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Human Rights: In the company of Iraq, China

U.S. fights globalized justice now

By Andrew Reding

A global revolution is underway in the field of human rights, and the United States is on the sidelines. As Europe and Latin America take the lead in promoting effective enforcement of human rights, Washington is lining up with such strange bedfellows as Cuba, China, Libya and Iraq in a futile and ultimately counterproductive effort to hold back the tide.

The revolution is in international law, where universal human rights are beginning to take precedence over national sovereignty. It all began two years ago, when Britain honored a request from a Spanish judge to arrest a former Chilean dictator for crimes against humanity. Britain's highest court, the Law Lords, set an international precedent by ruling that Gen. Augusto Pinochet could be tried in a foreign court for violations of international human rights treaties ratified by Chile.

Pinochet was eventually allowed to return to Chile because of poor health. But the Chilean Supreme Court has since stripped him of immunity from prosecution. That action was unthinkable before Pinochet's arrest in London.

Then on Dec. 1, a Chilean judge placed Pinochet under house arrest following indictment for the murder of 73 political prisoners after the 1973 coup that overthrew the elected government of President Salvador Allende. Though the order was suspended by the Supreme Court on a technicality, the case has been remanded to the original judge for further action.

Meanwhile neighboring Argentina is also seeking to prosecute Pinochet. In October, it requested the general's extradition on charges of masterminding the 1974 assassination of his predecessor, Gen. Carlos Prats, in Buenos Aires.

But Pinochet is by no means alone in his predicament. Since the precedent set by the British Law Lords, former tyrants and torturers can no longer rely on the principle of national sovereignty to protect themselves from prosecution in foreign courts.

Last February, citing the British precedent, a Senegalese court indicted and arrested former Chadian president Hissene Habre for torture during his brutal eight-year dictatorship in the 1980s. Habre's CIA-backed security forces killed at least 40,000 civilians and imprisoned and tortured hundreds of thousands more. Charges were dropped in July, however, after Senegal's new president appointed Habre's main attorney as his special legal adviser, then removed the investigating judge from the case. Corruption remains a major obstacle in poorer countries.

That is why most of the advances are coming from Europe. In August, Mexican authorities detained Miguel Angel Cavallo, a retired Argentinean naval captain, at the request of the Spanish judge who originally sought the arrest of Pinochet. Using a pseudonym, Cavallo had been running Mexico's national motor vehicle registration bureau. But during the 1970s, he had been among the officers in charge of a torture chamber through which more than 5,000 kidnapped civilians passed, almost all on their way to their deaths.

Unlike Chile, which vigorously protested the detention of Pinochet as a violation of national sovereignty, Argentina has offered only customary consular assistance to Cavallo. It is in effect acknowledging the revolution in international law. So is the new president of Chile, Ricardo Lagos, who recently said that "Pinochet's long detention in London has shown that globalization has now expanded from economic affairs to the institutions of politics and justice."

Yet one would hardly know that from the goings-on in Washington, where both Democrats and Republicans are clinging hard to the old order. The Clinton administration has been vigorously resisting efforts to get the United States to take part in the creation of an international criminal court that would be empowered to try cases such as those involving Pinochet, Cavallo and Habre. They fear U.S. citizens — notably including government officials and military personnel on foreign assignment — could eventually be tried by the court for war crimes and for crimes against humanity.

Yet such prosecutions will occur anyways. Under the British Law Lords precedent, any national court can try foreigners for violations of international human rights treaties ratified by their countries. Would it not be preferable for U.S. citizens to be tried by an international court in which the U.S. and its allies can ensure due process and qualified judges? There is also concern that the international criminal court could engage in politically motivated prosecutions. But international courts are much less likely than national courts to tolerate such behavior, since judges and prosecutors are drawn from many nationalities.

Another objection is that the court would trump the U.S. Constitution. In fact, international courts are limited by statute to the enforcement of international human rights treaties. Those in turn only allow recourse to international tribunals in the absence of domestic remedies. Since U.S. courts have an excellent record of addressing such violations within the terms of our Constitution and ratified treaties (which the Constitution describes as "the highest law of the land"), plaintiffs would have a hard time justifying an appeal to the international criminal court.

These arguments are sufficiently persuasive that all other advanced Western democracies have signed the statute creating the International Criminal Court. In fact, 120 countries, including neighboring Canada and Mexico, are backing the court. The United States is among only seven holdouts, alongside China, Iraq, Israel, Libya, Qatar and Yemen.

Regrettably, this is part of a wider pattern. The U.S. has yet to ratify many of the most important international human rights treaties. A case in point is the American Convention on Human Rights, which has been ratified by every Latin American country except Cuba. Another is the Convention on the Rights of the Child, approved by every other nation except Somalia.

The most immediate obstacle to ratification of these and other human rights treaties is Senator Jesse Helms (R-N.C.), who chairs the Senate Foreign Relations Committee. Under the Senate's arcane rules, a committee chairman has effective veto power over any matter that comes under the committee's jurisdiction. In the case of the tribunal, for instance, Helms has said that any international court that can touch Americans is "dead on arrival."

So are international human rights treaties that are binding on the behavior of Americans abroad.

The inauguration of George W. Bush will likely only harden Washington's resolve to buck the global trend. Bush, after all, made a point during the campaign of criticizing the use of U.S. forces for humanitarian intervention to head off genocide.

Foreign diplomats point to such attitudes as evidence that the U.S. retains an imperial attitude towards international human rights — that treaties are to be applied to foreigners, but never to Americans, and that the U.S. (at least in Republican administrations) will not use its military might to defend human rights except as cover for other vital national interests.

That puts the U.S. in an embarrassing position. For all its rhetorical emphasis on human rights, Washington is in league with Cuba, China, Iraq and Libya when it comes to trying to retard progress in making such rights enforceable across borders.

With such few and odd bedfellows, the U.S. position cannot possibly prevail. As the Pinochet, Habre and Cavallo cases demonstrate, international human rights law is gaining teeth with or without U.S. approval.

Washington can recognize the inevitability of the process, and retrieve its credibility and influence by joining in, or watch as Western Europe, Canada and even Latin America take over as torchbearers of international human rights.

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