

A love-hate^{USA} relationship

A BIZARRE feature of the United States attitude towards the question of international law is that it loves to create multilateral treaties and international agreements, but hates to subject itself to the discipline of most of them. The history of the past century reveals that the US desire to participate in and help create a global framework of laws that builds national and global security is counteracted by fears that international obligations will injure US interests and sovereignty.

The fact remains that the United States is one of the founders of the modern system of international law. Even its inception as a federal state was motivated by the idea that a system of constitutional law is superior to rule by a king. Regardless of whether a treaty, once ratified, is enforced within the United States or not, its courts recognize that it is a legal obligation of the United States on the international plane. For a treaty to become US law, two-thirds of the Senate must give its "advice and consent" to its ratification. Ratification occurs when the president gives formal notice of US acceptance of a treaty to other signatories.

The US has been averse, right from the outset, to the establishment of an international organization conducting affairs between nations. Small wonder, the American Senate declined to approve rati-

fication of the Versailles Treaty establishing the League of Nations. And in case of the United Nations, the US agreed to be part of it only on the condition that it will enjoy a veto in its highest political body, the Security Council. It was accepted as a fait accompli by other nations since most of Europe was devastated by the war and its first priority was survival and recovery.

Now that the US plays host to the UN and a majority of its people support a stronger role by the UN in conducting international affairs and settling disputes, a vocal faction of the US government expresses wariness, and often hostility, towards the UN. In the 1980s and 1990s, the United States refused to pay its dues to the UN unless the latter reduces its bureaucracy and ensures preservation of US sovereignty. But after the September 2001 terrorist attacks, US Congress quickly approved payment of a large sum of arrears to the UN saying international cooperation through the UN was badly needed to fight terrorism.

With respect to international criminal law, the United States played a leading role following World War II in convening the Nuremberg trials of major Nazi war criminals. In the 1990s, the United States also supported the Security Council's establishment of ad hoc tribunals to try persons accused of war crimes, crimes

against humanity, and genocide in the former Yugoslavia and Rwanda. However, it now opposes the International Criminal Court as it fears that US nationals, along with those of other states, will be subject to the court's jurisdiction.

Many US citizens, including Eleanor Roosevelt, played key roles in the evolution of international human rights instruments during the Second World War. But their adoption by the US political system itself has been slow. The United States did not ratify the 1948 Genocide Convention until 1988. The Senate expressed significant reservations and conditions when it approved ratification of the Covenant on Civil and Political Rights and the Convention Against Torture. The United States has not yet ratified the Convention on Discrimination against Women, the Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child (Somalia is the only other state not to have ratified the last treaty).

In 1946, when the United States accepted the general jurisdiction of the International Court of Justice, it sought to exempt matters "within [US] domestic jurisdiction as determined by the United States." In the 1980s, after the court ruled that it had jurisdiction to decide a case brought by Nicaragua charging that the United States violated international law by supporting the Contras in their effort to overthrow the Nicaragua government, the United States withdrew from the case and

from the jurisdiction of the court.

Regarding the war on terrorism, there are interesting aspects of the US response to the September 2001 terrorist attacks. Under US leadership, the Security Council adopted a resolution requiring all states to suppress financing of terrorist operations and to deny shelter to terrorists. The Bush administration submitted two anti-terrorism treaties to the Senate which approved ratification. The United States is now a party to all 12 global treaties on terrorism, which require member states to prosecute or extradite persons accused of specific acts of violence. But it openly declines to treat captured members of Taliban forces as prisoners of war under the Third Geneva Convention. The United States also humiliated the Security Council by ignoring it when it decided to invade Afghanistan and Iraq.

The debate over double standards pursued by the US in its course of involvement in the international legal system is now nearly a century-old. A sizable section of US public opinion is of the view that Washington must rely on its power, resources and capabilities only rather than on international treaties to protect its interests and sovereignty. With the passage of time, the US resistance to law-governed multilateralism is on the rise and manifest both in its disregard of obligations imposed by treaties to which it is a party, and by a peculiar behaviour — shaping up treaties during negotiations only to