

United States Ratification of the United Nations Covenants

*Richard B. Lillich**

I would like to congratulate Professor Wilner, members of the student body, and Amnesty International for organizing this conference. You may not know it, but it is the first regional meeting of the American Society of International Law, or indeed any meeting of the American Society of International Law, that has addressed the issue of ratification of these treaties since 1976.¹ This fact may suggest one reason why these treaties have not moved much more rapidly in the ratification process. I would like to express my appreciation to Professor Sohn as well. It goes without saying that he is Mr. International Human Rights Law. Several years ago he very graciously, after some publication of mine, wrote me a letter saying he was passing me the human rights torch. After his presentation today, I think it is apparent that he just handed me a flashlight because he obviously still carries the torch himself. Lastly, I would like to issue a bit of an apology, because while I did send the organizers a little extract from a speech I gave at the American Society four years ago that you have been given,² basically that is all that I have to say today. The speech is still relevant because nothing has happened in the last four years in so far as what we are concerned with here today. We have had no progress on the Covenants whatsoever, as I shall point out in detail. With that as background, let me get to my remarks.

My first point concerns the causes for nonratification. I think we are not talking law so much as we are talking politics and political will. As an academic, it is somewhat embarrassing to have to give a stump speech, but that is really what I am going to give today. A lot of the discussion on the Covenants is focused on narrow legal issues. There are obviously some important legal issues concerned.

* Howard W. Smith Professor of Law, School of Law, University of Virginia, Charlottesville, Virginia.

¹ Panel, *U.N. Human Rights Covenants Become Law: So What?*, 1976 PROC. AM. SOC'Y INT'L L. 103.

² Lillich, *U.S. Ratification of the Human Rights Treaties: Now or Ever?*, 1986 PROC. AM. SOC'Y INT'L L. 419.

The hearings that were held in 1979,³ a small book to which I shall refer later on,⁴ and a handful of articles have addressed these issues. Basically, however, there has not been a serious and sustained look at the legal issues with respect to the Covenants since they were submitted by President Carter back in 1978.⁵ One of the reasons for this lack of a serious study may be the fact that the Covenants present few real legal difficulties.

In the grand tradition of the American Society of International Law, its founder Elihu Root and other members like Chief Justice Hughes, Secretary of State Stimson and Secretary of State Hull all were government lawyers as well as practitioners. It seems to me unfortunate that in our legal community today we have splits between academics, government officials and practitioners. I think we lose a great deal because those persons who spend time and care analyzing the Covenants, being mainly academics, emphasize some of the rather narrow technical and legal issues to the exclusion of larger, political concerns. They then reflect and wonder why nobody catches fire with respect to ratification of the treaties they are critiquing. I suggest that one reason is because the issue really is one of politics, not of law.

Professor Henkin in all his writings, and in a very good recent book called *The Age of Rights*,⁶ speaks of a deep isolationism in the United States as the basis for the refusal to ratify or even seriously consider human rights treaties. There is no doubt that in the United States it has always been thought, and this view goes back to the Truman Administration, that human rights treaties are needed by other people, not by us. We have this great Constitution that supposedly makes the protection of human rights by international law superfluous. However, the Constitution does not say many of the things that the human rights treaties say. It does not give one the right to an education, the right not to be tortured, nor a variety of other rights to which Professor Henkin devotes most of a chapter.⁷ Some of these rights evolved from what he calls United States constitutionalism, but they are not found in the Constitution itself.

³ *International Human Rights Treaties: Hearings before the Senate Comm. on Foreign Relations*, 96th Cong., 1st Sess. (1979) (hereinafter *Hearings*).

⁴ See *infra* note 15.

⁵ MESSAGE OF THE PRESIDENT TRANSMITTING FOUR TREATIES PERTAINING TO HUMAN RIGHTS, S. EXEC. DOC. NOS. C, D, E & F, 95th Cong., 2d Sess. (1978).

⁶ L. HENKIN, *THE AGE OF RIGHTS* (1990).

⁷ *Id.*, ch. 9.

A look overseas may be instructive. When England ratified the European Convention on Human Rights, it never thought the Convention would have much impact upon it. Anthony Lester, the great English barrister and the head of Interights in London, has written an excellent article on this point.⁸ Now that the 30 year rule has allowed access to government papers, we discover that the Labour government was not very keen to ratify the European Convention on Human Rights in the first place. Moreover, it was insistent upon the exclusion of the right to property from the European Convention. This right is present in the First Protocol, of course, but is not in the Convention itself. The minutes of the Cabinet reveal that a major argument for ratification was that there would be no need to change English law, and indeed upon ratification no legislation was introduced to alter then-existing law. In short, England would not be affected by the Convention: its benefits were for other people.

