
International Human Rights Law: The Real Improver of Human Rights Situation or Faithless Paradoxes?



Regional Studies
Vol XXXV, Issue 1
pp.79-104
© Author(s)
<http://irs.org.pk>
P-ISSN: 0254-7988
E-ISSN: 2959-5459

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Date of Acceptance: 4 November 2016

Abstract

Due to the feeble mandatory and meaningful but optional implementation mechanisms, international human rights laws fail to change the behaviour of the states with respect to adherence to human rights standards. This leads to questions such as why states join the international human rights law regimes, why they subject their human rights practice to the scrutiny of the world community, and why the rights-abusing states readily join international human rights treaties while the rights-respecting states are hesitant in becoming a party to them. This paper argues that the ratification of human rights treaties has been used by the states for motives other than having real intentions of improving the human rights situation. Therefore, the international human rights law can be termed as the paradox of dishonest commitments rather than a real human rights situation improver. In conjunction with this, the standing of Pakistan being a signatory to a number of human rights core treaties, the level of its honesty in implementing the provisions of the ratified treaties, and compliance is critically evaluated.

Introduction

Human rights are the first casualty of an emergency or a crisis situation. When states are confronted with situations of armed conflict, economic turmoil, natural disasters, and other dangers, the ultimate result comes in the shape of suspension of human rights protections. Such response of the states to the emergency situation is fuelled and encouraged by the ineffectiveness of the international human rights

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treaty regimes, which, in the case of their violation, provide for no serious sanction or punishment for the concerned states.

Over the last fifty years, international protection of the human rights system in terms of growth in the number of ratifications at the global level can be considered a success of the system. The scope of the core six international human rights regimes¹ increased in terms of the number of ratifications over 50 percent from the year 2000 to 2011.² Although the international human rights regimes are extensive, they provide no, or very weak, legal protection. Thus, these instruments have not been as effective and result-producing as it was hoped. The prime example is the Convention Against Torture (CAT), which prohibits torture and is considered the most successful human rights treaty. Although the convention is considered a remarkable achievement in the field of international human rights law, the post-9/11 events have led to encroachment of security measures over the prohibition of torture. Several signatory states to the convention are engaging in the practice of torture, yet they are not faced with any actions or sanction for violation of their international obligation.³

If international law is unable to change the rights-violating behaviour of states, then what is the use of states actually joining the international human rights treaty regimes? This paper briefly highlights the failure of international human rights regimes in protecting human rights and preventing their abuse. It discusses some interesting facts about the types of states that ratify international human rights treaties and their motives for doing that. It also looks into why the rights abusing states ratify international human rights treaties when they are not intending to comply with its obligations while the rights-respecting countries with better human rights records refrain from joining such treaties. The features of the treaties that attract ratifications by the states are discussed as well. Finally, the reasons for ratification of core international human rights treaties by Pakistan are evaluated in light of the arguments given, obligations created through such commitments, steps taken for implementation of those obligations, and the level of compliance to those commitments. The challenges in this respect are also analysed.

International human rights law: Does it really work?

The views about the effectiveness of international human rights laws vary. According to sceptics, international law is a mere window dressing, which is unable to change the behaviour and practice of the states. Those on the other side of the debate take international law differently. According to them, once states commit to certain international legal regimes, they are obliged by their international legal commitments most of the time. With the solid enforcement mechanism, its internalisation into domestic legislation⁴ coupled with the principle of *pacta sunt servanda*, the international law is the most effective tool for protecting human rights.⁵

The reality: domestic structure as determining factor for ratification of human rights treaties

The main question here is whether international law has so far proved effective in changing human rights violating behaviour of the states. Oona A. Hathaway has examined the compliance of 160 nations to human rights treaties over a period of forty years, which has led to some important findings. For example, the ratification of the CAT by a state does not guarantee its better record against torture in comparison to the states that have not ratified it. More surprisingly, becoming a party to a human rights treaty does not always have the intended results. In some cases, it produces the opposite results.⁶

Furthermore, according to Hathaway, states with less democratic institutions and poor human rights records will not be less likely to commit themselves to human rights treaties as they have very little intention of enforcing and implementing the treaties as compared to the states with strong democratic institutions and good human rights records. The states with effective and powerful domestic institutions and poor human rights records will less likely commit themselves to human rights treaties because such commitment may lead to changes in their behaviour. Even states with more powerful democratic institutions and good human rights protection records may not ratify human rights treaties.⁷ This finding contradicts the claim of the proponents of the effectiveness of international law, who hold that international law is the most effective tool for the protection of human rights in terms of domestic

enforcement of international law and internalisation of international law into domestic legislation.

Why states join human rights treaties?

