

THE UNITED STATES APPROACH TO RATIFICATION OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

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I. INTRODUCTION

Nearly eleven years of neglect by the United States preceded President Carter's October 1977 signing of the International Covenant on Civil and Political Rights¹ and the International Covenant on Economic, Social and Cultural Rights.² By signing the Covenants, Mr. Carter initiated the long and arduous process required to obtain the Senate's consent to ratify these major international human rights agreements. The executive branch alone required more than four months of study and consideration before referring the Covenants to the Senate Committee on Foreign Relations.³ In the process, the Department of Justice and the Department of State joined forces in an attempt to avoid constitutional, political and ideological obstacles to ratification. As a consequence, the Departments suggested the interposition of a host of reservations, understandings and declarations.⁴ Although such an approach may eliminate some potential conflicts between the Covenants and the U.S. Constitution, problems still exist. Many of the same human rights issues so hotly debated in the 1950's and 1960's remain to be settled, including those questions concerning the efficacy of entering into international human rights conventions.

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1. International Covenant on Civil and Political Rights, G.A. Res. 2200A, 21 U.N. GAOR, Supp. (No. 16) 52, U.N.Doc. A/6546 (1966) *reprinted in* 56 DEP'T STATE BULL. 107 (1967) [hereinafter cited as Civil and Political Covenant].

2. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A, 21 GAOR, Supp. (No. 16) 49, U.N.Doc. A/6316 (1966), *reprinted in* 56 DEP'T STATE BULL. 111 (1967) [hereinafter cited as Economic, Social and Cultural Covenant].

3. Message of the President Transmitting Four Treaties Pertaining to Human Rights, S. EXEC. NO. 95-C, D, E and F, 95th Cong., 2d Sess. (1978).

4. *Id.* at IV.

Hopefully, these two international agreements on human rights will not languish twenty-nine years before the Senate without consent to ratification, as has the Convention on the Prevention and Punishment of the Crime of Genocide.⁵ One must recall that the post-World War II era witnessed the ratification of the Charter of the United Nations and the unanimous approval by the U.N. General Assembly of the Universal Declaration of Human Rights.⁶ These accomplishments took place during a period of American commitment to the development of international human rights standards, and yet, after President Truman submitted the Genocide Convention to the Senate on June 16, 1949, the treaty collected more dust than supporters.

The history of the U.S. Senatorial treatment of other human rights treaties since 1949 has been strikingly similar. A new policy of considering each human rights convention on its own merits emerged only after President Kennedy submitted three limited covenants to the Senate in 1963. Even with this "new policy" the Senate consented only to ratification of the Supplementary Convention on Slavery in 1967,⁷ and waited until 1976 to consent to ratification of the Convention on the Political Rights of Women.⁸ The Convention on Forced Labor still awaits the Senate's consent, a record in dust collecting second only to that of the Genocide Convention.

Set against this rather grim history of Senate neglect of human rights treaties, this article will examine the Carter Administration's approach to ratification of both the International Covenant on Civil and Political Rights (the Civil and Political Covenant) and the International Covenant on Economic, Social and Cultural Rights (the Economic, Social and Cultural Covenant). The discussion will also include many of the legal and constitutional issues inherent in any consideration of these major international human rights treaties.

II. THE U.S. CONSTITUTION AND SUBSTANTIVE PROVISIONS OF THE COVENANTS

The United States cast its vote in favor of the two Covenants in the U.N. General Assembly in 1966. During the next decade both the

5. Convention on the Prevention and Punishment of the Crime and Genocide, *opened for signature* Dec. 9, 1948, 78 U.N.T.S. 277.

6. G.A. Res. 217A, U.N.Doc. A/810, at 71 (1948).

7. Supplementary Convention on Slavery, *opened for signature* Sept. 7, 1956, 18 U.S.T. 3201, T.I.A.S. No. 6418, *entered into force with respect to the United States* Dec. 6, 1967.

8. Convention on the Political Rights of Women, *opened for signature* March 31, 1953, 27 U.S.T. 1909, T.I.A.S. No. 8289, *entered into force with respect to the United States* July 7, 1976.

Congress⁹ and self-appointed private groups¹⁰ actively promoted the human rights movement. The *sine qua non*, however, for executive branch activity was what Professor Bilder termed a "changing national leadership" which "could bring individuals more sensitive and committed to human rights objectives into positions of responsibility."¹¹ With the arrival of such a change in national leadership in 1976, only one year after each of the Covenants entered into force, President Carter sounded the battle cry for his own human rights campaign.¹²

A. *The Civil and Political Covenant*

Most of the controversy surrounding the Covenants centers upon their potential effect upon the Constitution. However, these provisions of the Civil and Political Covenant which parallel sections of the Constitution create no potential of overreaching, or encroaching upon, United States sovereignty. The Covenant provisions include: the right to life,¹³ the prohibition against torture,¹⁴ the prohibition against slavery,¹⁵ the right to liberty and security of person (including the guarantee against unlawful arrest and detention),¹⁶ the guarantee

9. A series of progressively forceful legislation was promulgated in the following order: Foreign Assistance Act of 1973, 87 Stat. 733 (1973), *discussed in* Salzberg & Young, *The Parliamentary Role in Implementing International Human Rights: A. U.S. Example*, 12 *TEX. INT'L L.J.* 251, 269-74 (1977); Trade Act of 1974, § 402, 22 U.S.C. 2112 (1975); International Development and Food Assistance Act of 1975, § 116, 22 U.S.C. 2151n (Supp. 1976); and, International Security Assistance and Arms Export Control Act of 1976, § 502B, 22 U.S.C. 2304 (Supp. 1976), which articulated the following policy:

(A)(L) It is the policy of the United States, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, to promote and encourage increased respect for human rights and fundamental freedom for all without distinction as to race, sex, language or religion. To this end, it is a principal goal of the foreign policy of the United States to promote the increased observance of internationally recognized human rights by all countries.

(2) It is further the policy of the United States that, except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.

For an in-depth analysis of these Acts, see Weissbrodt, *Human Rights Legislation and U.S. Foreign Policy*, 7 *GA. J. INT'L & COMP. L.* 231 (1977).