This argument also has been made in the United States. In fact, it is made by most of the supporters of human rights treaties. It is thought to be a good argument, and, to some extent, it perhaps defuses a bit of the opposition. However, it seems to me to ignore other facts. One is that we increasingly see Supreme Court cases today where United States constitutional law lags behind the law of the European states under the European Convention.⁹ So, we have some things to learn from other countries as well. If one admits this fact, one also must acknowledge that human rights treaties, if ratified, might obligate the United States to make at least some changes in federal and state laws. Is there the political will in the United States today to expose the country to this "risk"?

It is instructive, I think, to look at the state of the civil rights movement in the United States today. After great strides in the 1960s and 1970s, it ran out of steam in the 1980s. The United States has not passed a civil rights act, a real civil rights act, since the 1980 statute dealing with prisoners' rights.¹⁰ Bradford Reynolds, the Reagan Administration's Assistant Attorney General for the Civil Rights Division, refused to enforce that statute. Similar legislation has met the

⁸ Lester, *Fundamental Rights: The United Kingdom Isolated?*, PUBLIC LAW 46 (Spring 1984).

⁹ Compare *Bowers v. Hardwick*, 478 U.S. 186 (1986) (Constitution does not protect consenting adult male homosexuals) with *Dudgeon v. United Kingdom*, 45 Eur. Ct. H.R. (ser. A), 4 Eur. Hum. Rts. Rep. 149 (1981) (Article 8 of European Convention protects such persons).

¹⁰ Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 (1982).

same fate. The Supreme Court has been "retrenching" if not actually retreating on one case after another in the civil rights area. The recent Supreme Court decision in *United States v. Verdugo-Urquidez*¹¹ does not say the Constitution is inapplicable overseas, but it does hold it not to apply to aliens overseas. Thus both the Congress and the Court seem reluctant to establish or find new human rights. Why then, should we expect the Executive and the Senate to move ahead with the human rights treaties? If there is a lack of progress by one branch, why should progress occur in another? I think too much emphasis, and perhaps it is misplaced emphasis by many of the people in the human rights area, is placed on the argument that there must be something wrong with our presentation if, after all these years, we cannot get even the two Covenants ratified. Well, there is a lot wrong with our presentation, to which I shall come directly, but even if an effective presentation were made, it would be made in a context where it would fall on almost deaf ears.

Now, there has been a failure on the part of the proponents of the human rights treaties to make a strong case. As I already have indicated, there has been a complete lack of discussion, debate, and books and articles about the four treaties sent to the Senate by President Carter in 1978. Additionally, very little literature on the treaties that have been sent up since then has appeared. Some literature has appeared on the Torture Convention, fortunately moving ahead towards ratification, but almost nothing on the other very basic treaties. In fact, no one really appears to know how many treaties are signed by the United States, signed and sent up to the Senate by the President, or just out there awaiting action. Among the latter I would include United Nations treaties to which the United States could become a party, like the Convention Against Discrimination in Education.¹² I am sure the Department of State does not know itself how many human rights treaties exist. I was a consultant to the Department of State from 1978 to 1979 on human rights treaties. I helped prepare for the hearings on the Covenants when a conscious effort was made to discover the status of human rights treaties and the United States' position with respect to these treaties.¹³ As far as

¹¹ 110 S. Ct. 1056 (1990) (a non-resident alien held not to benefit from Fourth Amendment protection from search-and-seizure by United States authorities of property owned by the alien and located in a foreign country).

¹² Adopted Dec. 14, 1960, entered into force May 22, 1962, 429 U.N.T.S. 32.

¹³ For the privately-published end product of this study, see R. LILICH, *INTERNATIONAL HUMAN RIGHTS INSTRUMENTS* (Supp. 1990).

I know, there has not been any further effort within the Department to update this work. Here, as elsewhere, the proponents of the human rights treaties have not placed pressure either on the Executive or on the other political branch, the Congress, in this regard.

Hearings were held in 1979.¹⁴ They remain the only hearings conducted on the treaties. In addition to these hearings, the only other material concerning the treaties is found in a 1981 book I edited called *U.S. Ratification of the Human Rights Treaties*.¹⁵ As I suggested before, little has been written on this subject during the past decade. The book I edited is not the last word, of course, but it is basically the only word.

