9-1-2008

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Without Distinction: Testing Realist Theory with the International Convention on the Elimination of all Forms of Racial Discrimination

John Mahler

Abstract

This article tests realist theory using a case study on the International Convention on the Elimination of All Forms of Racial Discrimination. It provides a brief overview of realism and gives four hypotheses about how anti-discrimination law is consistent with realist ideas: 1) states form and join the ICERD, 2) the convention will allow a noncommittal membership, 3) enforcement is conditional on state involvement and agreement, and 4) ICERD has a limited ability to change structures. Using qualitative evidence from the writings of ICERD and the reaction of various states to treaty provisions, the article shows that ICERD is a relatively weak body, yet it has still influenced national laws and state actions. While full compliance to the convention may never be attainable, ICERD has been partially successful in helping the UN fulfill its mandate. The test has produced mixed results on how well realist theory describes the origination, development, and implementation of ICERD.

Introduction

Suppose . . . that there were some . . . distinction made between men upon account of their different . . . features, so that those who have black hair . . . or grey eyes should not enjoy the same privileges as other citizens; can it be doubted but these persons, . . . united together by one common persecution, would be as dangerous to the magistrate as any others that had associated themselves merely upon the account of religion? . . . There is only one thing which gathers people into seditious commotions, and that is oppression.

—John Locke, Letter Concerning Toleration

John Locke wrote more than three hundred years ago about how distinguishing someone based on hair or eye color would be dangerous. Since John Locke's time, much has been done to propagate intolerance, promote tolerance, and combat discrimination, whether that discrimination is based on religion, race, or some other method for classifying humanity. International action
has been coupled with national action against discrimination as international organizations such as the United Nations (UN) have become more involved in interstate relations and even domestic affairs. The primary instrument combating racial discrimination is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

ICERD was opened for signature and ratification on 21 December 1965 and entered into force approximately three years later on 4 January 1969 (UN GA Resolution 2106). Since then, many states have become party to the convention, and the Committee on Elimination of Racial Discrimination (CERD) has worked actively with states' parties to implement laws against racial discrimination.

The development of anti-discrimination law in the international arena offers an interesting case to test the realist theory in political science. To formally test the theory, I will first provide a brief overview of realism and give hypotheses about anti-discrimination law consistent with realist ideas; these hypotheses will then form the structure for the paper. Each section will include qualitative evidence from ICERD's writings and work, the reaction of various states, and the interaction of the committee and states' parties for the implementation of treaty provisions.

**Realism**

In the fifth chapter of the *Twenty Years Crisis*, E.H. Carr established the basic tenets of realist thought. Realism attempts to explain the world not in terms of moral absolutes but in the actions of imperfect people. Carr established three foundations of realist theory. First, history is a series of causes and effects that may be understood through analysis. Second, theories do not exist independently of reality. Third, "morality is a product of power." In other words, without central authority there can be no right or wrong; there is no such thing as a natural right, because no such rights exist independently of power.

Realism has changed since Carr wrote his book. In addition to these foundational principles, realists such as Hans J. Morgenthau and Kenneth N. Waltz focused on "the limits imposed on states by the international distribution of material resources" (Legro and Moravcsik 1999, 6). Waltz has written clearly and indefatigably on structural realism. The following is a list of vital points extracted from his "Structural Realism After the Cold War" and "The Emerging Structure of International Politics":

- International politics operate among self-interested, security-minded states. Also, states must maintain internal security while keeping a close eye on world developments in order to maintain power (2000, 6, 37).
- States compete for wealth as well as power and will watch the development of other countries closely for signs of changes in the power structure. Thus, states may seek a greater role in international organizations as a road to power (2000, 33-4).
- States have at least two options in the international structure: balancing or bandwagoning; bandwagoning is often easier, though perhaps not as effective (2000, 38).
- International relations are dominated by the bipolar structure of the Cold War (2000, 39). Also, the bipolarity of the Cold War system predicts that the Soviet Union and the United States would act similarly (1993, 46). This manifests itself in the convention on at least two occasions; the inclusion of anti-Semitism and the denial of the need
to vastly change laws. The Soviet excuse was no discrimination; the U.S. excuse was protecting other rights.

