opposes accession by the United States to the Convention on the Political Rights of Women; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of this Association to the President of the United States, the chairman and members of the Foreign Relations Committee of the United States Senate, and the Ambassador of the United States to the United Nations; and

BE IT FURTHER RESOLVED, that the Chairmen or other representatives of the Association's Standing Committee on Peace and Law Through United Nations and of the Section of International and Comparative Law be authorized to appear before appropriate committees of the Congress, and to cooperate with the executive departments of the Government of the United States, to present the views of the Association as herein expressed.

Excerpts from the Statement of Max Chopnick

testified September 13, 1967, before the Senate Committee on Foreign Relations.

The debate in the House of Delegates August 8 and 9, 1967, and the adoption of the Section's Resolution.

. . . ABA President Orison Marden called the Delegates' attention to [the July] issue of *The International Lawyer* and urged all of the Delegates to examine the reports and arguments on these treaties. . . . In the House of Delegates, Mr. [Eberhard P.] Deutsch, for the Joint Committee, vigorously urged adoption of the Committee's recommendation to oppose the three treaties [Forced Labor, Political Rights of Women, and Supplementary Slavery Conventions]. The Section presented its Resolution as a substitute. This was tabled. A Resolution in favor of the three conventions was then offered as a substitute for the Joint Committee's recommendation. The position of Ambassador Goldberg was made known to the Delegates. Attorney General Ramsey Clark spoke in support of the motion for adherence to the three Conventions. He pointed out that the provisions of the three Conventions fall far below our own existing standards of human decency, that they are wholly consistent with our Constitution and require no implementation by the Congress or by the legislatures of the States as the rights under these conventions have been enjoyed by American citizens for many years, that he saw no Congressional impediment to the application of the provisions of these treaties or to

our adherence to them, that the test as to whether a convention is domestic in its nature is whether it is an appropriate matter of international concern and human rights are clearly matters of great international concern, that we must maintain our leadership in the field of human rights and believed, as did President Kennedy, that we adhere to the three Conventions to protect our heritage on an international scale.

Arguments were made for and against the treaties on constitutional and international law grounds and on considerations of policy. After one of the Delegates took strong issue with the provisions of the ILO Convention, President Marden moved (and the motion was adopted) to amend the Resolution in favor of the three Conventions to provide as to the Forced Labor Convention that ratification be subject to an understanding that the Convention is not applicable to prison labor imposed after conviction for participating in an illegal strike or imposed for violation of injunction against a strike.

The substitute Resolution to favor the three Conventions, with the above understanding on the Forced Labor Convention, was defeated by a vote of 122 to 87.

After the House of Delegates adopted a motion to lift from the table the substitute Resolution of the Section, a motion was made to amend the substitute Resolution by striking the recommendations of no action on the Forced Labor Convention and opposition to the Political Rights of Women Convention. This motion was defeated by a vote of 111 to 96.

A motion to substitute the Section Resolution for that of the Standing Committee was adopted by vote of 115 to 92. Thereafter the Resolution of the Section was overwhelmingly passed.

Each Treaty Should be Judged on its Own Merits

The majority of the Section council present at the April 1967 meeting (and also at the August 1967 meetings) were of the view that the treaties be considered separately. Even those most strongly advocating adherence to the three treaties agreed that "each treaty must, of course, be looked at individually and considered on its individual merits." (*The International Lawyer, ibid.* p. 644). The Resolution adopted by the House of Delegates of the Association reflects, in its action, separate consideration as to each treaty, and acceptance by the Association of the grounds urged by the Section in support of its Resolution. . . .

