The following excerpts from the 1979 Senate hearings on the treaties concern only one of them, the International Covenant on Civil and Political Rights. The treaties were never brought to vote in the Senate, and the matter effectively died until the Bush Administration revived in 1991 the question of US participation in this Covenant. It submitted the Covenant afresh to the Senate, together with modestly amended proposals for reservations, understandings and declarations that are set forth at p. 1039, infra.

There follow some brief excerpts from the lengthy Senate hearings.

Statement of Charles Yost, Former Ambassador to United Nations

There are, in my judgment, few failures or omissions on our part which have done more to undermine American credibility internationally than this one. Whenever an American delegate at an international conference, or an American Ambassador making representations on behalf of our Government, raises a question of human rights, as we have in these times many occasions to do, the response public or private, is very likely to be this: If you attach so much importance to human rights, why have you not even ratified the United Nations' conventions and covenants on this subject? . . .

Our refusal to join in the international implementation of the principles we so loudly and frequently proclaim cannot help but give the impression that we do not practice what we preach, that we have something to hide, that we are afraid to allow outsiders even to inquire whether we practice racial discrimination or violate other basic human rights. Yet we constantly take it upon ourselves to denounce the Soviet Union, Cuba, Vietnam, Argentina, Chile, and many other states for violating these rights. . . .

Many are therefore inclined to believe that our whole human rights policy is merely a cold war exercise or a display of self-righteousness directed against governments we dislike. . . .

Prepared Statement of Robert Owen, Legal Adviser, Department of State

. . . [Objections to the human rights treaties] tend to fall into three categories. First, it is said that the human rights treaties could serve to change our laws as they are, allowing individuals in courts of law to invoke the treaty terms where inconsistent with domestic law or even with the Constitution. The second type of objection is that the treaties could be used to alter the jurisdictional balance between our federal and state institutions. . . . The third type of objection is that the relationship between a government and its citizens is not a proper subject for the treaty-making powers at all, but ought to be left entirely to domestic legislative processes. . . .

. . . [The treaties do diverge from our domestic law in a relatively few instances. Critics fear that this divergence will cause changes in that domestic law outside the normal legislative process, or at least will subject the relations between the government and the individual to conflicting legal standards.
This fear is not well-founded, in our judgment, for two reasons. First, President
has recommended that to each of the four treaties there is appended declaration
that the treaties' substantive provisions are not self-executing.

... This does not mean that vast new implementing legislation is required, as
the great majority of the treaty provisions are already implemented in our
domestic law. It does mean that further changes in our laws will be brought
about only through the normal legislative process. This understanding as to the
non-self-executing nature of the substantive provisions of the treaties would not
derogate from or diminish in any way our international obligations under the
treaties; it touches only upon the role the treaty provisions will play in our
domestic law.

A second reason why we need not fear a confusion of standards due to possible
conflicts between the treaty provisions and domestic law rests in this Administra-
tion's recommended reservations and understandings. In the few instances
where it was felt that a provision of the treaties could reasonably be interpreted to
diverge from the requirements of our constitution or from federal or state law presently in
force, the Administration has suggested that a reservation or understanding be
made to that provision. In our view, these reservations do not detract from the
object and the purpose of the treaties—that is, to see to it that minimum standards
of human rights are observed throughout the world—and they permit us to accept
the treaties a form consonant with our domestic legal requirements.

... The primary objective is the fostering of international commitments to erect
and observe a minimum standard of rights for the individual as set forth by the
treaties. This standard is met by our domestic system in practice, although not
always in precisely the same way that the treaties envision. By ratification, we
would commit ourselves to maintain the level of respect we already pay to the
human rights of our people; we would commit ourselves not to backslide, and we
would be subjecting this commitment and our human rights performance as a
whole to international scrutiny.