10. Ad Hoc Group on United States Policy Toward the United Nations, *A New United States Policy Toward the United Nations* (April, 1976) whose report offered the following suggestions:

Accommodation on colonialism should be linked to a more active posture on humanitarian and human rights considerations in foreign policy. A fitting bicentennial action would be United States adherence to the Conventions on Genocide, Racial Discrimination, Forced Labor and the two Covenants on Human Rights.

11. Bilder, *Human Rights and U.S. Foreign Policy: Short Term Prospects*, 14 *VA. J. INT'L L.* 597, 606 (1974).

12. 76 *DEPT STATE BULL.* 409, 411 (1977).

13. Civil and Political Covenant, *supra* note 1, art. 6.

14. *Id.* art. 7.

15. *Id.* art. 8.

16. *Id.* art. 9.

of humanitarian treatment in prison,¹⁷ the right of liberty of movement within, out of, or return to one's own country,¹⁸ the right to a fair and public hearing before an impartial tribunal¹⁹ (including such familiar guarantees as presumption of innocence, the right to counsel, the privilege against self-incrimination, the right to appeal and the prohibition against double jeopardy), the prohibition against *ex post facto* laws,²⁰ the right to privacy,²¹ freedom of religion,²² freedom of association,²³ and equal protection under the law as well as equality before the law.²⁴

Surely this catalogue of rights does not contravene U.S. Constitutional guarantees; indeed they are but re-emphasized. The civil rights legislation of the 1960's added broader and more specific guarantees to United States law than the Civil and Political Covenant could possibly be construed to provide.²⁵ In fact, the civil rights legislation eliminated the old fears of international meddling in the affairs of the several states.

By comparison, the Civil and Political Covenant does not include some of the most cherished rights provided for in the Bill of Rights. For instance, the First Amendment right to petition the government for a redress of grievances²⁶ is absent, although the Covenant's Optional Protocol (which has not yet been signed by President Carter) does provide for the right of individual petition to the Human Rights Committee. Similarly, neither the prohibition against the taking of private property for public use without just compensation,²⁷ nor the right to trial by an impartial jury in a criminal prosecution,²⁸ is provided for by

17. *Id.* art. 10.

18. *Id.* art. 12.

19. *Id.* art. 14.

20. *Id.* art. 15.

21. *Id.* art. 17.

22. *Id.* art. 18.

23. *Id.* art. 22.

24. *Id.* art. 26.

25. Shestack & Cohen, *International Human Rights: A Role for the United States*, 14 VA. J. INT'L L. 673, 688 (1974).

26. U.S. CONST. amend. I states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

27. *Id.* amend. V states:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

28. *Id.* amend. VI states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and pub-

the Covenant. The Covenant, however, gives support to such provisions by providing in paragraph (2) of Article 5:

There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or customs on the pretext that the present Covenant does not recognize such rights or that it recognized them to a lesser extent.²⁹

Clearly, then, there was an intention on the part of the drafters of the Civil and Political Covenant to prohibit the restriction of additional domestically guaranteed human rights when such provisions are absent from the Covenant.³⁰

An even more important consideration concerns those rights and guarantees set forth in the Civil and Political Covenant which are absent from the Constitution. For example, (a) the right to self-determination,³¹ (b) the right of all people to freely dispose of their natural resources,³² (c) the right to compensation for (i) victims of unlawful arrest or detention³³ and (ii) persons who are convicted and punished as a result of a miscarriage of justice,³⁴ (d) the right of men and women to marry,³⁵ and (e) the cultural, linguistic and religious rights of minorities.³⁶

A unique provision of the Civil and Political Covenant is the prohibition set forth in Article 20, against propaganda for war, including "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."³⁷ Obviously, the language of Article 20 represents a significant incursion into the right to freedom of speech as recognized in the United States. Even though the drafters of the Covenant were presumably motivated by the most noble intentions, Article 20 is far too general and all-encompassing to escape eventual delimitation or modification in the United States.

lic trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and the cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

29. Civil and Political Covenant, *supra* note 1, art. 5, para. 2.

30. Starr, *International Protection of Human Rights and the United Nations Covenants*, 1967 Wis. L. Rev. 862, 870-71.

31. Civil and Political Covenant, *supra* note 1, art. 1, para. 1.

32. *Id.* art. 1, para. 2.

33. *Id.* art. 9, para. 5.

34. *Id.* art. 14, para. 6.

35. *Id.* art. 23, para. 2.

36. *Id.* art. 27.

37. *Id.* art. 20.

Accompanying President Carter's Letter of Transmittal is a Letter of Submittal by Undersecretary of State Warren Christopher which characterized the Civil and Political Covenant as "similar in conception to the United States Constitution and Bill of Rights."³⁸ Mr. Christopher initially analyzes Articles 1 through 29, the substantive provisions of the Covenant, pointing out the previously mentioned conflict between Article 20 and the U.S. Constitution, as well as the implicit questions involving free speech raised in Paragraph (1) of Article 5. The following reservation is recommended by Mr. Christopher:

The Constitution of the United States and Article 19 of this Covenant contain provisions for the protection of individual rights, including the right of free speech, and nothing in this Covenant shall be deemed to require or to authorize legislation or other action by the United States which would restrict the right of free speech protected by the Constitution, laws, and practice of the United States.³⁹

Freedom of speech and of the press, however, are not absolute rights in the United States, and consequently, are not "free" under all circumstances.⁴⁰ Generally, any restriction of these liberties must be justified by a clear public interest, and there must be reasonable grounds to believe that the danger apprehended is imminent.⁴¹ Only the gravest abuses endangering paramount interests give occasion for limitations of free speech.⁴²

Mr. Christopher's survey continues with suggested reservations to Article 6 (limiting capital punishment), Article 9(5) (granting an enforceable right to compensation for unlawful arrest or detention) and Article 15(1) (requiring imposition of a lighter penalty when such a change has been accomplished subsequent to the commission of an offense). He also suggests that a "statement" be inserted regarding Article 10(2) and (3) (concerning treatment of prisoners) and that an "understanding" be inserted dealing with Article 14 (establishing detailed standards of conduct for criminal trials).⁴³

38. Message of the President, *supra* note 3, at XI.

39. *Id.* at XIXII.

