

## Are the “Human Rights” Conventions Really Objectionable?

President Kennedy, in July of 1963, sent three United Nations draft conventions to the United States Senate for its advice and consent to accession. The conventions, popularly called the “human rights” conventions, were the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the Convention Concerning the Abolition of Forced Labor; and the Convention on the Political Rights of Women. These three human rights draft conventions remained before the Senate, in its Committee on Foreign Relations and a special Subcommittee, for four years until 1967, when the Senate approved the Supplementary Slavery Convention on November 2, 1967.<sup>1</sup> The other two conventions, those on forced labor and women’s political rights, are still technically before the Senate,<sup>2</sup> though the Foreign Relations Committee recommended, after its Subcommittee’s 1967 hearings, non-accession to the two treaties.

The purpose of the present inquiry is to examine briefly the principal purposes of the three aforesaid human rights conventions, to examine key policy and legal issues raised in debates over any ratification, and to suggest a clearer analysis, than has gone before, of the basic constitutional issue—treaty dispute settlement jurisdiction.

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<sup>1</sup> U.S. Congress, Senate, 90th Cong., 1st Sess., November 2, 1967, *Congressional Record*, S15750-751.

<sup>2</sup> See Wisconsin Senator William Proxmire’s March 22, 1968, Senate speech urging ratification of the conventions on forced labor, women’s political rights, genocide (before the Senate since 1950), and freedom of association (latest convention to come before the Senate). U.S. Congress, Senate, 90th Cong., 2d Sess., March 22, 1968, *Congressional Record*, S3208.

To maintain manageable boundaries to the present inquiry, only the three much discussed conventions on slavery, forced labor, and women’s political rights will be considered here.

**The Conventions**

The Supplementary Slavery Convention, drafted by a Conference of Plenipotentiaries convened by the Economic and Social Council (ECOSOC) of the United Nations in Geneva in 1956, obligates contracting parties to abolish any existent slavery, slave trade, or similar practices (such as, *inter alia*, debt bondage and serfdom). Article 4 of the convention provides: "Any slave who takes refuge on board any vessel of a State Party to this Convention shall *ipso facto* be free."<sup>3</sup> This convention is an expansion on the 1926 Slavery Convention<sup>4</sup>—the only prior human rights convention which the United States has ratified.

The Convention on Forced Labor was drafted in Geneva by the International Labor Organization Conference in June of 1957. Simply stated, the convention obligates states parties to undertake "to suppress and not to make use of any form of forced or compulsory labour" as a means of political coercion, as a method of mobilizing labor for economic development, as a means of labor discipline, as a punishment for participation in strikes, or as a means of invidious discrimination.<sup>5</sup>

The Convention on the Political Rights of Women, adopted by the United Nations General Assembly at New York in 1953, provides, generally, that the contracting parties agree that suffrage and the right to hold public office shall be accorded to women without discrimination.<sup>6</sup> This convention is the only one of the three which provides, in Article VII, for accession with reservation.<sup>7</sup>

All three of the human rights conventions allow denunciation of accession by states parties after the following given time periods: every

<sup>3</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 266 U.N.T.S. 3, 40 (effective Dec. 6, 1967). The text of the convention is reprinted at U.S. Congress, Senate, 90th Cong., November 1, 1967, *Congressional Record*, S15685-86 and at 1 INT'L LAW. 590-94 (1967).

Subsequent citations to the convention will be by article numbers only.

<sup>4</sup> Slavery Convention of 1926, 46 Stat. 2183 (1929), T.S. No. 778, 60 L.N.T.S. 253 (effective March 21, 1929).

<sup>5</sup> Convention Concerning the Abolition of Forced Labor, 320 U.N.T.S. 291, 1 INT'L LAW. 594-97 (1967).

Subsequent citations to the convention will be by article numbers only.

<sup>6</sup> Convention on the Political Rights of Women, 193 U.N.T.S. 136, 1 Int'l Law. 597-99 (1967).

Subsequent citations to the convention will be by article numbers only.

<sup>7</sup> For a review of the three conventions and their backgrounds, see 1 Int'l Law. 602-03 (1967) and 2 Int'l Law. 20-26 (1968).