Let me read to you the opening remarks at these hearings. They indicate the lack of interest in the treaties before the Senate Foreign Relations Committee at the time. The following statement is from Senator Pell who is now, of course, Chairman of the Foreign Relations Committee. "The Committee on Foreign Relations will come to order. As the witnesses know, the hearing is scheduled for 9:30 Is the Honorable Arthur Goldberg here?" He was involved in the Helsinki process at the time, working for the government. "[No response]. . . . Is the Honorable Warren Christopher here?" As the Deputy Secretary of State, he was the person who drafted and signed all the letters sending the treaties up to the Senate. "[No response]." Here is where it really hurts. "Are Ms. Patricia Derian and the Honorable Roberts Owen," Assistant Secretary for Human Rights and the Legal Adviser of the Department of State, "here. [No response]."¹⁶ I hypothesize that they must have been caught in traffic or they did not expect the hearing called for 9:30 A.M. to start at 9:33 A.M. So, while I do not want to jump on these people too much, I do think it is symbolic that they were not in the starting blocks and ready to go when these important hearings began.

Of course, we must consider the lack of Congressional interest as well as Executive support. I shall come back to that point in just a moment. There is also what I call the reciprocal passing of blame. You talk to the Foreign Relations Committee today and they say the ball is in the President's court. They are not going to waste time unless they have a committed President. On the other hand, Secretary

¹⁴ See *supra* note 3.

¹⁵ U.S. RATIFICATION OF THE HUMAN RIGHTS TREATIES: WITH OR WITHOUT RESERVATIONS? (R. Lillich ed. 1981).

¹⁶ *Hearings, supra* note 3, at 1.

of State Baker wrote last winter to Chairman Pell to the effect that, "We are not going to do anything until you indicate interest in going ahead." So part of our job, I think, assuming we are all concerned about ratification, or at least the serious consideration of these treaties, is to knock some heads together. That involves a political as well as a legal effort. The effort should be made, as the United States suffers in many ways from their nonratification.

There are several effects of the United States' nonratification of the human rights treaties. As any one who has talked abroad or functioned in a diplomatic context knows, other states view our refusal to ratify the treaties as another example of United States arrogance, a manifestation of a hypocritical foreign policy that embraces human rights in the form of protests against abuses elsewhere, yet refuses to undertake the same commitments that we ask other states to take. We see this scenario repeated over and over again in debates between diplomats and academics, at the United Nations in New York or Geneva, before other bodies, and before groups in Africa, Asia and Latin America. It is impossible to go overseas and talk about United States human rights and foreign policy without being challenged about the United States' nonratification of these treaties.

A second effect of nonratification is the loss of the opportunity for enforcement against other nations and the clarification of the norms present in the human rights treaties involved. We have invoked the Civil and Political Covenant against Iran, Poland, and many other countries, yet we are unable to participate in the Human Rights Committee of the United Nations. We cannot clarify the law there, nor may we take advantage of the opportunity to bring a complaint against another state violating the Covenant. We cannot sit in judgment upon communications submitted by individuals to the Committee. We will not have the opportunity to do so until we come aboard the Civil and Political Covenant. The same is true with the enforcement devices in other treaties as well.

Third, the refusal to ratify these treaties deprives citizens in the United States of the opportunity to invoke these treaties within the United States. We heard earlier about self-executing instruments. As most of you know, a declaration to the effect that the human rights treaty in question is non-self-executing now has become a standard technique. I do not know how we are going to get around such declarations. We must eventually acknowledge the problem, and either fight or succumb to it. We should start, perhaps, by asking the Executive Branch to reconsider these proposed declarations. Roberts Owen, then Legal Advisor, testified at the 1979 hearings that if in

the Senate's view any reservation or declaration was thought to be unnecessary, then the Department would draw them back.¹⁷ Frankly, I think it would be pretty difficult to draw many of them back today, but we have seen other reservations to the Torture Convention drawn back or modified. More of them should be too. It is ridiculous to have thirty-eight declarations, understandings, statements, and reservations made to four treaties, as was done in 1978.

In any event, as long as the United States fails to ratify these treaties, no one can raise the argument in a domestic court that a treaty provision might be self-executing. Therefore, if a state wanted to execute a pregnant teenager, which is possible under current United States law and preserved by a reservation to the Civil and Political Covenant that President Carter recommended to the Senate in 1978, that state would continue to have the "right" to do so. If the Senate should ratify the treaty without the reservation and without the non-self-executing declaration, then the pregnant teenager could not be executed.