40. *Beauharnais v. People*, 343 U.S. 250, 255-56 (1951). *See also Schenck v. United States*, 249 U.S. 47, 52 (1919); *Dennis v. United States*, 341 U.S. 494 (1951). These were qualified in *Yates v. United States*, 354 U.S. 298 (1957), wherein the Supreme Court held that suppression of speech could only be permitted when the advocator urges the audience to take overt action toward subversion or treason. In *Brandenburg v. Ohio*, 395 U.S. 444 (1969), the Supreme Court held that an exception may be made when such advocacy is directed towards inciting or producing imminent unlawful action and is likely to incite or produce such action.

41. *Bridges v. State*, 314 U.S. 252 (1941).

42. *Thomas v. Collins*, 323 U.S. 516 (1945).

43. Message of the President, *supra* note 3, at XII-XIII.

The remainder of the Covenant's more important substantive provisions are enumerated in the Letter of Submittal, without the inclusion of such limiting reservations, statements or understandings. With regard to all of the substantive provisions, Mr. Christopher recommends the following declaration: "The United States declares that the provisions of Articles 1 through 27 of the Covenant are not self-executing."⁴⁴ This one brief declaration, however, would effectively eliminate the legal significance of each of the provisions of the Civil and Political Covenant in its relation to the law of the United States. It is questionable why Mr. Christopher sets forth in detail the various reservations, statements and understandings when the non-self-executing declaration is designed to assure that the Covenant will have no legal impact upon the domestic law of the United States without express Congressional enactment.

B. The Economic, Social and Cultural Covenant

In contrast to the Civil and Political Covenant, the Economic, Social and Cultural Covenant contains few corresponding provisions in the U.S. Constitution. The Constitution, unlike some federal statutes, does not deal directly with economic and social rights. Faced with this dilemma, the Carter Administration has taken the position that the Economic, Social and Cultural Covenant "is primarily a statement of goals to be achieved progressively, rather than through immediate implementation."⁴⁵ This is in keeping with the language of Article 2(1) which obligates adherents to the Covenant to take steps to achieve "progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."⁴⁶ In light of this potential obligation, Mr. Christopher recommends the following statement: "The United States understands paragraph (1) of Article 2 as establishing that the provisions of Articles 1 through 15 of this Covenant describe goals to be achieved progressively rather than through immediate implementation."⁴⁷

Among the substantive provisions included in the Economic, Social and Cultural Covenant are the following: the equality of men and women,⁴⁸ the right to work,⁴⁹ the right to just and favorable work con-

44. *Id.* at XV. For the view that many provisions of the Civil and Political Covenant are self-executing, see *Ratification Now*, 7 HUMAN RIGHTS 36, 39 (Summer 1978).

45. Message of the President, *supra* note 3, at V.

46. Economic, Social and Cultural Covenant, *supra* note 2, art. 2, para. 1.

47. Message of the President, *supra* note 3, at IX.

48. Economic, Social and Cultural Covenant, *supra* note 2, art. 3.

49. *Id.* art. 6, para. 1.

ditions,⁵⁰ the right to form trade unions,⁵¹ and the right to social security.⁵² Further social rights provisions are as follows: the right to protection of the family,⁵³ the right to an adequate standard of living, the right to be free from hunger,⁵⁴ the right to the highest standards of mental health,⁵⁵ the right to education,⁵⁶ and the right to cultural life and scientific and literary development.⁵⁷ Nevertheless, the declaration of the non-self-executing nature of Articles 1 through 15 is recommended. As with the Civil and Political Covenant, Mr. Christopher explains the use of this device in the following manner: "While the terms of the Convention, with the suggested reservations and understandings, are consonant with United States law, it is nevertheless preferable to leave any further implementation that may be desired to the domestic, legislative and judicial process."⁵⁸

It is obvious that the Economic, Social and Cultural Covenant has not been considered very seriously. In effect, by emphasizing the fact that these provisions are merely "goals whose realization will be sought rather than obligations requiring immediate implementation,"⁵⁹ the Carter Administration reiterates the traditional United States position that political and civil rights outweigh those expressed in the economic and social realm.

III. PERMISSIBLE DEROGATION FROM THE CIVIL AND POLITICAL COVENANT

The Civil and Political Covenant allows for derogation from many of the basic rights it guarantees in "time of public emergency which threatens the life of the nation."⁶⁰ No derogation, however, is permitted from Article 6 (right to life), Article 7 (prohibition of torture), Article 8 (prohibition of slavery), Article 11 (prohibition of imprisonment for failure to fulfill contractual obligations), Article 15 (prohibition of *ex post facto* laws), Article 16 (recognition as persons before the law), nor Article 18 (right to freedom of thought, conscience and religion).⁶¹

Unfortunately, provisions have been made for derogation from

50. *Id.* art. 7.

51. *Id.* art. 8.

52. *Id.* art. 9.

53. *Id.* art. 10.

54. *Id.* art. 11.

55. *Id.* art. 12.

56. *Id.* art. 13.

57. *Id.* art. 15.

58. Message of the President, *supra* note 3, at VIII.

59. *Id.* at X.

60. Civil and Political Covenant, *supra* note 1, art. 4, para. 1.

61. *Id.* art. 4, para. 2.

Article 12 (right to choose residence and freedom to leave one's country) when "necessary to protect national security, public order, public health or morals or the rights and freedoms of others."⁶² Both the right of peaceful assembly (Article 21) and the right of freedom of association (Article 22) include the additional reason of "public safety" in addition to the same vague restrictions as Article 12.⁶³ Freedom of expression, as set forth in Article 19, may be restricted for the "respect of rights or reputations of others" or protection of "public health or morals."⁶⁴

By permitting limitation of the enjoyment of these rights, the Civil and Political Covenant is obviously vulnerable to abuse. Although three of the derogation provisions refer to "a democratic society" when considering the necessity of such restrictions, it is not clear what "public order" means. In fact, Professor Humphrey suggests that "'Public Order' apparently has no precise legal meaning in common law jurisdictions; in its ordinary English use the term implies simply the absence of disorder."⁶⁵ He adds that "there seems to be little doubt that the civil law concept of *ordre public* means something more than the absence of disorder, but its precise meaning is elusive."⁶⁶ With this ambiguity in mind, it is clear why, as Professor Humphrey reported, "Articles that appeared in the Soviet press after the Soviet Union ratified the Covenants in 1973 interpret the limitations clauses to permit the restrictions imposed on the enjoyment of human rights in that country."⁶⁷

In light of this unfortunate state of affairs, it appears that the United States must apply understandings or reservations to these restrictive portions of Articles 12, 19, 21 and 22. In giving its consent, the Senate should make it clear that, in ratifying the Civil and Political Covenant, the United States does not consider such limitations proper under any circumstances other than those permitted by the United States Constitution, laws and practices.