As of January 1968, 81 states had ratified the Supplementary Convention on Slavery. Treaties in Force 330 (Dept. of State, 1968). As of June 1967, 75 states had ratified the Convention on the Abolition of Forced Labor, and 50 states had ratified the Convention on the Political Rights of Women. Gardner, *A Costly Anachronism*, 53 A.B.A.J. 907, 908 (1967).

three years for the slavery treaty,<sup>8</sup> every ten years for the forced labor treaty,<sup>9</sup> and every year for the women's political rights treaty.<sup>10</sup>

### The American Bar Association Position

In May of 1967, the American Bar Association's Standing Committee on Peace and Law Through the United Nations recommended that the Association oppose Senate approval of the human rights conventions, primarily on the ground that the treaties were "concerned with matters essentially within the domestic jurisdiction of the United States."<sup>11</sup> The Standing Committee's recommendation did, it may be noted, exempt from its opposition the provision of the Supplementary Slavery Convention that "Any slave who takes refuge on board any vessel of a State Party to this Convention shall *ipso facto* be free."<sup>12</sup>

And, the American Bar Association's Section of International and Comparative Law, meeting in late April of 1967, adopted a "Suggested Compromise Resolution on the Human Rights Conventions."

In the compromise resolution, the Section favored United States accession to the Supplementary Slavery Convention, with special reference to the convention proviso in Article 4 that any slave taking refuge on board any vessel of a convention party was to be freed. In support of the slavery convention recommendation, the Section declared its position to be "consistent with the historical position of the United States in opposition to slavery and the slave trade."<sup>13</sup>

Addressing itself to the Convention on the Abolition of Forced Labor, the Section recommended non-ratification on the ground that the convention's ambiguities with respect to the coverage of servitude by persons lawfully convicted of crimes,<sup>14</sup> "raise problems of international adjudication over matters bordering essentially on the domestic jurisdiction of a single state."<sup>15</sup>

The Section further recommended that the United States Senate also not approve the Convention on the Political Rights of Women, on

<sup>8</sup> Article 14.

<sup>9</sup> Article 5.

<sup>10</sup> Article VIII.

<sup>11</sup> U.N. "Human Rights" Conventions, 1 INT'L LAW. 589, 601 (1967).

<sup>12</sup> *Ibid.*

<sup>13</sup> *Chairman's Report*, 1 INT'L LAW. 521, 531-32 (1967).

<sup>14</sup> For example, conviction for participation in strikes alleged to be illegal. Use of conscripted labor in periods of national emergency (storms, floods, earthquakes, and et cetera) could also be involved. *Id.* at 531.

<sup>15</sup> *Id.* at 532.

the ground that the convention "is concerned with matters essentially within the domestic jurisdiction of a state."<sup>16</sup>

At the August 1967 Annual Meeting of the American Bar Association in Honolulu, the House of Delegates adopted the Section (of International and Comparative Law) Resolution as the official American Bar Association 'policy position' with reference to the three human rights conventions before the Senate.<sup>17</sup> Thus, the American Bar Association "favors" ratification of the Supplementary Slavery Convention, "recommends that no action be taken by" the Senate with regard to the Convention on the Abolition of Forced Labor, and "opposes" ratification of the Convention on the Political Rights of Women.<sup>18</sup>

### Legal-Constitutional Issues

American decisional law defining the scope of the treaty-making power is often cited by both proponents<sup>19</sup> and opponents<sup>20</sup> of the human rights conventions.

The oft-quoted, classical test, as laid down by *Geofroy v. Riggs*,<sup>21</sup> requires that a treaty deal with "any matter which is properly the subject of negotiations with a foreign country." But what matters are properly the subjects of negotiations with a foreign country?<sup>22</sup>

<sup>16</sup> *Ibid.*

<sup>17</sup> Report by Max Chopnick, Esq., Section Delegate, on the Human Rights Convention, in the House of Delegates—Excerpts from Max Chopnick's Statement to the Senate Foreign Relations Committee, September 13, 1967, on the Human Rights Convention, 2 Int'l Law. 15, 19 (1968)

<sup>18</sup> Resolution Passed August 9, 1967, by the House of Delegates in Honolulu, *id.* at 17-18. The Section Resolution was substituted for that of the Standing Committee by a House of Delegates vote of 115 to 92. The resolution was then "overwhelmingly" passed.

<sup>19</sup> See, e.g., Ambassador Goldberg's letter of May 11, 1967, to American Bar Association President Orison Marden, Esq., reprinted in U.S. Congress, Senate, 90th Cong., 1st Sess., August 2, 1967, *Congressional Record*, S10607.