- "[Uncertainty] about the future does not make cooperation and institution building among nations impossible; [it does] strongly condition their operation and limit their accomplishment;" thus, dramatic shifts in structure are highly unlikely (2000, 41).
- With the end of the Cold War, the world disarmed to a degree rather quickly; however, "leaders saw that without . . . constructive efforts the world would not become one in which [people] could safely and comfortably live" (1993, 55). This idea may be applicable during Cold War times, as well.

I derived four hypotheses from this list. First, realists predict that states hesitate to join a convention unless a compelling security concern existed; however, states may see participation as a method to interact with other states and consolidate power, or states may relish the opportunity to jump on the bandwagon. In ICERD's formation, it is likely that the U.S. and the Soviet Union would play significant roles. Second, realists hold that states would agree on only a noncommittal treaty, allowing themselves to pull out should compliance become too costly. Third, the strength of the enforcement mechanism would be conditional on the strength and involvement of states' parties. Thus, ICERD should have little power independently and would have a weak enforcement mechanism. Finally, ICERD would not dramatically change either internal or external affairs, and its accomplishments would be limited.

Hypothesis 1: States Forming and Joining ICERD

The first hypothesis is that states would hesitate to join a convention unless a compelling security concern existed; however, states may see participation as a means to interact with other states and consolidate power, or states may simply jump on the bandwagon.

ICERD arrived after a series of declarations and conventions prohibiting racial discrimination. The Charter of the United Nations declared "human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (UN Charter). The most important body for law on racial discrimination within the UN was the Sub-Commission on Prevention of Discrimination and Protection of Minorities. This was established by the Commission on Human Rights in 1947, "to undertake studies, particularly in the light of the Universal Declaration of Human Rights, and to make recommendations to the Commission on Human Rights concerning the prevention of discrimination of any kind" (Santa Cruz 1977, 35). Notably, there already existed two conventions concerning discrimination in employment and education discrimination. The UN was not treading on new ground; it was merely expanding the already existing body of human rights treaties.

The sub-commission's work received a higher place on the agenda during the winter of 1959; this will sound commonsensical, but ICERD would arguably never have come into being without acts of negative discrimination. In West Germany and other places around the world, certain groups had attacked Jewish sites. This anti-Semitism alarmed the international community (Banton 1996, 53). Others referred to this as an "epidemic of swastika-painting and other forms of racial and national hatred and religious and racial prejudices of a similar nature." The Sub-Commission on Prevention of Discrimination and Protection of Minorities happened to be in session in January of that year and condemned the acts, later composing factual data to
for analysis. It recommended an instrument to “impose specific legal obligations on the parties to prohibit manifestations of racial and national hatreds” (Schwelb 1966, 997–8).

The idea that discrimination is reproachable can be traced at least as far back as the Enlightenment. This paper began with a quote from Locke that discussed mostly religious intolerance but touched on what might be called racial intolerance as well. The dissemination of these ideas led various governments to condemn and outlaw slavery. Then, the victors of World War I imposed various standards for how the nations carved out of the Austro-Hungarian Empire should treat minorities.

During World War II, Nazi Germany showed that racial discrimination begins with exclusion and ends in extermination. Genocide became a crime, and the international community realized that discrimination is the seed for it. Anti-Semitic acts, then, performed so close to the end of the war, told the world that discrimination would not just disappear; people of their own accord would not give up these potent ideas, and members of the United Nations realized that there ought to be national laws prohibiting some or all forms of racial discrimination. Future conflict could destabilize the postwar system, and states saw international action against racial discrimination as a means to prevent future conflict. Thus, the introduction of the treaty to the agenda is in line with realist predictions about security.

In fact, ICERD’s preface used both the word “security” and the phrase “all necessary means.” That racial discrimination and mistreatment of minorities has been a key propagator of conflict has been affirmed by various conflicts during both world wars and time and again over the last half century. ICERD offers valuable help and advice for responsible states attempting to deal with these problems.