IV. IMPLEMENTING PROCEDURES

A. *Under the Civil and Political Covenant*

Article 28 of the Civil and Political Covenant established the Human Rights Committee. The Committee consists of eighteen mem-

62. *Id.* art. 12, para. 3.

63. *Id.* art. 21 and art. 22, para. 2.

64. *Id.* art. 19, para. 3(a) & (b).

65. See Humphrey, *The International Bill of Rights: Scope and Implementation*, 17 WM. & MARY L. REV. 527, 535 (1976).

66. *Id.* at 535-36.

67. *Id.* at 536.

bers, nationals of State Parties, who shall be elected by the states.⁶⁸ The first elections took place in 1976, and under Article 32 the two-year terms of nine of those elected members expired on December 31, 1978. The other nine members will serve a term of four years, until 1980.⁶⁹ The list of members serving on the Committee appears to be incomplete due to the lack of a representative from the United States. It is indeed a sad commentary that the work of the Human Rights Committee proceeds today without any input from a person "of high moral character and recognized competence in the field of human rights"⁷⁰ from the United States. The list of individuals qualified to serve from the United States in such a capacity would be quite extensive and impressive. If by the election of the second full Committee of eighteen members in 1980, the United States is still not represented, this country will have lost an exceedingly important opportunity to participate in the development of international human rights law under the Covenant.

Since the Civil and Political Covenant is a fairly accurate codification of most of the relevant provisions contained in the Universal Declaration of Human Rights, its interpretation and application will ultimately determine the meaning and scope of the principles set forth in the Universal Declaration. Thus, states which have ratified the Covenant have acquired

the power to effect the meaning of the Universal Declaration and to shape the future of international human rights law. United States nonparticipation in this process is not only politically indefensible; it also deprives the international community of the valuable experience that this country has acquired in dealing with highly complex human rights problems.⁷¹

Furthermore, because the Human Rights Committee, as an institution, has the potential to consider human rights problems throughout the world, it is undeniably "in the eminent interest not only of United States and of the West, but also of the international community as a whole that an American citizen of recognized competence in the field of human rights become eligible to serve on the Committee."⁷²

68. Civil and Political Covenant, *supra* note 1, art. 28.

69. For a listing of the current membership of the Human Rights Committee, see *Report to the Secretary General, International Covenants on Human Rights*, U.N.Doc. A/32/188 (1977).

70. Civil and Political Covenant, *supra* note 1, art. 28, para. 2.

71. Buergethal, *International Human Rights: U.S. Policy and Priorities*, 14 VA. J. INT'L L. 611, 619 (1974).

72. Schwelb, *Entry Into Force of the International Covenants on Human Rights and the*

The work of the Committee is limited by the requirement of exhausting two preliminary procedural steps. First, all domestic remedies must be exhausted.⁷³ Second, the state initiating the procedure must send a communication to the state alleged to be in violation of the provisions of the Covenant.⁷⁴ Article 41(1)(a) further provides that the receiving state shall "afford" the sending state an explanation or "other statement in writing clarifying the matter." Only after a period of six months during which no solution is reached may either party have the right to refer the matter to the Committee.

There is, however, a none too subtle "catch" in Article 41; a State Party has the option to declare that it recognizes the competence of the Committee to receive and consider such communications. As of the date of this writing, only six states have done so: Denmark, Finland, the Federal Republic of Germany, Norway, Sweden and the United Kingdom.⁷⁵ Inasmuch as Article 41 requires ten states to make such declarations before it becomes authorized to function, the Committee's authority to receive and make reports on such communications awaits declarations from four additional states. President Carter's Letter of Transmittal to the Senate contains a statement of his plans in this regard:

Should the Senate give its advice and consent to ratification of the International Covenant on Civil and Political Rights, I intend upon deposit of United States ratification to make a declaration, pursuant to Article 41 of the Covenant. By that declaration the United States would recognize the competence of the Human Rights Committee established by Article 28 to receive and consider 'communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant.'⁷⁶

The States Parties "undertake to submit reports on the measures they have adopted which give effect to the rights recognized" by the Covenant and "on the progress made in the enjoyment of those rights" within one year after the coming into force of the Covenant for the state concerned and, thereafter, "whenever the Committee so request[s]."⁷⁷ The only activities of the Committee that states are, *ipso facto*, subject to on becoming parties to the Covenant consist of study-

Optional Protocol to the International Covenant on Civil and Political Rights, 70 AM. J. INT'L L. 511, 518-19 (1976).

73. Civil and Political Covenant, *supra* note 1, art. 41, para. 1(c).

74. *Id.* art. 41, para. 1(a).

75. Report to the Secretary General, *supra* note 69, at 2-3.

76. Message of the President, *supra* note 3, at IV.

77. Civil and Political Covenant, *supra* note 1, art. 40, para. 1.

ing these reports and making general comments to the States Parties and to the Economic and Social Council.⁷⁸ The only other activity of the Committee is prescribed by Article 45 which requires an annual report on the Committee's activities to be submitted to the United Nations General Assembly. At present, therefore, the Committee plays a minor role in comparison to its potential authority. Indeed it is difficult to imagine weaker measures of implementation.⁷⁹

B. Under the Economic, Social and Cultural Covenant

No new organizations or committees are created by the Economic, Social and Cultural Covenant. Rather, States Parties are required to submit reports to the Secretary General of the United Nations who must transmit copies to the Economic and Social Council.⁸⁰ Thereafter, any action taken by the Economic and Social Council is purely optional. For instance Article 19 states: "The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or as appropriate for information the reports concerning human rights submitted by States . . . and those . . . submitted by the specialized agencies."