Lastly, it seems to me that the United States is entirely out of step both with current events and our own self-interest in the future. Events in Eastern Europe and the U.S.S.R. are happening that surprise all of us from day to day. While attending a conference in Paris in March 1989, a speaker from the Soviet Union announced for the first time that the U.S.S.R. intended to ratify the Optional Protocol to the Civil and Political Covenant. It is "mindboggling" to hear the Soviet Union announce that it will let individual communications from Soviet citizens go to the Human Rights Committee. The Hungarians already have done so, with the Poles and Czechs supposedly scheduled to do the same. These developments certainly undercut the arguments raised in 1988 by the Department of State against ratification of the Civil and Political Covenant.¹⁸

Having surveyed the causes and effects of nonratification, I will turn briefly to some attempts to achieve ratification. The United States has ratified a handful of human rights treaties. The Eisenhower Administration, in response to Senator Bricker, decided not to go ahead with ratification of any human rights treaty, but the Kennedy Administration consciously sought the three most innocuous treaties that it could find to establish the pattern Mr. Baab talked about.

¹⁷ *Hearings, supra* note 3, at 42.

¹⁸ *Implementation of the Helsinki Accords: Hearings Before the Commission on Security and Cooperation in Europe*, 100th Cong., 2d Sess. 9-12 (1988).

They found the Supplementary Convention on the Abolition of Slavery.¹⁹ We fought the War Between the States over a hundred years ago, but they felt it necessary to pick out that little treaty. The Convention on the Political Rights of Women²⁰ also was selected. The 19th Amendment gave women the right to vote, all that that convention seeks to accomplish. And those two treaties were ratified, despite, I should add, the opposition of the ABA at the time. The third treaty was the ILO Convention Concerning Forced or Compulsory Labour.²¹ Once again, we fought a Civil War over the issue of slavery and forced labor. However, amazingly this treaty still has not been ratified. Later, President Johnson sent up the Protocol Relating to the Status of Refugees,²² which somehow slipped through the Senate because nobody paid any attention to it. Perhaps it was not thought to be a human rights treaty.

President Nixon did nothing except reaffirm support for the ratification of the Genocide Convention. The break came when President Carter, as part of his comprehensive human rights policy, sent up the four human rights treaties in 1978. In 1980, he sent up the Convention on the Elimination of All Forms of Discrimination Against Women.²³ So the Senate has before it the two Covenants, the American Convention, the Racial Convention, the Convention on Women, and the more recent Torture Convention.²⁴

Many things are wrong with the reservations, declarations, and understandings attached to these instruments. Let us start with the three principles that were adopted by the Carter Administration. They probably were wrong on all three, most certainly wrong on the first, which was that ratification of the treaties should be accomplished in such a way that no impact or potential impact on United States law would ever occur. Hence, every time a treaty might require a change in legislation, a reservation, declaration or understanding was added.

¹⁹ Signed Sept. 7, 1956, 18 U.S.T. 3201, T.I.A.S. No. 6418, 266 U.N.T.S. 3 (entered into force, Apr. 30, 1957).

²⁰ Opened for signature Mar. 31, 1953, 27 U.S.T. 1909, T.I.A.S. No. 8289, 193 U.N.T.S. 135 (entered into force July 7, 1954).

²¹ Adopted June 28, 1930, 39 U.N.T.S. 55 (entered into force May 1, 1932).

²² Signed Jan. 21, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 (entered into force Oct. 4, 1967).

²³ Adopted Dec. 18, 1979, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No.46) at 193, U.N. Doc. A/34/136 (1980) (entered into force Sept. 3, 1981).

²⁴ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted Dec. 10, 1984, G.A. Res. 39/46, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1985) (entered into force June 26, 1987).

Professor Henkin called it ignoble and outrageous.²⁵ I would call it absolutely ridiculous. Every other country has criticized the United States on this score. Why enter into a treaty if you are going to say that it should be tailored so as to have absolutely no possible impact on your legal obligations. I find this approach completely hypocritical.

The second principle is unnecessary in view of the first principle. It held that there should be a non-self-executing declaration attached to all the treaties so they would not have any impact in United States law. If the treaty were not to have any impact on United States law, why then worry, at least from the domestic perspective, about the declarations, reservations, and understandings contemplated by the first principle? It seems terribly unfortunate to have this non-self-executing declaration attached to every one of the treaties. Unfortunately, it is now a *fait accompli*, and it may be the price we have to pay for ratification.