The above facts lead to further questions, such as why some states join international human rights treaties despite having some of the worst human rights records and no intention of respecting and honouring those treaty obligations. Why a state subjects its domestic human rights practices to the scrutiny of individuals, groups, courts, peers, and the rest of the world in the first place? States' motives and willingness for giving consent to be bound by a human rights treaty can be classified into the following categories.⁸

Realist ratifiers

The effects of international law are not binding unless the state consents to be bound by it.⁹ A state only consents to it after weighing the costs and benefits of binding itself to a treaty. According to this theory, international law's anticipated positive and negative effects largely determine states' choices to commit to international law in the first place. States ratify the treaties when the anticipated benefits outweigh the costs. The states calculate the potential benefits and costs while binding themselves to a treaty.¹⁰ Mostly, states join a treaty under the following cases: commitment leads to no change in the existing laws of the country as it is already in conformity with that treaty, noncompliance to the treaty will not be detected and even if detected there will be no sanctions for the state,¹¹ or the treaty does not impose any legal obligation in the first place.¹² If the treaty compliance monitoring system is effective, the rights abusing states will rarely ratify it as compared to rights-affirming states.¹³

Liberalist ratifiers

Unlike the realist ratifiers, liberalist ratifiers do not calculate the costs and benefits of treaty membership.¹⁴ "Democratic nations generally have stronger internal enforcement mechanisms than nondemocratic nations," which make them quite cautious in choosing a treaty to join and the extent of its commitment towards it. Although the democratic states are vocal supporters of human rights, they know that even minor violation of a treaty provision will be costly and embarrassing. Thus,

liberal states will ratify the closely monitored treaties often after putting reservations to modify treaty commitments.¹⁵

Constructivist ratifiers

The determining factor of treaty ratification for constructivist ratifiers is the substance of the treaty and its conformity, accordance, and relevance with its cultural, ideological, and normative values, norms, and commitments.¹⁶ Whatever commitments are made by constructivist ratifiers, either positive or negative, they are usually made sincerely and in good faith. The implementation provisions such as enforcing, coercing, or evading are not important for this type of ratifiers because true ratifiers do not need any mechanism for ascertaining their compliance.¹⁷

Sociological institutionalism/the ratifiers that care for reputation

Some states join human rights treaties for giving an expression of a legitimate statehood. Such states are called sociological institutionalist states. According to this view, the principles of human rights are now becoming highly important and constitutive elements of legitimate statehood. Thus, in this case, a state's concern for its reputation plays a significant role in its decision to ratify a human rights treaty. Such states join the treaties in full or parts to make themselves look good. Therefore, even the repressive regimes will demonstrate support for the human rights treaties, despite the fact that such states have very little or no intention of implementing and abiding by them. The main causal factor of this hypocrisy is weak and ineffective implementation and monitoring mechanism, which allows such states to circumvent legal obligations imposed by the treaties.¹⁸

Ratification as a fashion: seeking political and other incentives

If the number of ratifications of a treaty grows in a specific region, the remaining countries within that region will more likely ratify that treaty for obtaining certain benefits, such as smooth relations with other countries, engaging with them in trade and military alliances, and attracting foreign investments, donations, and other tangible gains. Thus, the more likely a treaty is ratified in a specific region, the more likely it is that the rest of the states will join that treaty as well.¹⁹

False negatives and false positives

The above-mentioned categories except the constructivist ratifiers demonstrate that rather than really implementing human rights reforms and improving human rights situation, states ratify human rights treaties for a number of other motives. This leads us to discuss the question raised by Hathaway as to why some states with better human rights records do not ratify human rights treaties, while states that have the worst of human rights records and no intention of implementation and compliance to a treaty actually sign human rights treaties. An attempt is made in the following lines to answer this question.

Rights respecting states – false negative states

When a state ratifies a treaty and makes an attempt to integrate it into the national system, it bears certain implications for the existing system of national rules and laws. In states with strong reputations for the rule of law, the treaties once ratified may actually have certain impacts on the national legislation and judicial systems. That is why the countries where the rule of law is actually strong may seriously think about the implications of international law obligations for the domestic law before giving consent to a treaty. Therefore, their process of treaty ratification is very careful. Such a category is called the ‘false negatives’.

Rights abusing states – false positive states

Many states commit themselves to a treaty where they do not have the real intention and capacity to implement the provisions of the treaty or abide by it. According to such states, ratification of a treaty without necessarily having to implement it is a good bargain. Since they are enticed by promoters of the human rights treaties for some benefits, such benefits are offered “for positions rather than for effects.”²⁰ For such ratifiers, the expected benefits will exceed the costs that they may incur. They take into account the collateral consequences of ratifying the treaty as they have more to gain and no or little to lose. And in this case, the ratification process is driven by potential benefits of committing to a treaty regime. Therefore, there may be widespread ratification of the treaty with very less or no real impact on human rights conditions. This type of ratifiers may be termed as gamblers or false positivists.²¹

There are numerous examples, but let us consider some important ones. The United States, despite having a very good record of protecting the rights of women, has not so far ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) of 1979. On the other hand, countries such as Afghanistan and India have ratified the core human rights treaties with the worst of human rights records and no intention of implementing and complying with treaty obligations.²²

Ratification of a treaty by the level of soundness of enforcement mechanism

As discussed above, one of the determining factors for ratification of international human rights treaties is the effectiveness of its enforcement mechanism. The worst violators of human rights protections more likely ratify human rights treaties, and the countries that have ratified human rights treaties are at times the worst abusers of human rights. This attitude among states exists mainly due to the fact that the international human rights law is strong in substance but remarkably ineffective and weak in its enforcement.²³ In this section, as an example, we may now examine the enforcement mechanisms of CAT²⁴ and the International Covenant on Civil and Political Rights (ICCPR)²⁵ that are celebrated amongst the most successful international human rights instruments.

