannot be invoked in U.S. Courts to remedy a violation of the human rights guaranteed by the ICCPR. This failure to implement the ICCPR and the continued clinging to RUDs violates the ICCPR on its face. Additionally, the U.S.'s failure to implement the treaty and the U.S.'s failure to ratify Optional Protocol I leaves those whose human rights have been violated with no remedy.

I. THE U.S. IS IN VIOLATION OF THE ICCPR

The ICCPR not only enumerates certain human rights, it also requires that all signatory parties fully honor those rights. Article 2 of the ICCPR imposes obligations on the U.S. to enforce the Covenant's rights:

> 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> 2. Where not already provided for by existing legislative or

other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional process and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted."[4]

Article 2 states unequivocally that all the ICCPR's rights are bestowed to all persons within a State's jurisdiction and territory.[5] It requires that signatory parties employ all branches of government to secure the ICCPR's enumerated rights. Article 2.1 requires that legislative bodies implement legislation to integrate the ICCPR's provisions into domestic law and Article 2.3 requires that "an effective remedy" be made available to all whose rights have been violated. Article 2.3(c) requires the administrative or executive branches enforce any remedies granted to victims of a breach of the ICCPR's. The U.S. is violating all three of these requirements.

Additionally, Article 47 of the ICCPR prohibits any contradictory interpretations that might cause a breach of an obligation or hinder the fulfillment of States' obligations. Further, the ICCPR extends the State's duties to all jurisdictions within each State.

Article 50 declares "[t]he provisions of the present Covenant shall extend to all parties of federal States without any limitations or exceptions."[6] The U.S. is also violating these articles.

A. THE U.S.'S RECENT REPORTS DEMONSTRATE THE U.S.'S LACK OF DESIRE TO COMPLY WITH THE ICCPR

The U.S.'s failure to take affirmative steps to meaningfully implement the treaty domestically shows a lack of will to comply with its treaty obligations. This lack of will is evidence by its failure to submit its Second Periodic Report to the UNCHR as required on September 7, 1998. The U.S. also failed to submit the Third Periodic Report, which was due on September 7, 2003. It was not until the Human Rights Committee affirmatively requested, in a 27 July 2004 letter that the U.S. fulfill its treaty obligation to report on its compliance with the ICCPR, that the U.S. submitted its report to the Committee. The U.S. submitted a combined Second and Third Periodic Report on October 21, 2005.

Moreover, the U.S. Department of State's supplement to the U.S. periodic reports - - the "Updated Core Document Forming Part of the Reports of the United States of America" ("Updated Core Document") - - fails to acknowledge that the ICCPR has legal significance. The Updated Core Document states that the U.S.'s legal framework consists of the U.S. Constitution as the supreme law of the land, as well as state constitutions, and other statutes. It fails to mention that according to Article VI of the U.S. Constitution (which states that treaties are also the supreme law of the land), the ICCPR is the supreme law of the land.[7] The Updated Core Document states that no treaty provision may limit the U.S. Constitution. This defensive posture shows a

rejection of the ICCPR, rather than an embracing of its principles (which is mandated by the treaty). It also shows a fundamental misunderstanding of the ICCPR. The ICCPR in no way limits the U.S. Constitution. It bestows rights that complement and enhance the Constitution.[8]

Further, the Updated Core Document states that the "United States does not believe it necessary to adopt implementing legislation when domestic law already makes adequate provision for the requirements of the treaty."[9] But, not all rights enumerated in the treaty are guaranteed by U.S. law. Indeed, the U.S. government recognized that domestic law failed to cover the acts of torture and cruel, inhuman and degrading treatment committed by U.S. military personnel in Abu Ghraib Military Prison or the creation of U.S.-run secret detention facilities in Central Europe and Asia.[10] This prompted a national debate that resulted in the passing of new legislation - - the McCain Amendment to ban cruel, inhuman and degrading treatment.[11] The Bush Administration and its supporters were hostile to the proposed bill.[12] The treaty's irrelevance to the U.S. was plain during the debates that preceded the legislation's passing. At no time during the debate was Article 7 of the ICCPR (which prohibits torture or cruel, inhuman or degrading treatment) invoked as prohibiting the U.S.'s actions, or imposing an obligation to refrain from such abuses.