One author warned that states should be acutely aware of the social costs of racial discrimination in all forms, in private as well as public settings (Meron 1985, 294). The social exclusion of a group may lead to political unrest, extremism, and riots; often those without political means of redress consider violence as the next best option. Considering such costs, states would wisely make anti-discrimination law a matter of national security.

After the postwar acts of anti-Semitism, African states in the UN General Assembly (GA) demanded a convention. Some in the GA wanted a convention that considered both racial and religious discrimination (Banton 1996, 54). Apparently, Arab state delegates did not want a mention of religion in the convention because of the nature of the Arab–Israeli conflict. Eastern Europe did not consider religion as important as race. Schwelb argued that “political undercurrents” favored the racial question, and states agreed to make a convention considering religious discrimination separately (1966, 999). Interestingly, it does not appear that the stronger, more powerful Western states were responsible for the initial push for the convention; however, smaller states’ action openly is to some degree a sign of attempts to take a greater position on the international stage.

Schwelb mentioned that most states did not want the convention to be an organ of the UN, wanting instead states’ parties to be accountable only to one another (1966, 1035). As a largely independent organ, the convention is like a horizontal self-help organization, like Alcoholics Anonymous, where people willingly subject themselves to a kind of monitoring with an eye on the potential benefits of membership and a desire to change. Pressure from other states that join may convince a state that to remain influential in the international community, it must
adopt international norms; jumping on the bandwagon enthusiastically may win friends.

While the theoretical links are logical, the extent to which states were in fact motivated by security concerns is unclear. Banton argued that many states did not really understand racial discrimination as defined by the convention (1996). The treaty itself looks at racial discrimination as a crime, but many states referred to it instead as a sickness; this definition implies no one is held responsible. The Soviets, believing they had created a perfect socialist society, believed racism to be a natural extension of capitalism and imperialism. Also, former colonies spoke against colonialism, believing they had suffered from discrimination but would not need to act against it in their own states. Perhaps states saw the convention as a way to get back at capitalists and former colonial masters without imposing any great obligations on themselves. There is some evidence of this as some states have later refused to make great adjustments in national laws and deny the existence of discrimination in their countries.

In fact, only the United Kingdom is mentioned as publicly admitting discrimination. States like the UK held that racial discrimination would exist anywhere race was a distinction; laws might limit its effects, but the discrimination would always exist (Banton 1996, 58–9). The UK also held a unique view on another related point. Instead of using the phrase, “prohibit and bring to an end” [ICERD Article 2 (1d)], it wanted to say, “with the purpose of bringing to an end.” The Netherlands and Turkey proposed a mild compromise, and Ghana offered the phrase “required by circumstances.” Apparently, some countries believed this phrase meant that states would be exempt from enacting new laws if no discrimination existed (Schwelb 1966, 1017).

It is arguable, then, that there was no consensus on the nature of discrimination and the expectations for states’ parties. One of Banton’s most important insights was as follows: “The belief that racial discrimination could be eliminated... mobilized governments in pursuit of a higher objective... without [which] they would never have committed themselves as they did” (1996, 50). Some evidence supports that states thought they could sign the convention and not change any national laws; however, most states did understand the treaty and the concept of discrimination; “the travaux préparatoires reveal that governments were well aware of the far-reaching and mandatory nature of [the convention]” (Mahalic and Mahalic 1987, 88). Schwelb concurred, saying that many newly independent states participated actively and significantly in the convention (1966, 1057). To summarize, this evidence suggests that states were involved in the convention formation, but many did not intend to change national laws. If states anticipated great security benefits, the benefits would have had to come from changes in other countries and not in their own states. Arguably, though, the great powers knew about the potential security benefits, or suggestions by smaller states for the convention would never have been seriously considered.

