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Round Table Discusses U.S. Ratification of Inter-American Convention on Human Rights

by Nadia Ezzelarab and Brian Tittmore

On September 14, 1994, the Washington College of Law and the International Human Rights Law Group hosted an expert Round Table on the U.S. ratification of the Inter-American Convention on Human Rights. Those in attendance included representatives from law faculties, the private bar, the U.S. State Department and others with expert knowledge of the Inter-American Human Rights System and the U.S. treaty ratification process. Participants stressed the need for individuals who have studied the legal nature and potential effect of the Convention on the U.S. to effectively communicate their views to those who will ultimately determine whether the U.S. will participate fully in the Inter-American Human Rights system.

One issue addressed at the Conference was the nature of potential U.S. reservations to the Convention. The most controversial aspects of the debate were whether reservations to Article 4, which concerns the right to life, would be required to accommodate U.S. laws governing abortion and the death penalty, and whether any such reservations would be considered contrary to the purposes of the Convention.

Another issue discussed at the Conference was the proper interpretation of the Federal Clause, Article 28 of the Convention, and the measures that might be required to ensure that the Convention is complied with at both federal and state levels. Article 28 provides that the national government of a federal state "shall implement all of the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction," and further obligates the government to "immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of the Convention" (emphasis added). The discussion concerned how the Federal Clause would be interpreted internally by the U.S., and whether a U.S. reservation or "understanding" would be required to clarify the manner in which federal authorities may be expected to ensure compliance with Article 28.

More specifically, participants indicated that if the term "suitable measures"

in Article 28 is given a very broad interpretation, it could require the U.S. Government to "federalize" issues currently under state jurisdiction. Alternatively, a narrower interpretation of Article 28 might not require changes in jurisdiction between the federal and state levels, but might oblige the Federal Government to ensure state compliance within the existing legal system.

Participants at the Conference also discussed whether the Convention should be interpreted as self-executing; as creating rights in U.S. law which individuals may invoke in U.S. courts. Those who favored this interpretation pointed out that self-execution would enable U.S. courts, in complaints involving the U.S., to interpret the Convention before such complaints were heard by the Inter-American Court. This would not be the case if implementing legislation is required to bind the U.S. to the Convention. In addition, it was noted that if the Convention is self-executing, then the U.S. would have to ensure in advance of ratification that nothing in the existing U.S. law contravenes the Convention. Alternatively, if the Convention is not regarded as self-executing, then the U.S. would have to determine whether Article 28 should be interpreted broadly and therefore require the federalization of certain areas of state jurisdiction.



Round Table participants (left to right): Fritz Kalshoven, former Chairman of the Commission of Experts established by the UN to investigate grave violations of humanitarian law in the former Yugoslavia; Thomas Buergenthal, Professor of Law at the National Law Center, The George Washington University; and Ed Gordon, visiting Professor of Law at WCL.

Additional issues addressed at the Conference included the potential incompatibility between U.S. laws and the provisions of the Convention dealing with criminal justice and penal administration, as well as details of the supervisory procedures of the Inter-American Commission and the Inter-American Court. It was also noted that states are not automatically subject to the jurisdiction of the Inter-American Court upon ratification of the Convention, but that a separately expressed accession to the Court's jurisdiction is required. ☉

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rights their respective states and patriarchal cultures have thus far denied them. They will do this by developing feminist analyses of their own religious texts, much like Mary Daly and others did for Christianity, and then relying on these analyses to advance their cause. They will recruit supportive First World feminists to

help them in their efforts, but they will specify the kind of support needed, and they will lead their own battles. They will not seek to achieve their liberation by denigrating their religion or culture or by forcing upon their communities inappropriate priorities and demands. They will do it their own way. ☉