

Professor Paust posted an op-ed piece on Jurist, commenting on what President Obama should have stated with regard to U.S. compliance with international law in his recent address to the U.N.

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**What Obama Should Have Said: US Compliance with International Law**

JURIST Contributing Editor **Jordan Paust of the University of Houston Law Center** says that to really deliver on his recent declaration at the UN that "international law is not an empty promise, and that Treaties will be enforced," President Obama should have pledged aggressive action to withdraw erroneous US reservations, understandings, and declarations and to enact new legislation showing real domestic commitment to the international rule of law....

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President Obama's historic remarks at the United Nations on September 23rd entitled "Responsibility for our Common Future" are of particular relevance for those who have been waiting for the United States to comply more fully with its treaty obligations in the areas of human rights law and international criminal law. The President noted that some believe more generally that "America has acted unilaterally, without regard for the interests of others," and that with respect to international law, "[t]he world must stand together to demonstrate that international law is not an empty promise, and that Treaties will be enforced."

With apologies to the President, I offer (fictitious) follow-up remarks that were not recorded:

Today, I sent formal notice to the U.N. Secretary-General that the United States withdraws its erroneous prior "understanding" that Article II of the Genocide Convention merely reaches prohibited conduct when there is a specific intent to destroy a relevant group in whole or in "substantial" part. The treaty expressly covers an intent to destroy a relevant group "in part" and does not contain the word "substantial," nor does any other international criminal law instrument that defines the crime of genocide as it exists under customary international law (such as the statutes of the International Criminal Tribunal for the former Yugoslavia [ICTY], the International Criminal Tribunal for Rwanda [ICTR], and the International Criminal Court [ICC]).

Clearly the unilateral prior understanding was in error. "The people of the world want change. They will not tolerate those who are on the wrong side of history" and "transformative change can be forged by those who choose the side of justice." The United States will now assure that the Genocide Convention is "not an empty promise." In order to permit enforcement of our treaty obligations under the Convention (which are

otherwise later in time and which prevail against inconsistent legislation), I have asked Congress to delete Section 1093(8) of the U.S. genocide legislation. It is clearly incompatible with the object and purpose of the treaty and nearly assures that the United States will not be able to prosecute the crime of genocide and fulfill U.S. obligations under the treaty [see, e.g., 33 Vermont L. Rev. 717 (2009)]. Under present legislation, a perpetrator would have to have an intent to destroy “part of a group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity.” This is clearly improper, it could make our commitment under the treaty an empty promise, and it places the United States “on the wrong side of history.”

I have also asked Congress to finally enact legislation that incorporates “crimes against humanity” by reference, as we have done with respect to piracy and at least one set of laws concerning all violations of the laws of war.

With respect to U.S. obligations under human rights law, I have sent formal notice to the Secretary-General that the United States withdraws the prior U.S. Declaration No. 1 concerning partial non-self-execution of the International Covenant on Civil and Political Rights (which, in any event, did not apply to the mandate in Article 50), since the international community has long recognized that it is substantially incompatible with the object and purpose of the treaty, void ab initio as a matter of law, and of no lawful effect.

I have also withdrawn the attempted reservation to the Convention Against Torture that had declared erroneously that the U.S. “considers itself bound by the obligation under Article 16 ... only insofar as” the treaty’s prohibitions of cruel, inhuman, and degrading treatment match what is covered under the U.S. Constitution. The unilateral consideration was in error and, as the international community has long understood, incompatible with the object and purpose of the treaty and, therefore, has been void ab initio as a matter of law. I have withdrawn a similar putative reservation to the International Covenant that had rested on the same erroneous consideration. I will also ask Congress to pass new legislation that assures full coverage of the Convention Against Torture’s prohibitions of torture and cruel, inhuman, and degrading treatment. We also hereby make known to the world that we formally recognize that human rights law applies during times of armed conflict and that Article 2, paragraph 2 of the Convention Against Torture expressly affirms that “a state of war or a threat of war” cannot obviate the treaty-based prohibition of torture. We will fully comply with our obligations under all relevant treaties, including that of every member of the United Nations to assure “universal respect for, and observance of, human rights.”

With respect to U.S. obligations under international criminal law concerning genocide and crimes against humanity and the obligations of the U.S. under human rights law, “[w]e have reached a pivotal moment. The United States stands ready to begin a new chapter of international cooperation – one that recognizes the rights and responsibilities of all nations.”

Jordan J. Paust is the Mike & Teresa Baker Law Center Professor at the University of Houston. His suggestions for presidential withdrawals of erroneous putative reservations, understandings, and declarations and for new legislation appear in recent writings such as “The Absolute Prohibition of Torture and Necessary and Appropriate Sanctions,” 43 Valp. L. Rev. 1535, 1570-73 (2009); and “The Need for New U.S. Legislation for Prosecution of Genocide and Other Crimes Against Humanity,” 33 Vt. L. Rev. 717 (2009).