Realist predictions about the polarity of the debate are difficult to determine; realists predict that U.S. and Soviet camps would arise. One example illustrates the alignment on one issue. The U.S. and Brazil together proposed that a specific mention of anti-Semitism be included in the convention (Banton 1996, 60–61), and Austria, Poland, and Ecuador agreed. There was some disagreement about whether anti-Semitism qualified as racial or religious discrimination. The Afro-Asian delegates held that the convention already covered anti-Semitism and that no mention was necessary (Greece, France, Sudan, Jamaica, Italy, Nigeria, Pakistan, Lebanon, Iran, India, Jordan, Trinidad and Tobago, Zambai, Panama, Ecuador, Uganda, Ethiopia, and
Guatemala agreed). Belgium thought leaving out anti-Semitism somehow limited the treaty. There was a general agreement that anti-Semitism did fall under the definition of racial, not just religious, discrimination, because even non-practicing Jews experienced it. The USSR agreed that anti-Semitism was a form of racial discrimination (Schwelb 1966, 1014). Again, this agreement is not consistent with realist predictions about polarity but may be consistent with a prediction that the U.S. and the Soviet Union may behave similarly.

To conclude this section, it seems that the majority of states were not overly concerned about security, though many states participated enthusiastically, as if to gain power or to jump on the bandwagon. The bipolar nature of the debate is difficult to determine, though the fact that the convention passed a unanimous vote does not seem to coincide with this hypothesis.

**Hypothesis 2: Convention Will Allow Noncommittal Membership**

Realists hold states would want to remain relatively noncommitted to a treaty, allowing themselves to pull out should compliance become too costly. Language in the treaty would be vague, with standards difficult to measure and easy to avoid. Perhaps the best test for this comes in Article (4). The reaction of states to this burdensome demand will provide useful information for the test of realism.

The U.S. and other Western states expressed concern about Article (4b), which called for state’s parties to “prohibit organizations which incite discrimination and make participation in them punishable by law.” The West saw potential conflicts with freedoms of association and speech, though it chose not to pursue the debate and counted on being able to make reservations (Banton 1996, 62). The Third Committee omitted the part about reservations by a small number of votes, but the General Assembly put it back into the convention. Schwelb commented “the [resulting] provision is rather liberal and goes far in the direction of flexibility in the matter of reservations” (1966, 1055–6). Schwelb also called ICERD a maximalist document; the goals, aims, and specifications could lead to drastic changes, but the lenient reservations would allow the West to become a part of the treaty (1058) and likely limit its impact.

Many states have indeed made reservations. The U.S. delegate said the following when voting for the convention: 2

> Here in this Assembly I wish to state that the United States understands Article 4 of the convention as imposing no obligation on any party to take measures which are not fully consistent with its constitutional guarantees of freedom, including freedom of speech and association. This interpretation is entirely consistent with the opening paragraph of Article 4 of the convention itself, which provides that in carrying out certain obligations of the convention, States Parties shall have due regard to the principles embodied in the UNDHR and the rights expressly set forth in Article 5. 3

—American Journal of International Law

The UK tended to agree that Article (4) was impossible to implement (Schwelb 1966, 1025). ICERD, however, has emphasized the need to eliminate not only acts of discrimination but also the roots of discrimination, namely “prejudices and objective socio-economic conditions.” This is the likely objective of Article (4), which requires the criminalization of the act of spreading racist ideas. Part of the problem with this is that an act not subversive to U.S. law and order may be quite dangerous in another country without the same legal and social
controls and norms (Meron 1985, 297–9). Apparently, some Western states have defended the rights to freedom of speech and association over the right to not be discriminated against.

Since the convention entered into force, debate about these rights has continued among committee homes. The positions of significant actors are outlined below (Meron 1985, 301):

- UK: Article (4) dissemination clauses should be carried out with full respect for rights in the Universal Declaration of Human Rights.
- Belgium: Laws must be in full compliance with Article (4), while at the same time allowing freedom of expression and association.
- U.S.: "[Limit] the scope of the obligations assumed under the convention to those which would not restrict the right of free speech as guaranteed by the U.S. Constitution and those which would not restrict the right of free speech as guaranteed by the U.S. Constitution and laws of the United States."
- West Germany: "After careful consideration, [Germany] has reached the conclusion that dissemination of opinions of racial superiority should be punishable if it was intended to create racial discrimination or hatred."