Had the U.S. taken seriously its obligations to implement the treaty, it would not have been necessary to enact the McCain Amendment - - given that Article 7 of the ICCPR precludes the very abusive actions covered by the McCain Amendment.

B. THE U.S. HAS FAILED TO TAKE ANY ACTION TO MEET THE ICCPR'S IMPLEMENTATION REQUIREMENTS

Even though the U.S. has been party to the ICCPR for nearly 15 years, no efforts have been made by the executive or legislative branches of the U.S. government to implement the treaty provisions domestically, train its judiciary or provide remedies to victims of violations. Further, no efforts have been made to inform the public of the U.S.'s obligations under the ICCPR, or to ensure that the treaty is implemented on the federal, state and local levels.

The Updated Core Document attempts to show the various ways that the U.S. meets its obligations under the ICCPR. To demonstrate that is it meeting its implementation requirements in educating the branches of government about the ICCPR, the Updated Core Document refers to the State Department's annual publications "Treaties and International Agreement Series" (TIAS), and its re-publication in the "United States Treaties" (UST) series. Those documents list all the international treaties that the U.S. has signed. Further, the Updated Core Document states that the public has access to the published records of the Senate Foreign Relations Committee hearings, detailing the Committee's deliberations during the Senate's advice and consent.[13] Referencing governmental documents that merely list treaties falls short of meeting the U.S.'s implementation obligations under the ICCPR. Clearly, no affirmative steps have been taken to educate the public and government officials about the treaty's requirements, nor have any affirmative steps been taken to ensure that the ICCPR is recognized as the law of this land.

The U.S. is capable of taking affirmative steps to implement the treaty.[14] The U.S.'s failure to take any affirmative steps to implement the ICCPR is glaring when compared to the executive branch's aggressive promotion of policies it wishes to implement. In recent years, the President of the United States has made it a national priority to pass legislation in a wide variety of areas, including education, taxation, and social security. In doing so, he spent a considerable amount of time meeting with members of the U.S. Congress and traveling the country to win local support for the legislation he sponsored. While discussing the issues at hand, it was clear that he was trying to garner support for a particular program, and had open discussions with the American people about his positions.

Implementing the treaty is a manageable task. Indeed, the U.S. does not need to take any affirmative steps to incorporate the treaty into its laws, as many countries—Hong Kong-S.A.R., Latvia, New Zealand, and Norway—have done.[15] According to the U.S. Constitution, Article VI, "all treaties made, or which shall be made, made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."[16] Therefore, the U.S. needs only to withdraw its RUDs for the treaty to take full effect.

To implement the ICCPR, the U.S. could easily follow Canada's example. Like the U.S, Canada has a federalist system in which governing power is shared between the federal government and the provinces.[17] Canada's federal government works closely with provincial and local governments before and after the ratification of treaties to determine how they will be implemented.[18] In addition, the federal and provincial

governments work together to prepare reports regarding their progress with implementing the treaty into domestic laws.[19] Although the U.S. stated that it agreed with recommendations that it should engage in regular consultations with state authorities to discuss implementation during its first periodic review in 1995, nothing along these lines has been done.[20]

Additionally, there is a growing citizens' movement that the U.S. government can work with to implement the treaty. In the past few years, citizens' organizations and NGOs have spearheaded efforts to pass human rights legislation, and enacted at the municipal and state levels. For example, the city of San Francisco, California incorporated the Convention to Eliminate All Forms of Discrimination Against Women within its municipal code,[21] and 14 states have a moratorium on the death penalty, several of which cited international opinion in their rejection of the death penalty.[22] The U.S. government should promote such action and be involved in like pursuits nationally.

During the U.S.'s first periodic review in 1995, it assured the Committee that "notwithstanding the non-self-executing declaration of the United States, American courts are not prevented from seeking guidance from the Covenant in interpreting American law".[23] This is not the case, however. The ICCPR and international law obligations are still not a part of the U.S legal lexicon. So much so that Federal legislators feel free to express the hostility towards international human rights law. Recently the U.S. Supreme Court issued several opinions recently that look and to international law for guidance. In 2005, the U.S. Supreme Court's decision in Roper v. Simmons found the juvenile death penalty unconstitutional.[24] The Court cited both international law and the law of other nations in these decisions.