See Also Statement of Terence H. Benbow, Chairman, Committee on International Law, New York State Bar Association, U.S. Congress, Senate, Hearings [on the Human Rights Conventions] Before a Subcommittee of the Committee on Foreign Relations, 90th Cong., 1st Sess., pt. 1, at 193-94 (1967).

<sup>20</sup> See, e.g., Raymond, *Don't Ratify the Human Rights Conventions*, 54 A.B.A.J. 141, 142 (1968).

<sup>21</sup> 133 U.S. 258, 267 (1890).

<sup>22</sup> Another oft-quoted description of the scope of the treaty-making power (here again, both proponents and opponents of the conventions cite the same authority) is former Chief Justice Charles Evans Hughes' non-judicial explanation that, "The [treaty-making] power is to deal with foreign nations with regard to matters of *international concern*. \* \* \* [It] is intended for the purpose of having treaties made relating to *foreign affairs* and *not* to make laws for the people of the United States in their *internal concerns*. . . ." American Society of International Law, 1929 Proceedings, 194-96 (Emphases added.)

Migratory waterfowl protection clearly is a proper subject<sup>23</sup> and so apparently are slavery traffic<sup>24</sup> and many other diverse subjects touching on, for instance, commerce. Writer Raymond, citing the migratory waterfowl treaty and the slavery conventions, discerns the true test (of whether a treaty subject is proper) to be that of necessary "international cooperation"<sup>25</sup> to remedy an international problem. Thus, the problems of protection of migratory waterfowl and of outlawing international traffic in slaves, "*extending across state borders*,"<sup>26</sup> are proper subjects of international negotiations, and are therefore proper subjects of treaties.

But what of the conventions on political rights of women and on forced labor? Raymond thinks them to be "clearly domestic" subjects and beyond, or at least not amenable to, treaty-making.<sup>27</sup>

The two aforesaid conventions defy objective analysis, unless hazy phraseologies such as "international concern," "internal concern," and "domestic jurisdiction," are abandoned and realities examined.

An initial inquiry is whether any of the substantive provisions of the forced labor and women's political rights conventions conflict directly with statutory or decisional law. No such direct conflict is apparent.<sup>28</sup> However, the forced labor convention's commitment in Article 1 "not to make use of *any form* of forced or compulsory labour—\* \* \* (d) as a punishment for having participated in strikes. . ."<sup>29</sup> evokes the query whether or not due conviction and imprisonment for unlawful striking in violation of an injunction or of a statute (e.g., public employee non-strike acts) would violate the convention. The letter of the convention may seem to be violated in such a case. The spirit of the convention, however, appears unscathed, inasmuch as the convention's drafting history shows intention to exclude punishment for illegal strikes or other illegal labor activities.<sup>30</sup>

<sup>23</sup> *Missouri v. Holland*, 252 U.S. 416 (1920). In *Holland*, the treaty involved required both countries, Canada and the U.S.A., to take parallel actions to prevent indiscriminate slaughter of migratory waterfowl which flew from one country to the other.

<sup>24</sup> The Slavery Convention of 1926 and the current Supplementary Slavery Convention, both of which have been ratified by the United States, were aimed in substantial part at international traffic in slaves. Neither has apparently been judicially challenged on constitutional, or any other, grounds.

<sup>25</sup> Raymond, *supra* note 20, at 143.

<sup>26</sup> *Ibid.* (Emphases added.)

<sup>27</sup> *Ibid.*

<sup>28</sup> See Statement of Terence H. Benbow, *supra* note 17, at 194.

<sup>29</sup> (Emphasis added.)