I

THE SUPPLEMENTARY CONVENTION ON THE ABOLITION OF SLAVERY, THE SLAVE TRADE AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY

We recommend accession to this Treaty. We believe this Treaty to be consistent with the provisions of the Thirteenth Amendment to our Constitution. Unquestionably, slavery and the slave trade are matters of international concern. These are matters which, since early in the nineteenth century formed appropriate subjects for international treaties. The Treaty of Ghent (1814) between the United States and Great Britain required the two states to abolish the slave trade. (1 Malloy 612, 8 Stat. 218). While the United States was not a party to the Congress of Vienna, signed the following year (1815), that Treaty condemned the slave trade in principle. The Treaty of London (1841) between Great Britain, Austria, Franch, Prussia, and Russia provided for international cooperation in the suppression of slave trade. (30 B.F.S.P. 269). In 1842, an Anglo-American Treaty provided for naval cooperation of the two powers to suppress the slave trade (1 Malloy 650, 8 Stat. 572), and both governments party to that Treaty in the early 1860's established the right to board and search on the high seas to apprehend slave traders. In 1885, the General Act of the Berlin Conference, (the United States joined in this) declared that the Congo should not serve as a market or route for slavery. In 1890, our country was a party to the General Act of the Anti-Slavery Conference of Brussels, which provided for supervision of slave traffic at points of origin, across land routes, and in ports, and set up a supervision zone on the high seas. Later, and in 1919, the General Act of Brussels was superseded by the Convention of Saint-Germain, to which the United States was also a party, under which the parties undertook to secure the complete suppression of slavery and of the slave trade by land and sea.

The basic Treaty, which the Convention under discussion seeks to supplement, was negotiated under the auspices of the League of Nations and is known as the Geneva Convention on Slavery of 1926. We have been a party to that Treaty from its inception.

Thus we have had a long tradition in the efforts to suppress slavery and the slave trade and a long history of achievement in this field.

The Supplementary Slavery Convention was adopted by the

United Nations on September 7, 1956, and came into force among the participating states on April 30, 1957. As of June 1967, 69 states have become parties to this Convention.

This Convention requires participating states to take all practicable and necessary legislative and other measures to bring about as soon as possible the complete abolition of certain institutions and practices which are regarded as similar to slavery, namely, debt bondage, serfdom, involuntary marriage or transfer of women for payment, transfer of widows by inheritance, and exploitation of child labor.

"Debt bondage" and "serfdom" are expressly defined in this Treaty. These practices come within the prohibition of our Thirteenth Amendment to the Constitution proscribing slavery and involuntary servitude within the United States or any place subject to our country's jurisdiction.

The other practices and institutions outlawed by this Treaty are deemed similar to slavery, and contravene the Thirteenth Amendment, our peonage laws, or our public policy.

State laws prescribe minimum ages for marriage and provide for their solemnization and recording. So, it is not believed that Federal legislation would be required as to the obligation on the proscribed bride-price institution or practice. Federal and State legislation regulate child labor. The Fair Labor Standards Act of 1938, 29 U.S.C. Sec. 212(c) prohibits oppressive child labor. Both Federal and State statutes prohibit employment of children under certain ages.

The Supreme Court has applied the Thirteenth Amendment prohibitions to peonage and debt bondage as well as to slavery. *Bailey v. Alabama* 219 U.S. 219 (1910); *Hodges v. U.S.* 203 U.S. 1 (1906); *Clyatt v. U.S.* 197 U.S. 207 (1905); Peonage Cases 123 F. 671 (1903); *U.S. v. Reynolds* 235 U.S. 133 (1914); *Taylor v. Georgia* 315 U.S. 25 (1942); *Pollock v. William* 322 U.S. 4 (1944).

Article 10 provides for referral of any dispute on interpretation or application of this Treaty to the International Court of Justice.

II

THE CONVENTION ON FORCED LABOR

This Treaty, which proved to be the most controversial in the debates in the Section, stems from the work of the International Labor Organization (ILO) and its study of the nature and extent of prob-

lems raised by the existence in the world of systems of forced or compulsory labor employed as a means of coercion or as punishment for holding or expressing political views. As is well known, the ILO consists not only of government representatives but also representatives of employees' organizations and employers' organizations.