On the heels of the Roper decision, eight Senators and 47 Congressmen introduced a measure to prohibit U.S. courts from relying upon "any . . . law, policy, or other action of a foreign state or international organization in interpreting and applying the Constitution."[25] Although never debated or passed, and of questionable enforceability, the introduction of this measure clearly shows a lack of understanding of U.S. obligations under international law on the part of many U.S. lawmakers. It also demonstrates an attempt by U.S. legislators to discourage judges from relying on international law sources, including the ICCPR. This is contrary to the U.S.'s obligations to implement the ICCPR.

The public hostility that many U.S. legislators express toward international law appears to be limited to human rights treaties. There is little negative commentary from Congress when Congress ratifies international treaties dealing with trade and business, even when there is a great deal of public dissent and questioning, as in the case of certain World Trade Organization agreements and the ratification of the North American Free Trade Agreement.[26]

C. NO REMEDIES ARE PROVIDED FOR VICTIMS WHOSE TREATY RIGHTS HAVE BEEN VIOLATED

Article 2.3(a), (b) and (c) of the ICCPR specifically require that victims whose treaty rights have been violated be able to seek redress for the violations. In violation of these basic obligations under Article 2, the U.S. continues to argue that the ICCPR is "non-self executing," and U.S. Courts (relying exclusively on the Senate and Executive's interpretation to the ICCPR) have found that the treaty does not to create a private right

of action. "[27] This means that individuals whose rights are violated cannot use the treaty itself as the basis for legal remedies in U.S. Courts.

1. Even If The Treaty Was Non-Self Executing When It Was Enacted, The U.S. Is Required To Pass Legislation To Implement The Treaty

There are many court opinions that have found that the ICCPR and other human rights treaties are not self-executing.[28] These findings are contrary to the conclusions of international law experts who believe that the U.S. is bound to fulfill its obligations under treaties whether the treaties are self-executing or not.[29] By declaring that the treaty is non-self-executing, the U.S. delays the fulfillment of its obligation under the ICCPR and other international treaties.[30] The U.S. has a legal obligation to promptly enact necessary legislation to give effect to the rights in the ICCPR.[31] Deeming the ICCPR non-self executing violates the implementation requirement under Article 2.3(a).[32]

2. Remedies Must Be Made Available To Those Whose Rights Have Been Violated

U.S. Courts continue to find that the ICCPR and other human rights treaties do not automatically bestow rights on persons within the United States and its territories, and that plaintiffs cannot seek redress for a violation of the ICCPR in U.S. Courts.

U.S. federal courts time and time again have looked to U.S. treaty reservations to find that the ICCPR and other human rights treaties are not enforceable.[33] Federal courts consistently defer to the legislative and executive branches' interpretations of

treaties that incorporate reservations against self-execution, ignoring their constitutional duty to interpret the treaty law[34] by examining the plain language of the treaty.[35] It is troubling that the U.S. continues to refuse to acknowledge human right treaties as part of our legal framework. As other reports will show, U.S. law falls short of protecting the full range of Covenant rights, and judicial and legislative action have undermined severely access to judicial remedies.

While it is encouraging that the U.S. Supreme Court has affirmed the importance of customary international law[36] and looked to international law for guidance in interpreting the U.S. Constitution as it applies to some of the most important social issues in the U.S. (including the death penalty, affirmative action, and the rights of gays and lesbians),[37] the Supreme Court has not used the ICCPR to define the U.S. legal obligations.