The States Parties and the specialized agencies of the U.N. "may submit comments to the Economic and Social Council on any general recommendation under Article 19. . . ."⁸¹ The Economic and Social Council also has the option to submit reports to the General Assembly containing general recommendations.⁸² Apparently, even weaker measures of implementation were imagined and realized by the drafters of the Economic, Social and Cultural Covenant than those of the Civil and Political Covenant.

V. ADDITIONAL CONSTITUTIONAL PROBLEMS AND PROPOSED SOLUTIONS

In 1974, Professor Henkin observed of the United States: "She will refrain from adhering to human rights treaties that would change her national laws in any substantial way or would subject her national behavior to meaningful international scrutiny."⁸³ As has previously been

78. Schwelb, *The International Measures of Implementation of the International Covenant on Civil and Political Rights and of the Optional Protocol*, 12 TEX. INT'L L.J. 141, 154 (1977).

79. MacChesney, *Should the United States Ratify the Covenants? A Question of Merits, Not of Constitutional Law*, 62 AM. J. INT'L L. 912, 914 (1968).

80. Economic, Social and Cultural Covenant, *supra* note 2, art. 16, para. 1 & 2.

81. *Id.* art. 20.

82. *Id.* art. 21.

83. Henkin, *The United States and the Crisis in Human Rights*, 14 VA. J. INT'L L. 653, 667 (1974).

shown, the Covenants do not include mandatory provisions for international scrutiny. The question remains, however, whether adherence to the Civil and Political Covenant would change United States domestic law in any substantial way. A plethora of arguments exists on both sides of this issue, the more reasoned being that such adherence would effect no substantial change.

Many people, including former U.S. Supreme Court Justice Charles Evans Hughes, have argued that the treaty-making power cannot be exercised in such areas as civil and political human rights since they are not matters of international concern. The nineteenth-century Supreme Court decision in *Geofroy v. Riggs*,⁸⁴ however, set forth a different test: whether a treaty deals with a subject "which is properly the subject of negotiations with a foreign country."⁸⁵ It can readily be shown that human rights have long been a subject of negotiation with foreign countries when reference is made to the volume of international agreements involving human rights considerations.⁸⁶ These include, for example, "treaties of hundreds of years ago guaranteeing religious freedom, human rights provisions of World War II treaties and, of course, the Charter of the United Nations itself."⁸⁷ *A fortiori*, the more recent United States ratification of the Supplementary Convention on Slavery, the Convention on the Status of Refugees, and the Convention on the Political Rights of Women makes clear the obsolescence of the Hughes argument.

In 1969, a shift in emphasis became evident when the Clark Committee Report stated that "[t]reaties which deal with the rights of individuals within their own countries as a matter of international concern may be a proper exercise of the treaty-making power of the United States."⁸⁸ Senator Proxmire elaborated on this, saying:

The Clark Committee felt that an important criterion for judging human rights treaties was whether or not the treaty was in the best interest of the United States. If we stand to gain by an improvement in our international relations or by an increase in the prospects of world peace, that is a strong point why we should ratify a treaty.⁸⁹

Senator Proxmire followed this line of reasoning in calling upon the

84. 133 U.S. 258, 267 (1890).

85. *Id.*

86. BASIC DOCUMENTS ON HUMAN RIGHTS (I. Brownlie ed. 1971).

87. L. HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION 155 (1972).

88. Special Committee of Lawyers of the President's Commission for the Observance of Human Rights Year 1968, A Report in Support of the Treaty Making Power of the United States in Human Rights Matters (1969).

89. 118 CONG. REC. 17517 (1972).

Senate to give its consent to ratify the Genocide Convention, but it is equally persuasive in the context of the Civil and Political Covenant and the Economic, Social and Cultural Covenant. The Clark Committee concluded that the United States would be able to ratify a human rights convention "which does not contravene a specific prohibition in the Constitution in a manner so fundamental that a reservation avoiding the conflict would be incompatible with the overall purpose of the treaty."⁹⁰

Perhaps Professor Henkin most accurately summarizes the reasons why the United States should adhere to treaties such as the Civil and Political Covenant and the Economic, Social and Cultural Covenant:

[S]he adheres to such covenants in order to modify the behavior of other governments in ways that affect American interests. To get other nations to undertake to observe higher standards and to give the United States the right to request compliance with those standards, the United States is prepared to pay the price of undertaking to apply similar standards in the United States and to recognize the right of other nations to request American compliance.⁹¹

It seems clear that protesting human rights violations is a "two-way street" in which the United States can operate most effectively by accepting the merits of the Covenants, becoming a party to them, and actively participating in the international development of their substantive and procedural provisions.

The fact that no federal-state clause was included in the final drafts of either of the Covenants has caused some concern. It is feared that federal authority will encroach upon subjects reserved for state action. Perhaps it should be reiterated that the civil rights legislation of the 1960's brought a variety of subjects, previously thought to be reserved to the states, within the federal ambit. It has been claimed that this "fear became moot in the 1960's with the enactment of sweeping federal civil rights legislation even broader than the human rights conventions."⁹² Regardless of such claims, Mr. Christopher's Letter of Submittal explicitly deals with Article 28 of the Economic, Social and Cultural Covenant and Article 50 of the Civil and Political Covenant, which both provide that "[t]he Provisions of the present Covenant shall extend to all parts of federal states without any limitations or exceptions." Such mandatory language inspired the United States officials to

90. Fox, *The American Convention on Human Rights and Prospects for United States Ratification*, 3 HUMAN RIGHTS 243 (1973).

91. L. HENKIN, *supra* note 8, at 156.

92. Shestack & Cohen, *supra* note 25, at 688.

recommend the following reservation to counteract the respective Articles of both Covenants:

[W]ith respect to the provisions over whose subject matter constituent units exercise jurisdiction, the Federal Government shall take appropriate measures, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of this Covenant.⁹³

The Administration's proposed reservation is but another instance of its overall effort to defuse potentially controversial provisions of the Covenants prior to their review and debate by the Senate, especially those involving states' rights.