The enforcement mechanism of the CAT

The CAT prohibits states from intentionally inflicting “severe pain or suffering, whether physical or mental on any person to obtain information or a confession or to punish that person or to intimidate or coerce him or a third person.”²⁶ The following lines will evaluate briefly the striking aspects of the ratification of the convention.

Three forms of ‘treaty implementation mechanisms’ exist today: First is reporting, where states describe the measures that have been taken for the implementation of the treaty; the second is the state-to-state complaints, which so far have never been used; and the third is the individual complaints mechanism, which is the strongest and most effective form of implementation.

The minimum enforcement mechanism is the state reports, which should be submitted to the treaty body, the Committee Against Torture, which is an international body created to oversee the implementation of the convention.²⁷ However, even this minimal requirement is often ignored by the states. Strong enforcement procedures in the shape of interstate and individual complaint mechanisms in articles 21 and 22, respectively, are available but such procedures are not mandatory. It is the discretion of states whether to accept the mandate of the Committee Against Torture to receive and hear complaints from individuals concerning the violation of the rights guaranteed in the convention. The ratification of such optional provisions is not necessary for joining the treaty.²⁸

Implementation mechanism of the ICCPR

The ICCPR obliges state parties to submit periodic reports two years after entry into force of the covenant for the said state and then a report after every five years to describe all the steps for the execution and implementation of the covenant. Also, “whenever the committee so requests,” the states are obliged to submit the compliance and enforcement report. The covenant provides for interstate complaints, which is made optional only if a state consents to article 41 of the covenant.²⁹ The First Optional Protocol provides for a stronger implementation system, which is the individual complaint mechanism. In this system, an individual complains about the behaviour of the state as in violation of their rights.³⁰ However, even the minimal requirement of submitting the report is extremely ineffective, wherein reports submitted even after such a long interval and after states are given ample time to prepare statements that best represent them, are often perfunctory.³¹

Determining factors of ratification and compliance

The ICCPR and the International Covenant on Economic Social and Cultural Rights (ICESCR) demonstrate different rights. However, similarity between the implementation mechanisms of both the treaties leads to nearly the same level of ratification and membership. On the other hand, as stated above, the ICCPR combined with its Optional Protocol, which guarantees the same rights but provides for a comparatively different and effective implementation mechanism, leads

to a great variation in the membership and ratification.³² Pakistan has ratified both the ICCPR and the ICESCR mainly because of the similarity in its enforcement mechanism. However, Pakistan has not signed the stronger enforcement options in the shape of First Optional Protocol.³³

In the context of the strength of and compliance with a treaty regime, we can infer from the above discussion that the factor determining the strength of the human rights treaty membership is the soundness of its implementation mechanism rather than the substantive content of the treaty. Apart from the ICCPR, Pakistan has ratified a variety of international human rights protection treaties. However, where these treaties provide for binding, invasive, and effective enforcement mechanisms, Pakistan has not ratified or given consent to such international obligations. For example, although it has ratified the CAT, CEDAW, and the Convention on the Rights of Child (CRC), it does not recognise the competence of the treaty bodies of these treaties for entertaining individual complaints against Pakistan in terms of the rights guaranteed in these treaties.³⁴

The human rights regimes: hollow promises

The absence of effective and strong enforcement mechanism provides a strong incentive for states to join a treaty without making any serious commitment to its implementation and promotion of respect for human rights.³⁵ At times, these treaties may even shield the repressive behaviour of a state once it has ratified it, as after the ratification of a treaty, the state cannot be further forced to take any actions. So, once the external pressure decreases, the concerned state may start committing worst forms of human rights violation and human right regimes are unable to stop it because of the lack of effective enforcement mechanisms.³⁶ Thus, the impact of the human rights treaties may be termed as 'hollow promises and commitments with no real effect' as the states make a formal legal commitment without any intention of complying with it.³⁷

Where does Pakistan stand?

Legislative dimension

Unlike monist states, in Pakistan, international law does not prevail over the national law.³⁸ Both the national and international law are not considered to be one and the same. The mere act of ratification of an international law does not automatically incorporate it into domestic law, the national judges cannot directly apply the international law, nor can the citizens invoke it. In Pakistan, being a dualist state, there is a difference between the national and international law. The latter must first be translated and inserted into the former for it to come into force. Otherwise, international law will not exist at all. In dualist view, the national judges, apart from the provisions of international law that have been translated and incorporated into national laws, cannot apply international law.³⁹

Having critically discussed different aspects of the international human rights treaty regimes and the legislative dimensions of Pakistan, we may now evaluate the status of Pakistan in line with the arguments furthered above, such as the type of ratification. That is, whether the ratification of Pakistan's international human rights treaties can be termed as realism, liberalism, constructivism, ratification as a fashion, or sociological institutionalism. Then it will be evaluated whether Pakistan's approach can be termed as 'false negative' or 'false positive'. The issues and the problems faced by Pakistan will be highlighted and finally, suggestions will be forwarded for a solution to those issues.