Whereas, the terms "Debt Bondage" and "Serfdom" are defined in the Supplementary Slavery Convention, the Forced Labor Convention contains no definition of the term "forced labor." This Treaty seeks to suppress and to prevent the use of any form of forced or compulsory labor (a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to established political, social, or economic systems; (b) as a method of mobilizing and using labor for economic development; (c) as a means of labor discipline; (d) as a punishment for participation in strikes; and (e) as a means of racial, social, national, or religious discrimination.

This Treaty was adopted by the ILO Conference on June 25, 1957, and came into force for participating States on January 17, 1959. As of June, 1967, 78 states were parties to this Treaty.

At the meetings of the Section Council in which this Treaty was the subject of extended debate, much division of opinion existed. As noted before, a motion to support this Treaty made at the Meeting of the Section Council in April 1967 was defeated but a motion to support this Convention with certain understandings was adopted. At the Annual Meeting in August 1967, the Section Council, after further debate, recommended that no action be taken on this Treaty. The *ad hoc* Committee of the Section considered the many arguments for and against this Treaty but was divided in its views.

Some of the most earnest advocates of this convention recognized the ambiguities in the language describing prohibited forced or compulsory labor of certain types. Ambassador Goldberg, when questioned by members of the Senate Committee, at the hearings on these Conventions held before a sub-committee, expressed his opinion that the drafting history of this Convention showed that the provision relating to punishment for participation in strikes was not intended to apply to labor required of prisoners duly convicted of crimes and that the Convention did not apply to punishment for violation of court orders nor to sanctions imposed for participating in an illegal strike or other illegal labor activities.

In the proceedings before the House of Delegates the substitute

motion proposed for ratification of this Convention was amended, on motion of Mr. Marden, so that it proposed adherence to this Convention on the understanding that the Convention is not applicable to prison labor imposed after conviction for participating in an illegal strike or imposed for violation of injunctions against a strike. In submitting this amendment, Mr. Marden said that he understood that this was the language that the State Department had already indicated it would suggest to the Senate.

Arguments urged in the House of Delegates, as in the Section, against the Convention, centered on the problem of possible claims of violation on the part of our country in the event of imprisonment for illegal strikes or for violation of court orders issued in connection with strikes. Other situations were also cited that created doubts as to the meaning of the substantive clauses of this Convention.

The *ad hoc* Committee of the ILO, had before it in 1953 some 15 charges of conditions of forced labor in the United States made in the Economic and Social Council of the United Nations by representatives of Czechoslovakia, Poland, and the USSR. The *ad hoc* Committee concluded that most of the allegations were not relevant to its terms of reference or where they appeared to be relevant they were not substantiated by the evidence available to the Committee. On two charges, the Committee said that there appeared to be *prima facie* evidence of the existence of practices resembling forced labor, namely, in connection with illegal Mexican immigrants and in certain instances of peonage, but on further examination the Committee found that these practices are directly outlawed in this country and that there was no evidence to suggest that applicable laws are not enforced when offenses are brought to the knowledge of our government. It therefore concluded on these two charges that the practices do not constitute forced labor within the meaning of its terms of reference. However, as regards vagrancy laws, the Committee noted that in some states the term "vagrancy" is defined so broadly and the punishment for the offense is so severe that if extensively interpreted and applied, it could lead to a system of forced labor for economic purposes in the States concerned (Report of the *ad hoc* Committee on Forced Labor, Supplement No. 13 in Official Records of 16th Session of Economic and Social Council, 1953 (E/2431, page 124).

One of the strong arguments against this Convention in the Section Council and in the House of Delegates was that it impinged

upon Federal-State relationships and the above finding by the ILO *ad hoc* Committee suggested at least one area which would support this argument.

There is one item of considerable concern, namely, the effect of this Convention, if ratified by us, on the Connally reservation to the jurisdiction of the International Court of Justice. While this Convention contains no express provision for submission of any disputes as to interpretation or otherwise to the International Court of Justice it was argued that the Connally reservation would not apply. This appears to be so since when the United States ratified the ILO Constitution it accepted, without reservation; the first paragraph of Article 37 states:

> Any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice.