<sup>30</sup> Some of the relevant drafting history, lifted from the context of debates over proposed amendments to affect the scope of convention Article 1(d) relating to proscription of forced

R. N. Gardner, attorney and author, notes that ratification by the United States, during the Hoover Administration, of the original 1926 Slavery Convention is reason enough for ratification of the present Supplementary Convention on Slavery. Thus, Gardner reasons, "Surely things which were within the treaty power forty years ago cannot be outside the treaty power today."<sup>31</sup> Gardner further reasons that if outlawing slavery can be a proper subject of treaty-making, then why not forced labor?—and, why not the outlawing of denial of basic rights to women "at a time when human dignity and a maximum use of a nation's resources are *so obviously a matter of international concern?*"<sup>32</sup> While the latter arguments and quotation may admittedly be tenuous on their faces, Gardner's arguments, when taken together, at least appear to take a somewhat more persuasive tack. Gardner says, in sum and substance, that if sufficient international considerations warrant a state's commitment to abolish any slavery or slavery traffic *within* its jurisdiction (arguendo, domestic jurisdiction, involving relations between a government and its own citizens), then outlawing forced labor and protection of women's political rights (suffrage and public office-holding) are of equal international import since similar

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labor "as a punishment for having participated in strikes," is the following:

"\* \* \* Several members found this reference unacceptable on the grounds that *many national laws prohibited strikes* in certain sectors or during conciliation proceedings, and that in other countries trade unions voluntarily agreed to renounce the right to strike in certain circumstances. \* \* \* They agreed that strikes could be declared illegal in certain circumstances. All that they were asking was that the penalty for having participated in a strike should not be forced labour. Some members stated that the penalty for taking part in an illegal strike might be imprisonment, which might involve *hard labour*. The Workers' members indicated that they were not concerned with this position, which they regarded as being *outside the scope of the intention* of the [adopted draft] amendment." International Labor Conference, Fourth Item on the Agenda: Forced Labor, Report IV(1) for 40th Session of 1957, 8 (Geneva, 1956). (Emphases added.)

Some similar history is found in the context of International Labor Conference debate over whether to include subparagraphs (c) [relating to "labour discipline"] and (d) in Article 1 of the forced labor convention:

"\* \* \* Participation in strikes may, in the public interest, be prohibited for policemen, firemen, etc., and offenders may be *imprisoned with hard labour in conformity with the law*. This should not be considered a violation of human rights. \* \* \* The Government [of New Zealand] could not agree that such imprisonment was unjust or an abuse of power by the State, and it believes this situation is true of many countries." *Id.*, Report IV(2) at 15-16. (Emphasis added.)

See also *Statement of A.J. Goldberg, Permanent Representative of the United States to the United Nations, Before a Subcommittee of the Committee on Foreign Relations*, in U.S. Congress, Senate, 90th Cong., 1st Sess., August 2, 1967, *Congressional Record*, S10607. The statement is reprinted in the same session's November 2, 1967, *Congressional Record*, S15745.

<sup>31</sup> Gardner, *supra* note 7, at 909.

On November 2, 1967, the Senate, by a unanimous vote of 77 to 0, consented to the Supplementary Slavery Convention (Exec. L., 88th Cong., 1st Sess.). U.S. Congress, Senate, 90th Cong., 1st Sess., November 2, 1967, *Congressional Record*, S15750-51.

<sup>32</sup> Gardner, *supra* note 7, at 910. (Emphasis added.)

government-citizenry relationships are involved. Actually, no internal American government-citizenry relationships would be directly affected by the three conventions since the First, Fifth, Sixth, Thirteenth, Fourteenth, and Nineteenth Amendments to the Federal Constitution already grant to Americans the protections in the conventions.

Detractors of Gardner's argument for ratification of the forced labor convention would at least point out that Article 1 of the forced labor convention cuts too broad a swath.<sup>33</sup> Thus, the *prima facie* terms of the forced labor convention would seem, for instance, to attempt prohibition of prison labor as punishment for participation in illegal strikes in violation of injunctions or of statutes.<sup>34</sup>

Detractors of the Convention on the Political Rights of Women pose seemingly even more substantial objections. Convention drafters, perhaps perceiving such potential objections, provided, in Article VII, for reservations to be made to any of the convention's provisions by any contracting party.<sup>35</sup> Neither of the other two human rights conventions contains permission for such reservations in the accession process.

As of 1967, some 23 states (almost 50% of the fifty participant states), which had acceded to the women's political rights convention, had filed reservations. Many states, for example India, Finland, and the United Kingdom, have filed reservations so as to exclude the right of

<sup>33</sup> Article 1 of the forced labor convention, *inter alia*, obligates signatory parties "... to suppress and not to make use of any form of forced or compulsory labour—\* \* \* (d) as a punishment for having participated in strikes; \* \* \*"

For a general reply to Gardner's arguments, see Deutsch, *International Covenants on Human Rights and Our Constitutional Policy*, 54 A.B.A.J. 238 (1968), which was written "... to demonstrate that in a proper perspective of 'human rights and fundamental freedoms' throughout the world, the concepts embodied in the Constitution of the United States are still a sound bulwark against creeping international encroachment onto the domestic dominion over our traditional national institutions."