Pakistan's perspective

Out of the nine core human rights treaties, Pakistan has ratified seven. The privileged Generalised System of Preferences (GSP)⁴⁰ plus status for trade with the EU was granted to Pakistan for encouraging the rise of the country's economy, especially in the field of exports to Europe, on the condition of ratifying and implementing the core human rights treaties without any reservations. This scheme provided Pakistan with an opportunity to improve its trade as well as laws on good governance and human rights issues. The EU is the destination for 33 percent of Pakistan's exports, and thus a leading trade partner. Once ratification of a human rights treaty takes place, it leads to the creation of legal obligations at the international level and the states are duty bound to be

in conformity with all the obligations a treaty creates, which can be called the consequences of the ratification.⁴¹ However, while ratifying the treaties, Pakistan has taken the approach of 'ratify the treaties now for getting benefits, while thinking about the consequences later' because of Pakistan being a dualist state where the treaty provisions do not come into force automatically.

Steps taken

For fulfilling its international legal obligations, Pakistan has taken numerous steps and measures. It has established the Ministry of Human Rights and National Commission on Human Rights. Following the 18th Amendment to the 1973 Constitution, 'treaty implementation cells' (TIC) were also established in the centre and each of the four provinces of Pakistan through the Ministry of Law and Justice. The federal-level TIC has representation from all the federating units. And at the provincial level, each province has its own TIC.⁴² Apart from the TICs, at the provincial level, all the provincial governments have established a number of human rights institutions.⁴³ These efforts describe Pakistan's commitment towards persuasion of the EU for maintaining and continuing with its GSP plus status. However, these measures are described by critics as mere 'cosmetic arrangements' for international image building, which so far has exerted no substantial positive effect on the observation and implementation of international law obligations.

Level of Pakistan's compliance and its categorisation in terms of the type of ratifiers

The minimum requirement for monitoring treaty implementation, as discussed above, is the state reports to the respective treaty body. Analysing Pakistan's compliance history with this minimum requirement reveals an unsatisfactory track record in this respect. Although Pakistan has ratified the CAT, the minimum obligatory requirement for enforcement of the CAT is the state reports. Since July 2011, report to the United Nations Convention Against Torture is overdue. For the ICCPR, the report was due in 2011, which was submitted in 2015, with four years' delay. Similarly, the report to ICESCR was submitted in 2015 with more than five years' delay and the report for the Convention on the Rights of Persons with Disabilities is overdue since 2013. The few reports that are submitted even after such long delays are considered as

insufficient and often perfunctory by the relevant treaty bodies.⁴⁴ The failure of Pakistan to submit the reports in a timely manner earned it a reputation of non-seriousness for its international commitments in the international community.

Furthermore, 126 recommendations have been accepted by Pakistan out of the 167 recommendations by different treaty bodies for Pakistan. Not even a single recommendation has been implemented relating to child rights, freedom of thought, religion, conscience and expression, and enforced disappearance, though.

From the aforementioned discussion, it is evident that Pakistan has ratified the international human rights treaties for economic gains in the shape of the privileged GSP plus status and image and reputation building in the international community, coupled with a poor track record of its compliance with these obligations. Therefore, the categorisation of Pakistan in terms of types of ratification discussed above can be that of the realist ratifier, and the ratification for the sake of reputation or sociological institutionalist ratifier. The realist ratifiers often ignore and escape the effective and invasive monitoring and implementation mechanism, as discussed earlier. In the same way, Pakistan has not recognised the effective implementation and monitoring mechanisms, such as the respective treaty body's individual complaint mechanisms.⁴⁵ The non-ratification of these invasive but effective treaty enforcement and implementation mechanisms is a causal factor for Pakistan's double-standards in ratifying human rights treaties for financial gains as well as image building at the international level rather than honestly implementing them.

Issues

For Pakistan, however, the story may not be that simple. Previously, for image building and getting praise at the international level alone, Pakistan consented to a number of UN and ILO conventions and treaties, which lack the capacity to provide for any binding restrictions and punishments in case of noncompliance. Therefore, Pakistan took no pains for complying with those obligations or preparing and submitting the compliance and implementation reports. The same is not the case with EU treaties and conventions, though, which provide for binding measures and mechanisms for ensuring compliance. Therefore,

noncompliance with those UN treaties that are associated with the GSP plus status may weaken Pakistan's ties with the EU in terms of trade.

Even though the erection of the treaty implementation bodies is a positive step, there remains much work to be done for ensuring the implementation of the treaty obligations in letter and spirit. There is a lack of understanding and awareness regarding implementation and compliance to these international legal obligations, specifically with regard to the reporting procedure. In Pakistan, the public, in general, is unaware of the existence of these treaty implementation cells, the way they work, and their composition. The human rights protection mechanisms that exist and are available under international law are not, or very little, known outside the relevant academic circles. Therefore, they have not been used frequently. The public is unaware as to which international law Pakistan has signed. This situation exists mainly due to the failure on the part of the government to disseminate information regarding all these matters of public importance and benefit. Pakistan is obliged under international law to raise public awareness about the mechanisms that exist under the international law for relieving the grievances relating to human rights violations.⁴⁶

Furthermore, Pakistan has general and very broad reservations with regard to the treaty regimes it has ratified, such as the ICCPR, ICESCR, CAT, and CEDAW. These reservations are such in nature that it actually undermines the very essence and effectiveness of these treaty regimes. Keeping in view these facts, it can be safely deduced that in terms of 'false positive' and 'false negative', Pakistan can be termed as a 'false positive' ratifier that has violated international law in a gambling manner.

The level of seriousness towards its international obligations compliance

To control the increasing militancy in the wake of the war on terror, the government responded through the 21st constitutional amendment. The 20-point National Action Plan (NAP) was also announced, by virtue of which military courts were established in Pakistan to try suspects of terrorism and the death penalty was reinstated.