It is not surprising that the judiciary has failed to recognize the important role that it has in implementing the ICCPR. Despite the U.S.'s agreement during its first periodic review that the Federal Judiciary Center and state judicial centers should be used to increase judicial awareness of the Covenant,[38] no government-funded training has been provided to judges on the ICCPR or other human rights treaties.[39] Instead, non-profit organizations have taken the lead in training the judiciary about U.S. treaty obligations and customary international law. For example, the American Society of International Law Judicial Outreach Program provides U.S. federal and state-level judges workshops on the domestic application of international treaties and customary law.[40] Further, the National Association of Women Judges offers educational courses in the application of international treaties and customary law as well as how to draw

from international legal decisions in their state and federal decision making.[41] Additionally, The Justice and Society Program at the Aspen Institute, a non-profit policy and advocacy organization, offers seminars for leaders from the U.S. government, the private sector, and nongovernmental and intergovernmental agencies on international law, international norms and human rights. Further, the Institute offers seminars to U.S. federal judges in international and human rights law. To date, most of those efforts have dealt almost exclusively with customary international law principles and their application to immigrants through the use of the Alien Tort Statute / Alien Tort Claims Act (ATS or ATCA).

It is imperative that the U.S. government incorporate training about the ICCPR and international law into its own formal trainings for judges. Further, as part of its efforts to implement the ICCPR, the U.S. Solicitor General's Office could begin filing amicus briefs discussing the treaty in appropriate domestic cases. Such an action would alert the judiciary to the U.S.'s obligations to enforce this treaty.

II. RAMIFICATIONS OF THE UNITED STATES' FAILURE TO IMPLEMENT THE ICCPR

The U.S. appears to employ a double standard in relation to human rights and human rights treaties. The U.S. was instrumental in forming the United Nations, and in drafting many human rights treaties. Moreover, the U.S. State Department issues annual human rights report cards discussing the human rights records of countries throughout the globe. The U.S. Congress uses these reports as the basis for determining funding to other nations. The U.S. has also portrayed itself as a global

promoter of human rights, and a righteous critic of nations that do not respect human rights.

What should go hand in hand with promoting and defending human rights globally is an obligation abide by the very human rights standards that the U.S. criticizes other countries for ignoring. Ratifying the ICCPR, and then enacting RUDs that emasculate it fall well-short of doing so. This leads to the loss of the U.S.'s moral authority to criticize human rights abusers, and can also embolden nations to ignore their own human rights treaty obligations

Moreover, in invoking sovereignty when questioned about both its failure to implement the ICCPR, and its own potential violations of the ICCPR, the U.S. places itself above the law of the global community. Doing so can only embolden other nations to do the same.

Part of the U.S.'s obligations in ratifying the ICCPR is an obligation to abide by and implement legal norms, and norms of conduct that respect human rights, as international norms, that are defined by the international community. It goes against the spirit and letter of the ICCPR to respect only those norms that happen to coincide with U.S. domestic protections. Therefore, it is critical for the U.S. to recognize torture, cruel inhumane and degrading treatment, and other human rights abuses as human rights abuses. Recognizing human rights abuses as such is the first step in implementing the ICCPR. It alerts all citizens and all levels of government that the U.S. has obligations under the treaty. It also places a duty on the U.S. to remedy violations of the ICCPR, rather than to limit its enforcement of human rights only to those rights that might also be protected by U.S. law.[42]

CONCLUSIONS

Other reports will detail the many human rights abuses in which the U.S. engages, and will discuss the specific provisions of the ICCPR that the U.S. has violated and continues to violate. Although, it is unclear whether these wide-scale abuses would exist if the ICCPR had been fully implemented, it is clear that had the treaty been implemented the victims of human rights abuses could invoke the ICCPR and claim redress for violations of their human rights. The U.S.'s failure to implement the treaty creates a culture in which abuses for which there is no constitutional or other domestic legal remedy go unchecked, without appropriate judicial redress. Given the multitude of violations documented in this report, the U.S. legal system is not adequately responding to remedy these injustices.

We urge the Committee to recommend that the U.S. take the following steps to comply with the ICCPR:

1. Withdraw the U.S. RUDs to the ICCPR. As a first step, the U.S. should withdraw its reservation to Article 6 (the juvenile death penalty), as that reservation has been rendered obsolete by the U.S. Supreme Court.

2. Establish a federal-level commission much like Canada's to implement the treaty on the federal, state and local levels.

3. Provide immediate training to legislators, judges and members of the executive branch on the U.S. obligations under the ICCPR.