<sup>34</sup> e.g., INT'L LAW. 589, 608 (1967).

But see 2 INT'L LAW. 15, 22 (1968) for the view, expressed by Ambassador Goldberg, 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." (Emphases added.) and note 30, *supra*.

<sup>35</sup> Article VII of the Convention on the Political Rights of Women provides the following:

"In the event that any State submits a reservation to any of the articles of this Convention at the time of signature, ratification or accession, the Secretary-General shall communicate the text of the reservation to all States which are or may become parties to this Convention. Any State which objects to the reservation may, within a period of ninety days from the date of the said communication (or upon the date of its becoming a party to the Convention), notify the Secretary-General that it does not accept it. In such case, the Convention shall not enter into force as between such State and the State making the reservation."

women to hold military appointments or to serve in the state's armed forces. Often, such reservations attempt to preclude women's participation in unsuited or hazardous undertakings. The United Kingdom's long list of reservations includes, *inter alia*, exclusion of women from holding certain public offices of a primarily ceremonial nature, from serving on juries in certain territories, and from employment in certain diplomatic and civil service positions. Canada has made a general reservation, with regard to the entire convention, to the effect that the legislative jurisdictions of the provincial governments within the Canadian federal constitutional system are not in any way bound or restricted by convention accession.<sup>36</sup>

The many reservations to the women's political rights treaty point up, perhaps, the equivocation of such participative efforts as have been made under the human rights conventions. Indeed, the extrinsic value of participation by the United States may be limited. Intrinsic gains, as concluded below, may, however, result from participation.

#### **The Real Constitutional Issue: Dispute Settlement Jurisdiction**

The real, though little articulated, issue underlying the debates attempting to define such concepts as "international concern" and to delineate boundaries for treaty-making, is *who* shall decide disputes arising under the treaties.<sup>37</sup> What body is to arbitrate disputes over adherence or non-adherence to the conventions by states parties?

The issue is not as thorny as may seem at first blush. At the outset, one may recall that, historically, the United States has not submitted any general compulsory jurisdiction over "disputes essentially within the domestic jurisdiction of the United States of America, as determined by the United States of America,"<sup>38</sup> to the jurisdiction of the International Court of Justice.

<sup>36</sup> INT'L LAW. 20, 25 (1967).

<sup>37</sup> One commentator hints at the issue of judicial sovereignty with the following summary: "Measures of implementation for human rights conventions touch upon some of the most fundamental questions in international law, such as the sovereignty of states, the position of individuals as subjects of international law, and the significance of the domestic jurisdiction clause in the Charter. For this reason, many states have been reluctant to accept more than the minimal means of implementation." *Issues Before the 22nd General Assembly—Human Rights: Covenants, Conventions, and Declarations*, International Conciliation 91 (September 1967/No. 564).

<sup>38</sup> The reference is to the "Connally Amendment" reservation of "domestic jurisdiction" under the Senate's compulsory jurisdiction declaration [consent resolution S. Res. 196, 79th Cong., 2d Sess.] pursuant to Article 36(2) of the Statute of the International Court of Justice.



However, the Supplementary Slavery Convention, as ratified by the Senate,<sup>39</sup> provides in Article 10 that any treaty dispute between signatories which is unsettled by negotiation “shall be referred to the International Court of Justice at the request of any one” of the disputant parties. Thus, by ratification, the Senate has, *arguendo*, accepted the prospect of possible future international judicial settlement of any slavery disputes arising under the convention. The precedent of American accession to the 1926 Slavery Convention and the 13th Amendment’s ban on Slavery in this country no doubt led the Senate to accept Article 10 with equanimity.<sup>40</sup>

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See *New York State Bar Association—Committee on International Law: To the members of the New York State Bar Association: Report on United Nations Conventions*, U.S. Congress, Senate, Hearings [on the Human Rights Conventions] Before a Subcommittee of the Committee on Foreign Relations, 90th Cong., 1st Sess., pt. 1, 184, 193.