States having their own separate interpretations of the most far-reaching and controversial clauses of the treaty would be consistent with realist expectations. However, at one point the Secretary General intervened and drafted the "Model Law Against Racial Discrimination," clarifying what kind of laws states ought to have to be in compliance. Since then, states including Italy, New Zealand, Russia, South Africa, Croatia, and Spain are among countries that have modified laws to be more in compliance with this interpretation of Article (4). Even the U.S. Supreme Court, in the case Wisconsin vs. Mitchell, ruled that tougher sentencing for racially motivated crimes is constitutional (Lerner 1996).

That the Secretary General had to step in and clarify the meaning of Article (4) is evidence that the committee has not conclusively handled some of the more difficult issues on its own; the positive reaction of states, though, is more than realists would predict. As far as the level of commitment to the treaty is concerned, debate about Article (4), as well as different views concerning the right to discriminate privately, has largely been unresolved. It is clear from reservations and statements that states have their own interpretations, and while the committee has also attempted to rule on these matters, states made sure before agreeing to the convention that they would have an escape clause.

**Hypothesis 3: Enforcement Conditional on State Involvement**

The third hypothesis is that the strength of the enforcement mechanism would be conditional on the involvement of state's parties. Thus, ICERD should have little power independently. There is conflicting evidence that the committee is both relatively weak and that it has expanded its powers and influence. A weak committee would be unable to coerce states to comply with the treaty obligations.

According to Part II of the convention, a committee is to be composed of "eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals" (Article 8:1). Members of the committee do not serve as state representatives but are nonetheless more closely associated with their states than other committee IGOs; a given representative may only be nominated by his or her state because
states cannot nominate other nationals. Also, ICERD specialists are compensated by their respective states for services (Schwelb 1966, 1033). This would make ICERD more subject to state preferences and politics, arguably weakening the committee as a whole and allowing states more power.

State’s parties are required to submit a “report on the legislative, judicial, administrative or other measures which they have adopted” (Article 9:1) within one year of entry into force and then every two years; this gives the committee time to analyze reports and to request more information. Reporting is the main instrument for monitoring and enforcement.

Schwelb called reporting “a measure of implementation which is more acceptable to governments than judicial proceedings and arrangements for the quasi-judicial settlement of complaints. In certain contexts it has proved very useful and effective” (1966, 1034). In its work, the committee as a whole cannot consider outside documents, though individuals on the committee are not restricted in the kinds of information they may accumulate (Prado 1985, 499).

The committee itself submits reports to the General Assembly. Some wanted the committee strictly linked to state’s parties, others wanted it to be a UN organ. Italy proposed a compromise inherent in the treaty: principles in ICERD apply to all member states of the UN, but the obligations are only binding on state’s parties to convention (Prado 1985, 498). While realists may question the power of reporting, the committee has since been effective and expansive with the reporting system. In the sixth session, the committee decided to invite a representative of state’s parties to defend and explain reports (Santa Cruz 1977, 37–9). In the seventh session, the committee asked to know more about Article (4), which requires states to make certain acts criminal offenses. The committee requested that states report on specific laws that had been passed or on what laws already existed (Santa Cruz 1977, 39). This shows that ICERD has since actively engaged state’s parties, probably realizing that states were not certain about what to report on. In this way, ICERD can make recommendations on reporting procedures, which then become standard for all state’s parties. Also, ICERD has had states report on matters of noncompliance.

Almost by default then, ICERD can interpret the convention and make additional demands; State’s parties may or may not accept them, but because ICERD considers the reports, it has some sway in how states are required to implement convention obligations (Meron 1985, 285).