4. Issue implementing legislation to breathe life into the ICCPR, and allow it to be invoked in a court by victims of human rights violations.

5. Create a formal review body that will monitor the U.S.'s compliance with the

ICCPR and that will make recommendations to the implementation commission (described in 2. above) about how to remedy any deficiencies.

We thank the Committee for its consideration of this report in evaluating the U.S.'s compliance with the ICCPR.

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[1] Concluding Observations of the Human Rights Committee: United States of America: March 10, 1995.

[2] Office of the High Commissioner on Human Rights, Concluding Observations of the Human Rights Committee: United States of America, U.N. Doc CCPR/C/79/Add.50,A/50/40, Paragraph 279(1995). U.S. Reservation limiting application of Art. 7 to the extent that cruel, inhuman or degrading treatment prohibited by the 5th, 8th and/or 14th Amendment.

[3] Roper v. Simmons, 543 U.S. 551 (U.S. 2005).

[4] International Covenant on Civil and Political Rights. G.A. res. 2200A(XX1), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

[5] See Human Rights Committee, General Comments 23, Paragraph 5.1, 50th Session, 1994. "In this regard, the obligations deriving from Article 2.1 are also relevant, since a State party is required under that article to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction, except rights which are expressly made to apply to citizens, for example, political rights under article 25."

[6] *Id*. at Article 50.

[7] U.S. Department of State. "Updated Core Document Forming Part of the Reports of the United States of America." Bureau of Democracy, Human Rights and Labor, October 21, 2005. III. GENERAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS, A. Legal Framework, Statutes, Section 132. There is no single statute or mechanism by which basic human rights and fundamental freedoms are guaranteed or enforced in the United States legal system. Rather, domestic law provides extensive protection through enforcement of the constitutional provisions cited above and a variety of statutes, which typically provide for judicial and/or administrative remedies.

[8] *Id*. at III. GENERAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS, D. Human Rights Treaties, Treaties As Law, Section 154. Also, treaties as well as statutes must conform to the requirements of the Constitution. Reid v. Covert, 354 U.S. 1 (1957). Thus, the United States is unable to accept a treaty obligation which limits constitutionally protected rights, as in the case of Article 20 of the International Covenant on Civil and Political Rights, which infringes upon freedom of speech and association guaranteed under the First Amendment to the Constitution.

[9] U.S. Department of State. "The Updated Core Document Forming Part of the Reports of the United States of America." at III. GENERAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS, D. Human Rights Treaties, Implementation, Section 157.

[10] Priest, Dana. "CIA Holds Terror Suspects in Secret Prisons; Debate Is Growing Within Agency About Legality and Morality of Overseas System Set Up After 9/11." Washington Post. P A1. Wednesday, Nov 2, 2005. Found at: http://www.washingtonpost.com/wp-dyn/content/article/2005/11/01/AR2005110101644.html.

[11] The revelations of U.S. military engaging in torture and CID acts prompted Senator John McCain, a former prisoner of war, to propose Amendment SA. 1977 (IH) to the Defense Appropriations Bill for 2006, H.R. 2863 to ban CID treatment (the McCain Amendment). Despite the Bush Administration and its supporters' vociferously denied its legal obligations to prevent CID treatment as well as the U.S.'s past participation in torture and CID activities. Slowly, as the public rallied behind the McCain Amendment, the Bush Administration amended its position to reiterate the U.S.'s commitment to preventing torture and CID treatment. On December 17, 2005 the FY 2006 Defense Spending Bill with (Sec. 9011) the McCain Amendment attached.

[12] At first the White House reacted with a threat to veto the bill should the Amendments survive as written. Vice President Cheney rejected the Amendment arguing that the CIA should not be restricted in its use of interrogation techniques. Priest, Dana and Robin Wright. "Cheney Fights for Detainee Policy; As Pressure Mounts to Limit Handling Of Terror Suspects, He Holds Hard Line." Washington Post. P A1. Monday, Nov. 7 2005. http://www.washingtonpost.com/wp-dyn/content/article/2005/11/06/AR2005110601281.html. Kessler, Glenn and Josh White. "Rice Seeks To Clarify Policy on Prisoners; Cruel, Inhuman Tactics By U.S. Personnel Barred Overseas and at Home." Washington Post. P A1. December 8, 2005. http://www.washingtonpost.com/wp-dyn/content/article/2005/12/07/AR2005120700215.html.
See also Sen. Feinstein's Letter to Attorney General Alberto Gonzales quoting Sec. Rice's statement: "As a matter of U.S. policy, the U.S. obligations under the CAT, which prohibits cruel, inhuman and degrading treatment --- those obligations extend to U.S. personnel wherever they are."

