

Is the United States bound by the CCPR in relation to occupied territories?

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Abstract

The US has been, since September 8th, 1992, a State party to the International Covenant of Civil and Political Rights (CCPR). While it denies the latter's direct applicability and has not issued any implementing legislation, and while it has severely restricted the scope of the CCPR as applicable to it by extensive reservations, understandings and declarations, there can be no doubt that (at least) within these limits, the US is bound, under international law, by the CCPR. The question is whether this applies also to occupied territories, or other territories under the effective jurisdiction of the US outside its proper territory. There is another, more complicated question connected with the one above i.e. to what degree, if any, a Security Council resolution may dispense the US from respecting its CCPR obligations, if any, in occupied or assimilated territories.

The first question deals with the territorial aspect of jurisdiction: it asks whether the US is responsible, under the CCPR, for its actions in occupied or assimilated territories. The second question may best be formulated in this way: is it a valid defense, under the CCPR, against the reproach of a human rights violation by a State party in occupied or assimilated territories that this violation has been authorized by a Security Council resolution (such an

authorization generally taking the form of an unrestricted authorization of „all necessary measures“)? In principle, the answer must be „yes“. But this „yes“ may be qualified. It is conceivable that the States parties to the CCPR have to respect the international law duty inherent in every treaty not to frustrate the objects of that treaty. Within the framework of this question, the first question is whether a State party to the CCPR (the US) is bound by that treaty when participating in Security Council decision-making. The next question is whether a State party's allowing the adoption of a Security Council resolution unrestrictedly authorizing security forces in the territory of their deployment to take „all necessary measures“ infringes, by itself, an obligation in relation to the CCPR.

Both questions will be answered in the affirmative. However, this will not affect, in principle, the authority and the effects of a Security Council resolution voted regardless. But the general international law principle that no State must profit from its own wrongdoing may prevent a State from relying on a Security Council resolution in defense against the reproach of having infringed the CCPR in cases in which it was itself instrumental in bringing about that resolution and was thereby violating the CCPR.