Success through reporting has been mixed. The committee asserted, “Legislation in accordance with Article 2(1d) is mandatory for all States Parties regardless of their circumstances.” And while “discussions with the committee have been instrumental in the enactment of specific legislation prohibiting racial discrimination by some sixty States Parties, ... some twenty-five States Parties maintain that no specific legislation on racial discrimination is required under [this article] because racial discrimination does not exist in their territories” (Mahalic and Mahalic 1987, 85–8).

Realists also predict that the committee may become politicized and fragmented. Schwelb admitted to this possibility, arguing that as an institution the committee may form its own interests or become a forum for disagreement between factions. Mr. Dechezelles, a particularly outspoken committee member nominated by France, illustrated this potential. Of
a Belarusian report, he said “[I am] skeptical of statements claiming that in whole continents, or at least in a very large area of the world, not a single case of racial discrimination had been brought before the courts because racial discrimination had completely disappeared among the population.” Another committee member, Mr. Sviridov, later commented: “[racially discriminatory] practices [do] not exist in socialist countries,” adding that he, “could not agree . . . that racism was an inherent evil in every man” (Banton 1996, 124). This example shows that a fractioned committee would likely give mixed signals to states' parties and prevent an effective approach. Such disintegration is consistent with realist predictions, though in light of the benefits to security, states may be more inclined to cooperate. Clearly, the polarization of the international system is evident in this anecdote.

Another author stated contrarily in 1985 that ICERD based its actions more and more on a group of formal guidelines (Prado, 507). While I have no evidence of this, I would comfortably predict that with the spread of capitalism and democracy, states that formerly denied the existence of racial discrimination would be more willing to work with the committee to recognize and correct it.

In addition to reporting, the convention allows states to monitor one another and alert ICERD to violations. Article (12) allows for an ad hoc Conciliation Commission composed of five members. Appointed by “unanimous consent” of parties involved, this commission then adopts its own rules. According to Article (13), the commission submits a report about the facts and recommendations, then the committee chairman gives it to the states, and after three months the states accept or decline. The convention makes no other mention of this process, which is not strong: these conciliatory commissions can issue nothing legally binding. This conciliation process is consistent with realist predictions; a powerful process would result in a legally binding, enforceable decision.

In summary, the second prediction of realists, that the treaty would be non-binding in nature with weak enforcement features, is mostly consistent. The treaty has as its primary instrument a reporting mechanism and has no capacity to issue binding disputes. As shown above, the committee has not historically presented a unified face, though it may increasingly do so in the future. Also, the biggest problem with reporting is when states either do not report at all or take too long to submit reports (Prado 1985, 493). However, through the dialogue allowed by the reporting process, the committee has effectively helped states pass more meaningful and effective national laws against racial discrimination. In this regard, reporting may be an influential tool. This principle seems to be in line with theories about soft power: a committee to hold states accountable even through just dialogue can bring about change. It is also clear that while the committee members have disagreed, the work of the committee is carried out largely without a great deal of outside influence. In this regard, ICERD may be taking on a more independent role than realists would have predicted.

Hypothesis 4: Limited Success and Inability to Change Structures

The fourth and final hypothesis is that ICERD would not dramatically change either internal or external affairs and its accomplishments would be limited.

Mahalic (1987, 101) stated, “It is noteworthy that the combined efforts of the committee and States Parties . . . have clarified misconceptions, fostered more consistent interpretations
of the convention, and resulted in a greater degree of compliance with its provisions by a majority of States Parties.” Banton added to this positive assessment with two of the committee’s achievements: first, states have much better laws; and second, the committee is now established, autonomous, and generally not political (1996, 8–10).

Concerning the potential efficacy of a then newly formed treaty, Hernán Santa Cruz reported that states have adopted a “great variety of measures,” some legislative and some constitutional, to pursue the ends of the treaty. He also gave an exhaustive list of various bans on discrimination in many constitutions (1977, 49). Cruz suggested that the treaty prompted a rush to bring national laws against anti-discrimination in line with ICERD demands. In one way, the direct cause and effect is irrelevant; a convention such as ICERD draws attention to a matter when states are challenged to sign and ratify. This is one way the UN and other international organizations influence state behavior, somewhat like an interest group would lobby.