It is evident from the foregoing that the jurisdiction of the International Court of Justice applies to any subsequent convention concluded by ILO members in pursuance of the ILO Constitution. The Forced Labor Convention is such a Convention.

It was the consensus in the Section of International Law and in the House of Delegates of the American Bar Association that because of the ambiguities and the other questions pertaining to this convention that we should recommend, and we do recommend, that no action be taken on this Treaty.

III

THE CONVENTION ON THE POLITICAL RIGHTS OF WOMEN

This Convention was adopted by the General Assembly of the United Nations on December 20, 1952, and came into force among the participating States on July 7th, 1954. As of June 1967, 53 States were parties to this Convention.

Article I provides that women shall be entitled to vote in all elections on equal terms with men, without any discrimination. This statement is akin to the declaration in Article 1 of the United Nations Charter and Article 2 of the Universal Declaration of Human Rights.

The Nineteenth Amendment to our Constitution provides full suffrage for women.

Articles II and III provide that women shall be eligible for election to all publicly elected bodies, to hold public office, and to exercise all public functions established by national law, on equal terms with men, without any discrimination.

Unlike the other two treaties, this treaty permits reservations (Article VII). And it provides that any dispute, concerning the interpretation or application of this Convention which is not settled by negotiation, shall be referred for decision to the International Court of Justice (Article IX).

Some 23 of the States which have acceded to this Convention have filed reservations. This is almost 50% of the participating States. The nature of these reservations points up the doubts and questions that exist as to the application of the provisions that women may hold public office and exercise all public functions on equal terms with men without discrimination. The status of women in the armed forces of a State has been a frequent subject for reservation. Many countries, including India, Finland, and the United Kingdom, have filed reservations to exclude any right of women to hold military appointments. Some reservations are directed to the exclusion of women from services charged with maintenance of public order or unsuited to women because of the hazards involved. Included in the United Kingdom's long list of reservations are exclusion of women from holding certain offices primarily of a ceremonial nature, from serving on juries in certain territories, from employment of married women in certain diplomatic and certain Civil Service areas. In the light of the many reservations to this Treaty, the value of our participation would be quite limited.

Canada made a general reservation in regard to the entire Convention. This was to the effect that inasmuch as under the Canadian constitutional system legislative jurisdiction in respect of political rights is divided between the provinces and the Federal Government, a reservation was made in respect of rights within the legislative jurisdiction of the provinces. None of the other parties to this Convention exercised the right, under Article VII, to object to this reservation.

A newspaper reported some months ago a poll taken among the women of one of the Cantons of Switzerland. The women of that Canton did not have a right to vote or hold public office. Indeed, Switzerland, certainly an enlightened and cultured country, does not

grant women the right to vote or to be elected in Federal elections and, except for four Cantons, they cannot vote and are not eligible in Cantonal elections. The poll taken was to secure the views of the women of the Canton on their non-voting status. The women voted overwhelmingly against the right of women to vote. They did not want the right to vote. It was reported that the women believed that the men should bear the burden of voting and politics. If Switzerland joined this Convention, which it has not, it would have to foist on its women, and make compulsory, rights which its women do not want.

It is believed that such rights as are described in this Convention can be better achieved in countries which do not grant such rights to its women, from education and the desire of the women in those countries to change their customs and traditions. It is doubtful whether accession to this Treaty by the United States will effect changes in the few countries which deny women political rights. Indeed, the Economic and Social Council in the year 1950 concluded that the idea of such a Convention was perhaps not the best means to accomplish political rights for women and felt that propaganda and educational measures would be more effective. (United Nations pamphlet 1951, "Political Education of Women," p. 7.) On the basis of the foregoing, and because Federal-State rights may be involved, the Association opposes accession to this Treaty.