The third principle involves states' rights, and responds to such claims by proposing a reservation in the form of a federal-state clause. The states' rights concerns arose forty years ago, but are completely unjustified today. The interstate commerce power has been interpreted so broadly since the enactment of the Civil Rights Act of 1964 that the federal government can do most anything in this area of the law. Any rights supposedly "taken" from the states under a human rights treaty can similarly be taken away today under the interstate commerce clause. So the reservation is legally irrelevant.

At the 1978 hearings on the treaties, almost all witnesses strongly supported their ratification, with minimal reservations. There was no substantial opposition. Neither was there much interest by the Foreign Relations Committee. Senator Pell opened up the hearings because the Committee's Chairman, Senator Church, a good liberal, progressive, pro-ratification-of-the-Genocide Convention member of Congress, had an election that year and apparently was loath to hold hearings on the human rights treaties with his re-election bid very close. Of course, he lost the election anyway. Attendance by other members of the Committee was spotty. There were only two Senators present when I testified, Senators Zorinsky and Javits. Yet, the hearings remain a great source of information on the treaties. You will find all sorts of interesting comments and memoranda in them. As we know, the Foreign Relations Committee has never addressed the

²⁵ HENKIN, THE COVENANT ON CIVIL AND POLITICAL RIGHTS, IN U.S. RATIFICATION OF THE HUMAN RIGHTS TREATIES, *supra* note 15, at 22.

treaties again in the eleven years since the hearings were held.

Under the Reagan Administration, nongovernmental organizations did not make a major issue of the unratified treaties. Initially, in 1981, they were busy trying to keep the Bureau of Human Rights and Humanitarian Affairs alive in the Department of State, and opposing Senate confirmation of an individual nominated to head that bureau who professed to want to see it abolished. Later, from 1982 until 1984, the issue of the treaties remained unaddressed. I finally wrote a letter to a good friend who in 1985 was Assistant Legal Adviser for Treaty Affairs. I enquired as to the status of the human rights treaties. As Mr. Baab indicated, they were, and still are, "under study." The government rates the priorities treaties have on a scale of one to six. If you are anywhere beyond one or two, you are not even in the ballpark. Five is "under study." This status was reaffirmed by the current Assistant Legal Adviser two years ago and orally within the last two weeks. That is very sad. I have heard of sitting on a treaty. If you sit on a treaty, it may hatch. However, I do not call this sitting on a treaty. I call it squashing a treaty.

It has been very difficult to pin down the State Department on the status of the treaties. Mr. Schifter, the Assistant Secretary for Human Rights, waffled on the issue, and nobody really knew what position the Department held, unless you had read an obscure document by the Conference on Security and Cooperation in Europe, also known as the United States Helsinki Commission, that contained some remarks of Mr. Schifter.²⁶ He had gone up to Ottawa in 1985 and the United States had been harassed there for not having ratified the Civil and Political Covenant. So he let loose with a tirade against Poland for a variety of reasons, pointing out that while they had ratified the Covenant they had not complied with it. Moreover, he remarked, Poland had not ratified the Optional Protocol. This remark came, of course, from the representative of a state whose Executive Branch had not even sent up the Optional Protocol for Senate advice and consent! In any event, he contended that since the Covenant could not be enforced effectively it was pointless for the United States to ratify it. In 1988, he again acknowledged this view in a hearing before the United States Helsinki Commission, reading portions of his relevant Ottawa speech into the record.²⁷

²⁶ *Implementation of the Helsinki Awards: Hearings Before the Commission on Security and Cooperation in Europe*, 99th Cong., 1st Sess. 194, 196-98 (1985).

²⁷ See *supra* note 18.

That brings us to the Bush Administration, where Mr. Schifter remains as Assistant Secretary for Human Rights. Last winter, Secretary of State Baker wrote a letter to Senator Pell, the somewhat casual Chairman of the Foreign Relations Committee. I was saddened to see that Secretary Baker's letter represented more of the same thing: the treaties remain "under study." The ball, said Secretary Baker, is in the Senate's court.