The federal-state problem has been considered in *Missouri v. Holland*,⁹⁴ a Supreme Court decision that is "perhaps the most famous and most discussed case in the constitutional law of foreign affairs."⁹⁵ Richard Garner, in 1967,⁹⁶ referred to this case when he called for the consent to ratification of the three human rights conventions submitted to the Senate by the Kennedy Administration.⁹⁷ Reference to that case is also relevant to the analysis of the Civil and Political Covenant and the Economic, Social and Cultural Covenant. The Court "did not say that there were no limitations on the Treaty Power in favor of the states, only that there were none in any 'invisible radiation' from the Tenth Amendment."⁹⁸ Since this decision, "without asking whether Congress could regulate such matters in the absence of a treaty, the Court has consistently upheld the validity and supremacy of treaty provisions dealing with matters as local as the right to inherit land or to engage in local trade."⁹⁹ Despite such persuasive authority, the Carter Administration has followed a cautious, more conservative course in its presentation of the Covenants.

Article 1 of both Covenants makes "self-determination" a right, thereby creating a potential conflict. The "United States joins the majority of nations in defining self-determination in such a way as to exclude secession."¹⁰⁰ Actually, the United States champions the right to self-determination in the sense of the right of colonies to independence, and generally follows the definition given by some scholars "that it refers to the right of the majority within a generally accepted political

93. Message of the President, *supra* note 2, at X-XI & XIV.

94. 252 U.S. 416 (1920).

95. L. HENKIN, *supra* note 8, at 144.

96. Gardner, *A Costly Anachronism*, 53 A.B.A.J. 907, 909 (1967).

97. *Id.*

98. L. HENKIN, *supra* note 8, at 147.

99. *Id.* at 146.

100. V. VAN DYKE, HUMAN RIGHTS, THE UNITED STATES AND THE WORLD 88 (1970).

unit to [the] exercise of power.”¹⁰¹ Therefore, the self-determination provision should represent nothing more than what already exists in the political arena in the United States, and this position is reflected in Mr. Christopher’s comment that the provision is consistent with the United States policy.¹⁰²

VI. RESERVATIONS

The United States was one of several nations which opposed the inclusion of a reservations clause in the Covenants. The United Kingdom, on the other hand, made several unsuccessful attempts to have such a clause inserted.¹⁰³ “The *travaux preparatoires* of the Covenants prove that the absence of a reservations clause does not mean that reservations to the Covenant are inadmissible, but that the question of reservations is governed by the general rules of international law.”¹⁰⁴ According to the advisory opinion of the International Court of Justice in 1951 regarding the Genocide Convention,¹⁰⁵ when a treaty is silent concerning reservations (as the Covenants are), “a State may formulate a reservation unless it is incompatible with the object and purpose of the treaty.”¹⁰⁶ The United States, therefore, may include reservations to the Covenants if those reservations do not defeat the object and purpose of the Covenants.

The reservations recommended by the executive branch indicate an intention to limit the effect of particular provisions in each Covenant. However, the suggested general declaration concerning the non-self-executing nature of the Covenants is distressing, and might well be construed as defeating the object and purpose of the Covenants. If the substantive provisions of the Covenants are not permitted to be directly enforceable, then their purposes are effectively subverted. Eventual ratification of the Civil and Political Covenant with the non-self-executing declaration would place the international community on notice that the United States is unwilling to “practice what it preaches” in regard to the struggle for human rights.

A few States Parties to the Civil and Political Covenant have attached reservations to their ratifications or accessions. It is interesting to note that, among the reservations submitted by nineteen states, there

101. *Id.* at 89.

102. Message of the President, *supra* note 3, at IX.

103. Schwelb, *The United Kingdom Signs the Covenants on Human Rights*, 18 INT’L & COMP. L.Q. 457, 459 (1967).

104. *Id.*

105. Reservation to the Convention on the Prevention and Punishment of the Crime of Genocide, [1951] I.C.J. 29, 29-30.

106. Schwelb, *supra* note 103, at 460.

are some peculiar types of limitations, or even protests, which certain ideological blocs of states have seen fit to devise. For instance, members of the Soviet-led bloc submitted a curious reservation which appears to be a protest against Article 48 of the Civil and Political Covenant as discriminatory inasmuch as they believe it should be open to signature by all states, instead of those excluded by implication in Paragraphs 1 and 3 of Article 48.¹⁰⁷ This is the only reservation or declaration made by Bulgaria, the Byelorussian Soviet Socialist Republic, Czechoslovakia, the German Democratic Republic, Hungary, Mongolia, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics. Rumania added to its declaration a protest against the mention of territories in Article 1.¹⁰⁸

Some of the Arab states emphatically asserted that ratification of the Covenant in no way constituted recognition of the state of Israel. The reservations of Iraq, Libya and Syria follow this pattern, with only the Syrian reservation including a paragraph closely resembling the Soviet bloc's protest of the so-called "discriminatory nature" of Article 48.¹⁰⁹

The Western European states, in contrast to the group approach, made an independent, article-by-article examination of the Covenant. In so doing, Denmark, Finland, the Federal Republic of Germany, Norway, Sweden and the United Kingdom emphasized the accepted practices in each of their jurisdictions. Almost all of their reservations contained references to Article 20 and its potential for restricting the right of freedom of expression.¹¹⁰ The Federal Republic of Germany was the only ratifying nation not to take exception to the "propaganda for war" statement in Article 20.

The United Kingdom submitted an exhaustive list of reservations due to its complicated system of territories and dependencies, indicating the territory or dependency to which a particular reservation is to be applied. In addition, the United Kingdom has availed itself of the provisions of Article 4 (1) and (3) of the Covenant by giving notification that the situation in Northern Ireland constitutes a public emergency within the meaning of Article 4 (1). Thus, the United Kingdom has gone on record as failing to honor its obligations in Northern Ire-

107. For the complete text of all the reservations, understandings and notifications submitted regarding the Civil and Political Covenant, see *Multilateral Treaties in Respect to Which the Secretary General Performs Depositary Functions, List of Signatures, Ratifications and Accessions as of December 31, 1977*, 105, at 106-110, U.N.Doc. ST/LEG/SER.D/11 (1978).