[13] *Id*. at IV. Information and Publicity, Sections 158 - 159.

[14] ICCPR, Art 2.2.

[15]In 1991, China's Self Autonomous Region of Hong Kong directly enacted the ICCPR as its Bill of Rights. After declaring independence Lativa issued its "Declaration on the Accession of the Republic of Latvia to International Instruments Relating to Human Rights." New Zealand's Bill of Rights Act of 1990 affirms the ICCPR but does not implements it directly. In 1999, Norway passed the "Relating to the Strengthening of the Status of Human Rights in Norwegian Law" (the Human Rights Act) incorporates the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the ICCPR and its two protocols into Norway's domestic law.

[16] *U.S. Constitution*, Article VI.

[17] *Constitution Act,* 1867 (U.K.) 30 & 31 Vict. C.3, reprinted in R..S.C. 1985, App. II. No. 5.

[18] 1999 Can.Su.Ct. LEXIS 44, 2-3 (Can. Sup. Ct. 1999).

[19] 1999 Can.Su.Ct. LEXIS 44, 8-9 (Can. Sup. Ct. 1999).

[20] Summary Record of the 1405th meeting: United States of America. 24.04.95. CCPR./C/SR.1405 (Summary Record) ¶ 4 (Comments of Mr. Shattuck). *See* Summary record of the 1401st meeting: United States of America. 17/04/95. CCPR/C/SR.1401 (Summary Record), ¶36 (Comments of Mrs. Evatt); Sumary record of the 1402nd meeting: United States of America. 17/04/95. CCPR/C/SR.1402 (Summary Record), (Comments of Mr. Lallah).

[21] Schneider, Elizabeth, Anna Hirsch Lecture: Transnational Law As A Domestic Resource: Thoughts on the Case of Women's Rights, 38 New England L. Rev. 689, 720-721(2004).

[22] Powell, Catherine, Social Movements and Law Reform: Dialogic Federalism: Constitutional Possibilities for Incorporations of Human Rights Law in the United States. 150 U. Pa L. Rev. 245, (2001).

[23] Concluding Observations of the Human Rights Committee: United States of America. 3/10/95. CCPR/C/79/Add.50;A50/40, paras. 266-304. (Concluding Observations/Comments), ¶ 279; Summary Record of the 1405th meeting: United States of America. 24.04.95. CCPR./C/SR.1405 (Summary Record) ¶ 7 (Comments of Mr. Harper). *See* Summary record of the 1402nd meeting: United States of America. 17/04/95. CCPR/C/SR.1402 (Summary Record) (Comments of Mr.Bhagwati)

[24] Roper *supra* note 3.

[25] S.520 and H.R.1070 were both referred to Committee in April 2005.

[26] de la Vega, Connie. Human Rights and Trade: Inconsistent Application of Treaty Law in the United States, 9 UCLA J. of Int'l L. and Foreign Affairs. 1, 3 - 4 (2004) (arguing that there is no reason to treat human rights treaties differently than trade agreements). Neil D. Hamilton, Legal Issues Shaping Society's Acceptance Of Biotechnology And Genetically Modified Organisms, 6 Drake J. Agric. L. 81, 102 (arguing that public demonstrations about the safety of GMO foods that arose in the Seattle WTO talks illustrate how international institutions will not be free of the social concerns that exist relative to biotechnology). *See also* Gregory Schaffer, The World Trade Organization Under Challenge: Democracy and the Law and Politics of the WTO's Treatment of Trade and Environment Matters, 25 Harv. Envtl. L. Rev. 1 (demonstrating that most northern environmental activists advocate the adoption of a stakeholder model precisely because the model is not operational within the WTO).