While ICERD may be effective, there are numerous examples of persistent, intense discrimination in member states. Three examples of such discrimination follow:

1. Caste discrimination has arguably been one area of failure for ICERD and other UN Human Rights bodies. There has been a failure to define, research, and actively pursue policies against this; there is even debate about whether or not caste discrimination qualifies as a form of racial discrimination. UN action is referred to as “a story of selective perception, tepid reactions and token gestures” (The Hindu 2001).

2. The Bangladeshi constitution declares that the state shall not discriminate against any citizen on grounds of religion, race, caste, sex, or place of birth. Bangladesh is an ICERD member; ICERD has ordered that the constitutional provision is not enough. However, Bangladesh has yet to pass specific laws criminalizing discrimination, and Bangladesh itself continues to discriminate. For example, the Jumma people do not receive equal rations and have not received previously confiscated land back. This is a case of discrimination against a group of indigenous people (Asian Centre for Human Rights 2008).

3. Japan has argued about the term “national origin” since 1946. It believes that the term is nothing akin to race or ethnicity. Instead, “the term . . . should mean the legal nationality one had before migrating from one country to another, or before naturalizing in a country in which one was born an alien” (Weatherall 2007).

Paul Roth of the University of Otago called the main method to encourage compliance “naming and shaming.” Roth reported a more positive case with New Zealand, when ICERD expressed a number of concerns about a particular law and made recommendations, requesting that New Zealand include an update in the next report. Roth congratulated ICERD for what he called constructive dialogue, though he lamented some of the consequences of New Zealand being called down. First, New Zealand had a nearly flawless human rights record. Second, ICERD will be looking closely at New Zealand for the indefinite future. Third, other treaty bodies will also look into the issue. New Zealand later reported on the implementation of the law (ICERD 2007). For states like New Zealand, which cares about its human rights record, the opinion of the international community matters, and this is an incentive to comply and avoid scrutiny.
Two references to expert opinions, one of them quite dated, and four anecdotes are mostly inconclusive about the fourth hypothesis. ICERD has not drastically changed the structure of the international system, though it appears that on the national level many states have adjusted old laws and passed new ones in attempts to comply with the treaty. It is also clear that discrimination will remain pertinent.

Conclusion

Article (55) of the UN Charter states that the UN is to work for "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion" (Banton 1996, 21). The UN has taken that mandate to form ICERD, to which many states are now a party. This paper has given four separate realist hypotheses concerning an anti-discrimination convention and tested them, which test has produced mixed results; some cases were more conclusive than others. ICERD seems to be a relatively weak body, yet it has still influenced national laws and state actions. While full compliance to this convention may never be attainable due to the nature of racial discrimination, it can be concluded that ICERD has been at least partially successful in helping the UN fulfill its mandate without distinction. Given the security implications involved, realist predictions are more accurate than I would have expected. A more thorough study would likely include a detailed analysis of reservations, national laws, and the evolution of international attitudes towards minorities.

NOTES

1. Interestingly, this debate about the origins of authority surfaces in another form in the various views defining human rights. The Soviet Union commonly held that there are no rights without a powerful state, while the West claimed human rights exist independent of a state and can act against a state.

2. The reservation lodged upon ratification also discusses article four, as well as the overall respect for privacy that the constitution promises.

3. Article (5) states that the rights of freedom and expression are to be granted without distinction.

4. The draft law states: 1) it shall be an offence to threaten, insult, ridicule or otherwise abuse a person or group of persons with words or behavior that may be interpreted as an attempt to cause racial discrimination or racial hatred, and 2) it shall be an offence to defame an individual or group of individuals on racial grounds. Organizations that violate these restrictions should be declared illegal and prohibited.

5. Banton reports that no state has ever gone through this commission process. That may be because most states resolve violations through negotiations.

6. I have chosen not to include any in-depth discussion of the treatment of minorities or self-determination in this paper.

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