108. *Id.*

109. *Id.*

110. *Id.* at 103-105.

land under Articles 9, 10, 12, 14, 17, 19, 21 and 22. The wording of the British reference to Article 20 is as follows: "The government of the United Kingdom interprets Article 20 consistently with the rights conferred by Articles 19 and 21 of the Covenant and having legislated in matters of practical concern in the interests of public order (*ordre public*) reserves the right not to introduce any further legislation."¹¹¹ An approach similar to the British reservation should be sufficient to safeguard the constitutional standards of the United States.

The reservation submitted by the Federal Republic of Germany went further than that of any other ratifying nation concerning the right to freedom of expression, peaceful assembly and association. The West Germans declared that Articles 19, 21, and 22 "in conjunction with Articles 2 (1) of the Covenant shall be applied within the scope of Article 16 of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedom."¹¹² This reservation has the effect of giving the European regional convention priority in "imposing restrictions on the political activity of aliens,"¹¹³ meaning that the political activity of aliens in these areas will be defined in regional terms rather than in the universal terms of the Covenant.

Barbados is the only country of the Western Hemisphere which has both ratified the Civil and Political Covenant as well as attached a reservation. This small island-nation reserved its right not to apply the guarantee of full legal assistance provided for by Article 14 (3) (d) due to implementation problems. In fact, other Western nations (Denmark, Finland, the Federal Republic of Germany, Norway, Sweden and the United Kingdom) found it necessary to modify their obligations under Article 14. Obviously, the wide variety of criminal justice systems in these countries gives rise to differing views of the rights to be accorded in criminal proceedings. The United States should have minimal problems with this Article and the understanding put forth by the executive branch would appear to be appropriate under the circumstances, albeit somewhat overly cautious.

Chile is a prime example of the way in which sanctioned derogation from the Covenant's standards leads to "authorized" abuses. When Chile submitted a notification pursuant to the public emergency exception of Article 4 (1), it claimed it was in a state of siege. The notification listed Article 9 (prohibiting arbitrary arrest or detention), Article 12 (the right to choose residence and freedom to leave one's

111. *Id.* at 106.

112. *Id.* at 104.

113. *See* Convention for the Protection of Human Rights and Fundamental Freedoms, *open for signature* Nov. 4, 1950, 213 U.N.T.S. 221, 230-33.

country), Article 13 (the right of an alien not to be expelled except through lawful process), Article 19 (freedom of expression) and Article 25 (b) (the right and opportunity to vote and be elected), as those rights to be suspended indefinitely.

VII. INTERNATIONAL VERSUS REGIONAL CONVENTIONS

The existence of a regional human rights organization such as that created in Europe (the European Court of Human Rights), presents interesting questions of overlap and interaction with the international system set forth in the Covenants.

Article 44 of the Civil and Political Covenant does not specifically provide for coordination with regional organizations, yet it seems to include them by implication when it says: "The provisions for the implementation of the present Covenant . . . shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them." Clearly, the Covenant does not preempt States Parties from having recourse to "other procedures," leaving more specialized regional organizations "free to develop and maintain more effective systems for the protection of human rights."¹¹⁴

The Convention for the Protection of Human Rights and Fundamental Freedoms¹¹⁵ entered into force in 1953. The Convention has become the "eldest daughter" of the Universal Declaration of Human Rights by embodying a selective codification of the Declaration's provisions.¹¹⁶ The European Convention's selectivity emphasized civil and political rights which had traditionally been recognized by the contracting parties in Europe.¹¹⁷ Among the advantages of the Convention are provisions holding as binding the decisions of both the Committee of Ministers of the Council of Europe and the European Court of Human Rights and declaring that European case law will be applied to define and interpret the European Convention. Thus, it has been argued that "there is little reason to abandon a regional system which has proved its worth."¹¹⁸ Furthermore, a system of co-existence between

114. Buergenthal, *International and Regional Human Rights Law and Institutions: Some Examples of their Interaction*, 12 TEX. INT'L L.J. 321, 327 (1977).

115. 213 U.N.T.S. 222.

116. Eissen, *The European Convention on Human Rights and the United Nations Covenant on Civil and Political Rights: Problems of Coexistence*, 22 BUFFALO L. REV. 181, 182 (1973).

117. HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW 236 (A. Robertson ed. 1968).

118. *Id.* at 183.

the Covenant and the European Convention is preferable to abandonment of the Convention.

The principle of co-existence, however, is not easy to apply. First, the European Convention and its Protocols do not guarantee some of the rights found in the Covenant; furthermore, where the two instruments coincide, the "universal definition is sometimes more liberal than the European."¹¹⁹ In addition, some European states consider the European Convention to be self-executing and, thus, an integral part of their law.¹²⁰ These considerations present potential choices by individual states of the international forum. Some states, however, might be more inclined to follow the regional approach.

The same types of problems exist between the Civil and Political Covenant's Protocol and the procedures for petitions under the Inter-American Commission on Human Rights. The overlap of rights in the states involved makes it possible that the co-existence of similar procedures "may give rise to situations where the same complaint or the same matter would be submitted to both organs, which might lead to the adoption of conflicting recommendations thereon."¹²¹ It has been suggested that these problems can be solved "through judicious practice by the organs concerned based upon a full awareness of the need for coordination in the procedural sector of the international human rights law,"¹²² rather than through amendments to either of these instruments.

A lesser problem exists with the American Convention on Human Rights,¹²³ drafted by the Organization of American States in 1969. This Convention contains an elaborate coordination clause¹²⁴ due, principally, to the suggestions of observers such as Mr. René Cassin, who brought to the debates first-hand knowledge of the competing procedures of the Civil and Political Covenant and the European Convention.¹²⁵ Several provisions were included in the American Convention to satisfy the special considerations of the United States such as a federal and non-self-executing clause¹²⁶ and a specific reservations

119. *Id.* at 212.

120. *Id.*

121. Tardu, *The Protocol of the United Nations Covenant on Civil and Political Rights and the Inter-American System: A Study of Coexisting Petition Procedures*, 70 AM. J. INT'L L. 778 (1976).

122. *Id.* at 798.