Article 36(1) & (2) of the Statute of the International Court of Justice (to which the United States is party) provides the following:

Article 36

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation. \* \* \*

<sup>39</sup> U.S. Congress, Senate, 90th Cong., 1st Sess., November 1 & 2, 1967, *Congressional Record*, S15685 & S15751.

<sup>40</sup> Query, does Senate accession to Article 10 (the Supplementary Slavery Convention, in Article 9, allows no reservations to be made to the convention’s provisions) run afoul of Article III of the U.S. Constitution? Article III, §§1 and 2 state unequivocally that, “The judicial power of the United States, shall be vested in *one* supreme Court, . . . The judicial power shall extend to *all* Cases, . . . arising under. . . Treaties made, . . .” (Emphases added.) Nothing in Article III alludes to any court or body other than the Supreme Court as the arbiter of disputes arising under treaties. Of course, these Article III provisions may, on the other hand, be reasonably interpreted as not creating *exclusive* interpretational power over international agreements, since no such exclusive power is explicitly granted (the power merely “. . . shall extend . . .”), and especially since the very nature of international agreements, and conflicts of interpretation thereunder, bespeak the possible cognition of interpretations by foreign or international political bodies.

For an entertaining voyage into adjudicatory and enforcement problems in largely unenforceable international law, see Nathanson, *Constitutional Problems Involved in Adherence by the United States to a Convention for the Protection of Human Rights and Fundamental Freedoms*, 50 CORNELL L.Q. 235, 239 (1965), which investigates the plausibility of a hypothetical “Convention Court.”

Why, then, has the Senate balked at accession to the forced labor and political rights of women conventions?

Taking the case of forced labor first, since it may seem to present more formidable obstacles, one notes the striking feature that the forced labor convention, while itself silent on any judicial settlement or interpretation, would apparently subject states parties, who are members of the ILO, to possible treaty dispute interpretation by the International Court of Justice.<sup>41</sup> Detractors of ratification may point out that international propaganda could possibly use the convention to embarrass the United States (or any contracting party) in connection with some future notorious case or incident of imprisonment. But risk of such embarrassment by propaganda is always to some extent present—regardless of this country's policies or treaty commitments.

The "diplomatic embarrassment"<sup>42</sup> Ambassador Goldberg speaks of as resulting from failure of the Senate to ratify the human rights conventions is at least as great a—if indeed not a greater—propaganda risk as is accession.

At any event, states the world over will not cease to attempt to cleanse or protect their societies by convicting and imprisoning lawbreakers, regardless of any convention accession or interpretation. To fear that any strict, and arguably propagandistic, construction would be ascribed to the convention's "labor discipline" or "punishment. . . for strikes" proscriptions,<sup>43</sup> is shortsighted in view of states'

<sup>41</sup> The Constitution of the International Labor Organization contains rather elaborate provisions for ILO convention-treaty dispute settlement, both within the ILO (Articles 26 through 34 provide ILO member states, and thus the United States, with a complaint procedure for use where any other member state is not "... securing the effective observance of any Convention which both have ratified. . . .") and without the ILO (Article 37(1), and provides the following: "Any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of this Constitution shall be referred for decision to the International Court of Justice."). The Constitution of the International Labor Organization is set forth in PEASLEE, 2 *INTERNATIONAL GOVERNMENTAL ORGANIZATIONS* 1233 (The Hague: M. Nijhoff, 1961).

<sup>42</sup> Ambassador Goldberg's letter of May 11, 1967, to American Bar Association President Orison Marden, Esq., as reprinted in U.S. Congress, Senate, 90th Cong., 1st Sess., August 2, 1967, *Congressional Record*, S10607.

<sup>43</sup> The questioned labor provisions of Article 1 of the Convention Concerning the Abolition of Forced Labor are the following:

"Each Member of the International Labour Organization which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour—

\* \* \*

(c) as a means of labour discipline;

(d) as a punishment for having participated in strikes;\* \* \*

Note 30, *supra*, contains some convention drafting history which points out the realities requiring loose construction.

customary attempts at imprisonment of lawbreakers—be they felons, minor offenders, or labor strikers violating a statute or court order.

With reference to the Convention on the Political Rights of Women, questions of any dispute settlement need not present an obstacle. The convention, in Article VII, provides that reservations may be made at the time of accession. Thus the Senate could simply except the Article IX provision, for final dispute settlement by the International Court of Justice,<sup>44</sup> from any American accession.