Prohibition of the death penalty can be found in a number of international treaties, conventions, and declarations to which Pakistan is a signatory.⁴⁷ According to the Human Rights Committee, special military tribunals often do not meet the threshold of the requirement of an independent and impartial right to fair trial.⁴⁸ British lawyer Lord Steyn has explained the situation in the following words, "The military will act as interrogators, prosecutors, defence counsel, judges, and when death sentences are imposed, as executioners." The situation amounts to 'monstrous failure of justice' according to him.⁴⁹

Moreover, according to the ICCPR's committee, such courts are often established for the purpose of applying exceptional measures, which in normal standards of justice cannot be applied. The committee argues that even in circumstances where the military courts are established, they must not impose the death penalty. According to the second optional protocol to the ICCPR, the imposition of the death penalty is an arbitrary deprivation of the right to life and an extreme case of torture, and thus in violation of the right to fair trial, the right to life, and the prohibition of torture.⁵⁰

In 2015, with respect to human rights situation in the country, Pakistan remained near the bottom of state rankings, at 146 out of 187, over a number of crucial indicators relating to human rights situation.⁵¹ The legality of the establishment of the military courts was challenged by several lawyers before the Supreme Court of Pakistan. On 5 August 2015, the Supreme Court confirmed the legality of the military courts and its competency to hand down death sentences. According to the International Commission of Jurists, "This judgment squarely puts Pakistan at odds with its international obligations and weakens the Supreme Court's hard-won reputation as the last resort for protecting the rights of Pakistani people."⁵²

On completion of one year of the establishment of military courts and reinstatement of the death penalty, more than 311 death sentences were executed, which ranked the country third amongst the top death sentence executioner countries internationally. Although the government defended such a stance with the justification of curbing the ever-increasing threat of terrorism, out of those 311 plus executions, only 16 were linked to terrorism one way or the other.⁵³

The way out

Pakistan's failure in complying with the obligations and requirements of the GSP plus status may lead to its withdrawal and loss of such privileged position by the EU. It is the need of the hour for Pakistan to channelise and strategise human rights reforms. The country's economy could suffer because of the loss of the GSP plus status. Pakistan has toothless domestic human rights protection institutions and a poor human rights record. The toothless domestic human rights bodies need to be made effective and the reporting obligations to the respective human rights treaty bodies need to be regularised. The reporting also needs to be made in a timely and complete manner rather than late and perfunctory. All the reservation made to the treaties need to be withdrawn and the general recommendations need to be taken seriously.

Capacity-building of personnel and departments involved in the implementation of international law and compliance reporting need immediate attention. The reason for this is that even though Pakistan has ratified the core human rights treaties, there is a severe lack of understanding amongst relevant stakeholders about the kinds of national obligations thus created.⁵⁴ The *Compilation of Guidelines on the Form and Content of Reports to be submitted by States Parties to the International Human Rights Treaties* issued by the Secretary-General of the United Nations in 2009 may be very helpful and of great assistance in this regard. These guidelines provide general as well as specific information about the submission of initial and periodic reports, such as what type of data should be included and its categorisation etc.⁵⁵

Finally, undermining the judiciary through the establishment of military courts may not be the solution to the problem, rather the capacity of the judiciary against such threats should be boosted. The misuse of the military courts may lead to a violation of human rights. A right-respecting response, respect for the rule of law, and strengthening the civilian judiciary is required to overcome the problem of terrorism.

Culmination

International law lacks an effective enforcement mechanism. Even where relatively stronger enforcement mechanisms do exist, they are not mandatory. Due to the weak mandatory mechanisms and strong

but fully optional mechanisms, international human rights obligations are often ignored by the state parties. The determining factor of becoming a party to human rights treaties is the effectiveness of their enforcement mechanism. The stronger the enforcement mechanism, the lesser the states will commit to it.

The reasons for states' ratification of the international human rights law regimes are quite complicated and detached from the real purpose for which human rights treaties are adopted. According to the realist approach, the 'costs and benefits' of committing to a treaty are considered determining and driving factors for ratification and becoming a party to a treaty. The liberalist states, on the other hand, take the treaty ratification and commitment seriously. Therefore, they may ratify the closely monitored treaties. However, they may relieve themselves of unwanted provision by putting certain reservations, or they may not even ratify the treaties in the first place, thus limiting the effectiveness of a treaty regime or fully abandoning it. In the constructivist approach, the determining factor for the ratification of a treaty is its substance and its congruence with certain norms of the ratifying state. Some states, in giving the impression of a legitimate statehood, may ratify certain treaties because in today's scenario human rights are considered as constitutive of legitimate statehood. Here the element of reputation plays an important role in the ratification of a treaty. Such type of ratifiers is called sociological institutionalist states.

If the ratification of a specific treaty is widespread in a region, the other states may also ratify the treaty as a fashion without any intention of implementing and complying with it. And most interestingly, the countries with strong rule of law and better human rights records may not ratify human rights treaties, while the countries with fragile domestic implementation institutions, weak rule of law, and worst human rights records may join the treaties. Both the types may be termed as false negative and false positive, respectively.