123. American Convention on Human Rights, *opened for signature* Nov. 22, 1969, O.A.S.Doc. OEA/SER. K/XVI/11, Doc. 65, Rev. 1, CORR. 2 (1970), *reprinted in* Message of the President, *supra* note 3, at 41 [hereinafter cited as American Convention].

124. *Id.* art. 29.

125. Tardu, *supra* note 121, at 799.

126. American Convention, *supra* note 123, art. 28.

clause.¹²⁷ Although this may ultimately make ratification of the American Convention by the United States a somewhat simpler matter, the coordination of procedures and the choice of international versus regional fora will necessitate the same type of "judicious practice" as is required when dealing with the European Convention and the Civil and Political Covenant. The American Convention entered into force on July 18, 1978, when Grenada, an island-nation in the Caribbean, became the eleventh state to deposit its instrument of ratification with the General Secretariat of the Organization of American States.¹²⁸ Thus, the United States is presented with the unique opportunity of being able to ratify treaties which would thrust it into the limelight of the development of human rights law on the regional as well as the international scale.

None of these issues diminish the importance of the Civil and Political Covenant in the international arena. Overlap and interaction between the regional and international human rights conventions are greatly conducive to the development of human rights law throughout the world. It is "not unreasonable to assume that the proliferation of human rights instruments and institutions, while resulting in confusion and duplication of effort, creates a climate that gives legitimacy and respectability to governmental accessions to international human rights treaties."¹²⁹ Ratification of both the American Convention and the Civil and Political Covenant by the United States would signalize the acknowledgment of the leadership role it must play in the field of human rights. Indeed, the prospective interrelationship of the two covenants represents more accurately a welcome state of affairs rather than a potential problem.

VIII. CONCLUSION

More than a year has passed since President Carter signed the Covenants. Already, three non-governmental organizations (Amnesty International—U.S.A., the American Association for the International Commission of Jurists, and the International League for Human Rights) have urged the President to make the Senate's consent to ratification a top priority item on the Administration's agenda.¹³⁰ The upcoming session of Congress will be critical.

In the words of Brunson MacChesney, the Senators must be re-

127. *Id.* art. 75, requiring reservations to conform to the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969.

128. N.Y. Times, July 19, 1978, § A at 3, col. 6.

129. Buerghental, *supra* note 114, at 330.

130. N.Y. Times, Dec. 6, 1978, § A at 10, col. 3.

mindful that, when considering these Covenants, "It would not be worthy of our heritage and our responsibilities to abstain on spurious constitutional grounds."¹³¹ The United States' record in protecting human rights within its borders ranks among the very best in the world. Moreover, the Covenants, particularly the Civil and Political Covenant, represent traditional Western values which are currently being utilized as "a rallying cry for political change" by repressed people throughout the world.¹³² As long as the United States Senate refrains from giving its consent to ratification of the Covenants, any stated human rights policy will be wrought with hypocrisy.

The United States has yet to assume unequivocal leadership of the global effort to protect human rights. Indeed, the Senate can hardly refuse to consent to ratify at least the Civil and Political Covenant in order to legitimize the United States' increased activity in the human rights movement. With ratification will come credibility, with credibility a chance for true leadership.

There is much at stake when the United States engages the Soviets in debate and criticizes the ruthless regimes in Uganda, South Africa and elsewhere. Surely the ultimate goal is respect for, and adherence to, basic minimum standards of human rights for people everywhere. President Carter has stated: "[T]he American people have an abiding commitment to the full realization of these ideals. And we are determined, therefore, to deal with our deficiencies quickly and openly. We have nothing to conceal."¹³³ Upon the commemoration of the 30th anniversary of the Universal Declaration of Human Rights, President Carter restated his determination, saying, "As long as I am President, the Government of the United States will continue to enhance human rights. No force on earth can separate us from that commitment."¹³⁴ Unfortunately, no force on earth can disguise the fact that while eighty-three states have ratified the Genocide Convention and more than fifty have ratified the International Covenants, the U.S. Senate has not given its consent to ratify any of the three.

The Human Rights Committee has met twice since the Civil and Political Covenant entered into force. It is unfortunate that the Committee should continue to be a platform for the Soviet Union, rather than a respected forum in which a representative from the United States could make a contribution to the development of international

131. MacChesney, *supra* note 79, at 917.

132. N.Y. Times, Dec. 7, 1978, § A at 23, col. 1 (editorial opinion).

133. 76 DEP'T STATE BULL. 329, 332 (1977).

134. N.Y. Times, Dec. 7, 1978, § A at 10, col. 1.

human rights law. Without the Senate's consent, however, no such contribution can be made.

The various reservations and understandings suggested by the Carter Administration and this writer would adequately limit the effect of those provisions of both Covenants which may be in conflict with the Constitution, laws and practice of the United States. Surely, the interposition of specific reservations and understandings within an article-by-article approach presents the optimum mode of analyzing the Covenants. The most troublesome recommendation of the Carter Administration is the declaration which makes all of the substantive provisions of each of the Covenants non-self-executing. A general reservation or declaration such as this sabotages the intent and purpose of the Covenants. If the Senate gives its consent to ratify the Covenants, especially the Civil and Political Covenant, with any such general reservation or declaration, that action may fairly be interpreted as proof that the United States is unwilling to "practice what it preaches" regarding its commitment to the advancement of international human rights standards. Elimination of the domestic legal effect of all the substantive provisions of the Covenants would ultimately reduce the product of ratification to mere symbolism.

Some have argued that a primarily symbolic ratification would be acceptable,¹³⁵ while others contend that it would undermine the integrity of the Covenants.¹³⁶ In the final analysis, a symbolic ratification, which is the most probable outcome, is better than no ratification at all. If, however, the United States opts for the symbolic approach, it will have sacrificed the very substance of the Covenants, as well as much of its own credibility.

135. See Vogelgesang, *What Price Principle? U.S. Policy on Human Rights*, 56 FOREIGN AFFAIRS 819, 834 (1978).

136. See *Ratification Now*, 7 HUMAN RIGHTS 36, 39 (Summer 1978), in which the Committee on Human Rights, the American Branch, International Law Association presents its report on the Covenants.