The basic issue of dispute settlement is, therefore, soluble in the cases of both the forced labor and women's political rights conventions still before, or rather buried within, the Senate: The former treaty does not raise realistic or substantial interpretational obstacles, and the prospect of any international adjudication whatsoever may be avoided under the latter treaty.

#### **Where to Draw the Line—Some Policy Considerations**

The American Bar Association and the Senate Foreign Relations Committee have been debating what is, in essence, a demarcation exercise in treaty diplomacy. However, if one sets aside the already ratified Supplementary Slavery Convention, and considers only the two conventions on forced labor and the political rights of women, he sees immediately that traditional line-drawing, so to speak, of the boundaries of the scope of the treaty power is a hopeless exercise in tautology. Precious few guidelines flow from broad generalizations such as a requirement of "international concern" for treaty-making. Fruitful analysis of the realities and potentialities of effective diplomacy and maintenance of international political relations, by treaty, defies such sloganism.

The greatest possible danger involved in ratification of the two human rights conventions (on forced labor and women's political rights) is hazily apprehended possible future propagandistic reverses. The greatest possible gain involved in ratification is a substantial and exemplary foothold<sup>45</sup> on the threshold of the long journey toward effective and lasting international stability.

<sup>44</sup> Article IX of the Convention on the Political Rights of Women provides the following:

"Any dispute which may arise between any two or more Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation, shall at the request of any one of the parties to the dispute be referred to the International Court of Justice for decision, unless they agree to another mode of settlement."

<sup>45</sup> Writer Gardner advances four "positive" exemplary legal and diplomatic influence gains to be made from Senate ratification of the human rights conventions:

Clearly, the risks in accession are minute and remote, and the potential diplomatic gains are worth the price of experimental, good faith cooperation with the United Nations.

As Senator William Proxmire (Dem.-Wis.), a proponent of ratification, stated in one of his more than 175 pro-human rights convention speeches before the Senate: "The conclusion is inescapable. Where human rights are secure, peace is attendant. When the human rights of any people are threatened, peace itself is threatened."<sup>46</sup>

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"1. Ratification by the United States will encourage other nations to adhere to these conventions and implement their provisions in their own territories. \* \* \* 2. Ratification will put the United States in a better legal and moral position to protest infringement of these human rights in countries that have ratified the conventions but failed to implement them in practice. 3. Ratification will increase United States influence in the continuing U.N. (sic) process of drafting legal norms in the field of human rights. \* \* \* 4. Ratification will dissipate the embarrassing contradiction between our failure to ratify these conventions and our traditional support of the basic human rights with which they are concerned." Gardner, *A Costly Anachronism*, 53 A.B.A.J. 907, 908 (1967).

Rosalind S. Pollack lists somewhat similar arguments for "The Long-Range Value of [non-treaty] Documents on Human Rights" in her *The Individual's Rights and International Organization* 37-39 (Northampton: Smith College, 1966);

"First, it is clear that before machinery of enforcement can be established there must be something solid to enforce. \* \* \* The value of international instructions which do nothing but invoke 'human rights' lies in their rough estimation of what one might call a universal sense of right, . . . \* \* \*

"Secondly, the frequently voiced argument against 'declarations,' or technically unbinding human rights instruments, seems wholly untenable. \* \* \* To contend that such documents, lacking 'strict legal authority,' engender hopes in the common man which they cannot fulfill, and therefore give rise to disillusionment, is to ignore not only the proposition suggested above—that 'invocation' of human rights must precede their 'legislation'—but also the nature of domestic change. Perhaps, indeed, the greatest value of 'universal declarations' is their influence, however moderate, on 'world opinion'; \* \* \*

"Finally, there is the power of event, . . . we 'illegalize' actions that violate our sense of right only when they have reached mass, and hence unignorable, proportions. The atrocities of World War II gave rise to the U.N. Charter provisions, . . . \* \* \* Thus, . . . *principle eventually becomes declared law, and declared law becomes enforced law, in a gradual but irrevocable process.*" (Emphasis added.)

<sup>46</sup> Speech of Wisconsin Senator Proxmire before an executive session of the United States Senate, on the subject of the Supplementary Slavery Convention, U.S. Congress, Senate, 90th Cong., 1st Sess., November 2, 1967, *Congressional Record*, S15744-45.