In this classification, Pakistan falls into the realist ratifiers' category, where it has ratified the core human rights treaties for getting economic and political gains. Furthermore, Pakistan did so for image-building in the international community, which further qualifies it for the category of ratifiers that ratify for the sake of image and reputation-building in the international community. Because of ratification without a

genuine intention of implementing treaty provisions or ensuring the rights guaranteed in those respective treaties, coupled with the worst of human rights records, Pakistan can be termed as a case of 'false positive', which, despite having vocal support for and ratification record of core human rights treaties, is a violator of the rights protected by those treaties: For instance, the rights to fair trial, protection against arbitrary death penalty, and prohibition of inhuman and degrading treatment.

To come up with the international human rights law obligations and the expectations of the international community as well as genuinely improve the human rights situation, the following steps and measure need to be taken on a priority basis:

- The capacity of the relevant stakeholders needs to be enhanced;
- Human rights reforms need to be channelised and strategised;
- Domestic institutions for human rights protection need to be made effective and efficient;
- Reporting obligation to the respective human rights treaty bodies needs to be regularised;
- Exceptions to human rights treaties that are general and unspecific in nature need to be withdrawn;
- General comments of the treaty bodies need to be taken into serious consideration, which may be of ample assistance and guidance in understanding treaty provisions and helpful in discharging the treaty obligations; and
- Last but not the least, the undermining of the judiciary by the establishment of a parallel judicial system in the shape of the military courts might not be the solution to the problem of the ever-increasing terrorism. The alternate could be a right-respecting response that would also be in conformity with the international human rights obligations.

Notes and References

- ¹ Core six international human rights regimes include ICCPR, ICESCR, CERD, CEDAW, CAT and CRC.
- ² The consultation meetings and sessions that took place in Sion, Switzerland, with respect to non-formal consultation with state parties to international human rights treaties from 12 to 13 May 2011, available at <www.ohchr.org/english/bodies/HRTD/SionConsultation.htm>, accessed 7 June 2016.
- ³ Comparatively, India has signed the Convention on 14 October 1997. However, 19 years after signing the Convention, India is yet to ratify it. Like Pakistan, India failed to take comprehensive measures and steps for bringing its domestic legislation in conformity with the Convention. However, as India has not ratified the Convention yet, it is not binding for India as it is for Pakistan. International law only becomes binding upon a state when it ratifies the specific law. Thus, India is not in violation of international law but Pakistan is. The positive aspect of India with respect to the Convention is that India wants to incorporate the Convention's provisions into its domestic legislation in the first place and ratify the Convention later with 'Monist' style ratification. In this respect, an attempt was made when in 2008 it was decided to have a stand-alone legislation to give effect to the provisions of the Convention. Two years later, the Bill was introduced in the Lok Sabha and passed by the House on 6 May 2010. However, it remained pending in the Rajya Sabha and lapsed with the dissolution of the 15th Lok Sabha.
- ⁴ Antonia H. Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Massachusetts: Harvard University Press, 1995); Harold Hongju Koh, "Why Do Nations Obey International Law?" *Yale Law Journal* 106 (1997), pp.2599–2659.
- ⁵ *Pacta sunt servanda* means "agreements (and stipulations) of the parties (to a contract) must be observed." *Black's Law Dictionary*, 6th ed., (1990), p.1109.

- ⁶ Oona A Hathaway, "Why Do Countries Commit to Human Rights Treaties?" *Journal of Conflict Resolution* 51 (2007), pp.588-621: Eric Neumayer, "Do international human rights treaties improve respect for human rights?" *Journal of Conflict Resolution* 49 (2005), pp.925-953: Emilie Hafner-Burton, Kiyoteru Tsutsui, "Human Rights in a Globalizing World: The Paradox of Empty Promises," *American Journal of Sociology* 110 (2005), pp.1373-1411. For instance, in 1982, Guatemala ratified CEDAW. In the same time period, the government was reportedly practising the executions, political murders, and imprisonment for political views. The human rights practices worsened despite the ratification of the six core human rights treaties in 1992, which protect the citizens from all forms of human rights violations. And such violations of human rights reached its peaks in 1994 and 1995. The second example is Iraq where, in 1994, the government ratified the core five human rights treaties. However, the same year, Amnesty International reported that in Iraq repression was systematic, extreme, and throughout the country. This situation demonstrates that human rights treaties have little impact on human rights practices in actual.
- ⁷ Oona A Hathaway, "Do Human Rights Treaties Make a Difference?" *Yale Law Journal* 111 (2002), pp.1935-2042.
- ⁸ This classification is based on the work of Emilie M. Hafner-Burton.
- ⁹ The view is held by the opponents of the concept of '*Erga Omnes*'.
- ¹⁰ Emilie M. Hafner-Burton, Laurence R. Helfer and Christopher J. Fariss, "Emergency and Escape: Explaining Derogations from Human Rights Treaties," *International Organization* 65, No. 4 (2011), pp.673-707, Published by Cambridge University Press on behalf of the International Organization Foundation.
- ¹¹ Burton and Tsutsui, "Human Rights in a Globalizing World: The Paradox of Empty Promises," pp.1373-1411.
- ¹² Oona A Hathaway, "The Cost of Commitment," *Stanford Law Review* 55 (2003), p.1856.