[27] ICCPR at Article 47.

[28] Jogi v. Voges, 425 F. 3d 367 (7th Cir. 2005)(Concerning the Vienna Convention on Consular Relations, hereinafter "The Vienna Convention"); Auguste v. Ridge, 395 F. 3d 123 (3d Cir. 2005)(concerning the Convention Against Torture, hereinafter "CAT") and Atuar v. U.S., 2005 U.S. App. LEXIS 25417 (4th Cir. Nov 23, 2005)(Concerning CAT) Ogbudimkpa v. Ashcroft, 342 F. 3d 207 (3d Cir. 2004)(Concerning CAT); Iguarta-De La Rosa v. U.S., 417 F. 3d 145 (1st Cir. 2005)(Concerning the International Covenant on Civil and Political Rights, hereinafter ICCPR); Goldstar v. U.S., 967 F. 2d 965 (4th Cir. 1992)(Concerning the Hague Convention Respecting the Law and Customs of War on Land, hereinafter "The Hague Convention").

[29] Louis Henkin, Constitutionalism, Democracy, and Foreign Affairs, Columbia University Press, p. 63 (1990).

[30] *Id.*

[31] *Id. See also* Restatement (Third) Foreign Relations Law of the United States § 111, Reporter's Note 5.

[32] 87 C.J.S Treaties 9.

[33] *See supra* note 20.

[34] Auguste v. Ridge, the Third Circuit Court refused to interpret the CAT based on international understandings and looked only to domestic interpretations through

implementing legislation and D/R/U's. 395 F. 3d 123, 136-137. Similarly, in Iguarta-de la Rosa, the court deferred to the Executive and Legislative Branches' expertise in foreign relations. The court expressed skepticism at the judiciary's authority to "second guess" "the discretion of the Legislative and Executive Branches in managing foreign affairs" and cited an example from the Supreme Court's decision in Sosa v. Alvarez-Machain where the Court held that the ICCPR was a non-self executing treaty that did not create judicially enforceable rights. 417 F. 3d at 150 (Citing Sosa v. Alvarez-Machain, 542 U.S. 692, 734 (2004).

[35] 87 C.J. S Treaties § 9.

[36] Sosa v. Alvarez-Machain, 124 S. Ct. 2739 (2004).

[37] Roper v. Simmons, 543 U.S. 551 (U.S. 2005); Lawrence v. Texas, 539 U.S. 558 (U.S. 2003); Grutter v. Bollinger, 539 U.S. 306 (U.S. 2003).

[38] Summary Record of the 1405th meeting: United States of America. 24.04.95. CCPR./C/SR.1405 (Summary Record) ¶ 5 (Comments of Mr. Shattuck).

[39] The Federal Judicial Center was created by a mandate of Congress in 1967 to offer federal judges and staff education and training, however, none of the official trainings offer assistance in the understanding or application of the ICCPR. For more information on the Federal Judicial Center see http://www.fjc.gov/public/home.nsf.

[40] ASIL is the leading non-profit organization in the United States on matters of international law. ASIL offers twenty seminars throughout the year on different aspects of international law, including "The Role of International Law in U.S. Domestic Courts: An Overview," including discussion of treaty law. ASIL would be a major resource for any U.S. government agency's attempt to create a program for judicial training on international treaty law. Available at http://www.asil.org/judicial/workshops.html.

[41] See The National Association of Women Judges. Found at: http://www.nawj.org/education/programs.html. See:http://www.aspeninstitute.org/site/c.huLWJeMRKpH/b.612043/k.8BEB/Justice_and_Society_Program.htm. Unfortunately, the American Bar Association, ABA, does not have an initiative to educate and train the U.S. judiciary in the obligations and rights secured under the ICCPR, although it runs an ICCPR training program through its Central European and Eurasian Law Initiative. See http://www.abanet.org/ceeli/special_projects/iccpr/home.html.

[42] See also, Harold Hongju Koh, On America's Double Standard: The Good and Bad Faces of Exceptionalism, 1 October 2004. Available at: http://www.prospect.org/web/printfriendly-view.ww?id=8558.