There are several ways to assess the present situation. Optimistically, one may draw some hope from what President Bush said in his statement on Human Rights Day last December 10, 1989. He said, in honoring the Universal Declaration, that the great document not only reaffirms many of the principles enshrined in our Bill of Rights, which of course is true, but that it also serves as a blueprint for its signatories as we work for freedom and peace in the world. Of course, it is no longer just a blueprint. The house is being built, and it is time for the United States to enter it along with the other nations. President Bush also defined human rights very narrowly, failing to talk about economic or social rights. The Economic, Social and Cultural Covenant is a formal treaty that President Carter signed and sent to the Senate in 1978. President Bush is not going to withdraw it or any of the other pending human rights treaties. But he is going to sit on them or ignore them unless human rights groups and other United States organizations make strong, principled arguments for their ratification.

If I may, let me suggest briefly a few steps that I think should be taken. First, a political constituency has to be created, as has been suggested before, to support these human rights instruments. We are dealing principally with civil rights. Thus church groups, the labor unions, and civic organizations, not merely international human rights ones, must get involved. Amnesty International USA finally joined the effort in the last year or so. The Procedural Aspects of International Law Institute held a conference on the ratification of the treaties in March 1989, inviting every single major human rights organization. It was a conference to replicate ten years later what was accomplished in 1979. It was held, again, in the same room where the Foreign Relations Committee meets. Disappointingly, less people attended than in 1979. The reason, as Mr. Baab indicated, may be that after a treaty has been submitted the steam eventually goes out from underneath efforts to secure its approval. The lowered attendance indicated a lack of commitment by the very international human rights NGOs that should be involved in getting these other groups together.

Therefore, this political constituency must be built. I am not suggesting that if it were there, the door would be open and we could just walk right through the ratification process. I was talking yesterday in Washington to a staffer from the United States Helsinki Commission. She said they hear all kinds of things about the Helsinki process: abuses, strengths, weaknesses and so on. Nobody, however, writes about the human rights treaties. If anybody were to write about them, she said, the Commission would have to focus upon them and put out reports. Why not organize, like Amnesty International does with letters for prisoners abroad, a letter writing campaign to the United States Helsinki Commission and to members of the Senate Foreign Relations Committee. I am sad to say that a major foundation recently refused to grant the money to fund the organizational effort I proposed. Until such an effort occurs, we are not going to have any forward movement despite all the legal arguments that may be advanced.

Second, the President and the Department of State, as well as the Foreign Relations Committee, must become engaged. How can we overcome their lethargy? I would recommend two specific things.

Initially, I think a background study is needed of all the pending human rights treaties. Nobody has ever analyzed the hearings, articles, and memorandum written about even the four treaties sent up by President Carter, much less the other instruments awaiting ratification. Obviously, the NGOs and the government must assess in good faith our commitment to these treaties. Informal meetings could be held. The Legal Adviser to the Department of State has an advisory committee that would provide a forum for such exchanges. The United States Helsinki Commission might provide a forum. In this way the issues would be debated and arguments for ratification pressed upon members of the two political branches.

Additionally, specific case studies should be made of the five primary treaties: the Civil and Political Covenant, the Economic, Social and Cultural Covenant, the American Convention, the Racial Convention and the Convention on Women. There is something "wrong" with each one of these treaties, as Mr. Baab has indicated. No one will touch, despite Judge Buergenthal's eloquent pleas, the American Convention, because it raises the abortion question. The Economic, Social and Cultural Covenant still suffers from heavy-handed treatment by Elliot Abrams and Jean Kirkpatrick. I cannot understand why the Racial Convention would not receive the Senate's prompt consent. Yet, as Clyde Ferguson said so eloquently shortly before his death, there is a lingering racism that we all know still

exists in the United States. Lastly, the Convention on Women raises the question of the Equal Rights Amendment, equality of women, and so on. Therefore, the argument goes, it is not a propitious time to seek its ratification either. One should not succumb to the counsels of defeat, however, for such an approach never got human rights activists anywhere. Again, arguments must be mobilized and political pressure brought to bear upon the Executive Branch and Congress.

Third, rather than the shotgun approach, I would advocate ranking the treaties in order of importance and the likelihood of ratification and starting from the top. In my opinion we should select the Civil and Political Covenant to receive the focus of our attention. I lack the time to analyze the four reservations, two declarations, one statement, and one understanding that were attached to that particular instrument by President Carter. I think none of them are necessary; some of them are harmless; one or two of them should certainly be struck. I would suggest that we urge the ratification of the Optional Protocol as well. After all, 1991 is the bicentennial of the ratification of the U.S. Bill of Rights, and what could be more appropriate than to aim in 1991 for at least serious consideration, if not ratification, of this keystone of the International Bill of Rights. If the Soviet Union and the states in Eastern Europe are doing so, why not the U.S.? Why not, indeed!