- 13 Eric Neumayer, "Qualified Ratification: Explaining Reservations to International Human Rights Treaties," *Journal of Legal Studies* 36 (2007), pp.397-29.
- 14 Neumayer, "Do International Human Rights Treaties Improve Respect for Human Rights?", pp.925-953.
- 15 Hathaway, "The Cost of Commitment," op.cit, p.1821-1862: Neumayer, "Qualified Ratification: Explaining Reservations to International Human Rights Treaties," pp.397-29.
- 16 Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd ed. (New York: Cornell University Press, 2003), p.69.
- 17 Danial J. Whelan, Jack Donnelly, "The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight," *Human Rights Quarterly* 29 (2007), pp.908-949.
- 18 Emilie Hafner-Burton, Kiyoteru Tsutsui, and John W. Meyer, "International Human Rights Law and the Politics of Legitimation: Repressive States and Human Rights Treaties," *International Sociology* 23 (2008), pp.115-141.
- 19 Neumayer, "Do international human rights treaties..." op.cit, pp.925-53.
- 20 Some versions of this argument even claim that the ratification of human rights treaties worsens the state's behaviour. For example, Emilie Hafner-Burton, John W. Meyer, and Kiyoteru Tsutsui in *International Human Rights Law and the Politics of Legitimation: Repressive States and Human Rights Treaties*, have argued at page 129, "governments, armed with growing information that commitment to the regime would not lead to serious enforcement but would grant them legitimacy in the eyes of other states, were now free to hide domestic human rights practices behind the veil of international law."
- 21 Public Statement, AI Index: AFR01/002/2005(Public) News Service No.204, 29 July 2005, at <<http://web.amnesty.org/library/Index/ENGAFR010022005?open&of=ENG-375>>, accessed 11 May 2016. Countries have been praised by Human Rights Watch for their ratification of the statutes of the

International Criminal Court; see <<http://www.hrw.org/english/docs/2000/12/11/german645.htm>>, accessed 11 May 2016.

22 Open Society Justice Initiative, *From Judgment to Justice: Implementing International and Regional Human Rights Decisions* (2010), pp.119-20. The compliance rate “hovers slightly above 12 percent, a low figure by any measure” and over the time, the implementation record has even further deteriorated.

23 Hathaway, “Why Do Countries Commit...,” op.cit., pp.588-621; Neumayer, “Do international human rights...,” op.cit., pp.925-53; Burton and Tsutsui, “Human Rights in a Globalizing World: The Paradox of Empty Promises,” pp.1373-1411; Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads*, p.8.

24 UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p.85, available at <<http://www.refworld.org/docid/3ae6b3a94.html>>, accessed 21 July 2016.

25 UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p.171, available at <<http://www.refworld.org/docid/3ae6b3aa0.html>>, accessed 21 July 2016.

26 Article 1.1 of the Convention Against Torture 1984: Neumayer, “Qualified Ratification...,” op.cit., pp.397-29.

27 Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment reads, in part: “The State Parties shall submit to the Committee... reports on the measures they have taken to give effect to their undertakings under this Convention.”

28 Henry J. Steiner and Philip Alston, eds., *International Human Rights in Context: Law, Politics, Morals*, 2nd ed. (New York: Oxford University Press, 2000), pp.592–704.

29 David Robertson, *A Dictionary of Human Rights* (London: Europa Publication Limited, 2005), pp.88-90.

30 Article 40, ICCPR.

31 Donnelly, “*Universal Human Rights...*,” op.cit., pp.117-123.

32 In 2009 the HRC estimated that the figure still amounts to roughly 30 percent; UNGA, 64th Session. Report of the Human Rights Committee, 1 January 2009, UN Doc. A/64/40, Vol. I, Supp. No. 40, paras. 230–236; Kevin E Davis, “What can the rule of law variable tell us about rule of law reforms?” *New York University Law and Economics Research Paper Series* (2005), pp.103-125; Hathaway, “The Cost of Commitment,” op.cit., pp.1821-1862.

33 UN General Assembly, *Optional Protocol to the International Covenant on Civil and Political Rights*, 19 December 1966, United Nations, Treaty Series, vol. 999, p.171, available at <<http://www.refworld.org/docid/3ae6b3bf0.html>>, accessed 21 July 21, 2016), Pakistan is not signatory to this first optional protocol. Pakistan has two reservations regarding articles 3 and 25 that seem unspecific.

34 In the case of CAT, Pakistan has reservations to the following articles 8 (2), 20, 21, 22, 28 (1), and 30 (1). With such reservations, Pakistan does not recognise the competence of the committee against torture to receive individual complaints against Pakistan. As to CEDAW, Pakistan has a Declaration: “The accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.” And a Reservation: “The Government of the Islamic Republic of Pakistan declares that it does not consider itself bound by paragraph 1 of article 29 of the Convention.” Again Pakistan does not recognise the competence of the treaty body to receive individual complaints.

35 Bryan S Turner, *Vulnerability and Human Rights* (University Park, PA: Pennsylvania State University Press, 2009).

36 Hathaway, “Do Human Rights Treaties Make a Difference?” op.cit., pp.1935-2042.

- 37 Neumayer, "Do International Human Rights...", op.cit., pp.925-953.
- 38 James Atkin and Baron Atkin, in M. Akehurst, *Modern Introduction to International Law*, 7th ed. (London: Routledge, 1997), p.45.
- 39 Akehurst, *Modern Introduction to International Law*, op.cit., p.45.
- 40 Generalised System of Preferences (GSP) Plus status was granted in December 2013, granting Pakistani products duty-free access to the European market.
- 41 See Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) art 26 ('VCLT').
- 42 The main and overall objective of the TIC's is to enable the federal, provincial, and district level functionaries to effectively use the financial and human resources for creating forums to implement, fulfil, and comply with international human rights obligations contained in the respective human rights conventions and treaties, and to guide and inform the government and relevant departments of the costs and benefits of human rights treaty regimes.
- 43 Khyber-Pakhtunkhwa is leading the way by establishing the Directorate of Human Rights and Commission on the Status of Women and Child Protection and Welfare. The Human Rights Commission has been established by the provincial government of Sindh. The Commission on the Status of Women and Bureau of Child Protection and Welfare has been established by the government of Punjab. However, the provincial government of Balochistan is yet to establish any such forum.
- 44 United Nations International Covenant on Civil and Political Rights, Human Rights Committee List of issues in relation to the initial report of Pakistan, CCPR/C/PAK/Q/1, 15 November 2016, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fPAK%2fQ%2f1&Lang=en>. United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, List of issues in relation to

the initial report of Pakistan, E/C.12/PAK/Q/1, 7 November 2016, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fPAK%2fQ%2f1&Lang=en>, United Nations International Convention on the Elimination of All Forms of Racial Discrimination, Committee on the Elimination of Racial Discrimination, Concluding observations on the combined twenty-first to twenty-third periodic reports of Pakistan, CERD/C/PAK/CO/21-23, 3 October 2016. <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fPAK%2fCO%2f21-23&Lang=en>. Follow-up letter sent to the State party by Office of The High Commissioner for Human Rights with respect to CEDAW on 10 August 2016, <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PAK/INT_CEDAW_FUL_PAK_24832_E.pdf>, all the contents last accessed 1 January 2017. The exhaustive and complete picture with respect to reporting track-record can be accessed at the following authentic online sources: <<http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/PKIndex.aspx>>, <http://ap.ohchr.org/documents/dpage_e.aspx?c=138&su=140>, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=131>.

45 Muhammad Rafique, "Pakistan's International Human Rights Commitments: Challenges Ahead," Published on 18 January 2016, Rights and Advocacy Expert.

46 Emilie M. Hafner-Burton, Edward D. Mansfield and Jon C.W. Pevehouse, "Human Rights Institutions, Sovereignty Costs and Democratization', *British Journal of Political Science* 45 (2015), pp.1-27: Such obligation can be found in the ICESCR's general comment no 3. Even though the general comments are not legally binding, in the interpretations of the treaties, they hold important and authoritative value.

47 United Nations Universal Declaration of Human Rights of 1948: The Declaration proclaims the right of every individual to protection from deprivation of life. It states that no one shall be subjected to cruel or degrading punishment. The death penalty violates both of these fundamental rights. International Covenant

on Civil and Political Rights of 1966, and its second Optional Protocol of 1989: Article 6 of the Covenant states that “no one shall be arbitrarily deprived of his life” and that the death penalty shall not be imposed on pregnant women or on those who were under the age of 18 at the time of the crime. Article 7 states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The UN Economic and Social Council (ECOSOC) adopted “Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty.” In the same year, the Safeguards were endorsed by consensus by the UN General Assembly. The Safeguards state that no one under the age of 18 at the time of the crime shall be put to death and that anyone sentenced to death has the right to appeal and to petition for pardon or commutation of sentence. Article 37(a) of the UN Convention on the Rights of the Child prohibits the death penalty for persons under the age of 18 at the time of the crime. The UN General Assembly (UNGA) approved Resolution 62/149 in 2007 which called for all states that still maintain the death penalty to establish a moratorium on executions with a view to abolishing the death penalty.

48 Daryl A Mundis, “The Use of Military Commissions to Prosecute Individuals Accused of Terrorist Acts,” *The American Journal of International Law*, 96 (2002), pp.320-328.

49 Lord Steyn, “Guantanamo Bay: The Legal Black Hole,” (Lecture, Twenty-Seventh F. A. Mann Lecture, 25 November 2003).

50 UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, Article 6 (1), United Nations, Treaty Series, Vol. 999, p.171.

51 International Commission of Jurists (ICJ), *Military Injustice in Pakistan*, June 12, 2016, online access: <<https://www.icj.org/wp-content/uploads/2016/06/Pakistan-Military-court-Advocacy-Analysis-brief-2016-ENG.pdf>>, last accessed 1 January 2017.

52 ICJ is comprised of 60 eminent lawyers and judges which has been established in 1952. The ICJ mainly work for the promotion and protection of human rights and rule of law.

- 53 International Commission of Jurists (ICJ), *Military Injustice in Pakistan*, p.22.
- 54 Saad-ur-Rehman Khan & Imaan Mazari-Hazir, "Implementing the treaty," *The News*, 1 January 2016.
- 55 The same module was suggested by John von Doussa, "The Potential Role of National Human Rights Institutions in the Pacific," (Speech delivered at the Australasian Law Reform Agencies Conference, Port Vila, Vanuatu, 15 September 2008). <http://www.hreoc.gov.au/about/media/speeches/speeches_president/2008/20080915_pacific.html>, accessed 24 June 2016.