... Another reason why the Administration has proposed a number of reservations,
understandings and declarations is pragmatic. We believe these treaties to be
important and necessary, and we are anxious to secure the advice and consent of
the Senate to their ratification. It is our judgment that the prospects for securing
that ratification would be significantly and perhaps decisively advanced if it were
to be clear that, by adopting these treaties, the United States would not
automatically be bringing about changes in its internal law without the legislative
concurrency of the federal or state governments.

Senator Pell. Do you think by affixing reservations we may be making an error in
that we would be permitting other nations also to affix reservations and
reinterpret the covenants according to their own ideologies?

Mr. Owen. The reservations that we have recommended in some cases are
absolutely essential in order to avoid conflicts with our own Constitution.

As to the other reservations, if the Senate should decide that they are not
necessary, I think the administration would be willing to dispense with them. Then
we would be, in effect, bringing about a more rigorous civil rights regime and
there would be no possible criticism that we were not fulfilling the treaties as a
whole.

Senator Pell. Where do you think the opposition has been to the passage of these
treaties? Why is it we have had to delay for 20 years or more?

Mr. Foner. . . . I think that race relations have been one factor, if we will be perfectly
frank. A lot of opposition came from representatives of States where law or
practice were cruelly discriminatory.

But I also think that like most other countries, particularly large countries, we
tend to react instinctively with some belligerence to the idea that other countries
and peoples can assess for themselves what we are doing, and the idea that they
may fault the level of achievement that we have managed to reach.

Senator Pell. What would you think, Professor Sohn?

Mr. Sohn. I agree with the two other speakers that the fears have been exaggerated
and that it is simply part of the general feeling that the United States knows better
about various things and therefore should not be subject to other peoples' judg-
ments. It reminds me of what happened in the United Kingdom when they finally
ratified the European Convention on Human Rights. The Foreign Minister made a
statement in the House of Commons saying of course we are willing to ratify it
because nobody can find anything wrong with the British laws on human rights.
Well, of course, two weeks later all of the cases relating to immigration from Kenya
to the United Kingdom by people nominally British citizens and the restrictions
on them by immigration authorities immediately were taken to the European
Commission. The United Kingdom had to admit that its administrative procedures
were not in accordance with the standards of the Convention.

I think on the one hand we always say to everybody else that our standards are
higher than those of anyone else; but we will discover, if we are subject to inter-
national supervision, that there are some skeletons in our closet and they will be
paraded in public, and we do not like that idea.

... Statement of Phyllis Schlafly, Alton, Ill

... I oppose Senate ratification of these international human rights treaties for the
following reasons.

First, the treaties do not give Americans any rights whatsoever. They do not add
a minuscule of benefit to the marvelous human rights proclaimed by the Declara-
tion of Independence, guaranteed by the U.S. Constitution, and extended by our
Federal and State laws.
Second, the treaties imperil or restrict existing rights of Americans by using treaty law to restrict or reduce U.S. constitutional rights, to change U.S. domestic Federal or State laws, and to upset the balance of power within our unique system of federalism.

Third, the treaties provide no tangible benefit to peoples in other lands and, even if they did, that would not justify sacrificing American rights.

... This covenant sets up a Human Rights [Committee] of 18 members on which the United States would have at most one or perhaps no representative at all. It would have the competence to hear complaints against us, and who knows what they would do.

QUESTIONS

Based on the prior readings, how would you identify the principal concerns that a President who believed it important to ratify a given human rights treaty should be aware of when seeking the Senate’s consent? Can you think of ways in which the President might seek to alleviate or dispose of those concerns before submitting the treaty to the Senate?

NOTE

The following description of the ratification process of the ICCPR stresses the problem of treaty reservations. You should review the Comment on Treaty Reservations at p. 439, supra, up to the part of that Comment that specifically concerns CEDAW.

President Bush sent a letter to the Senate Foreign Relations Committee in 1991, urging the Senate to give its advice and consent to ratification of the ICCPR. It stated in part:

The end of the Cold War offers great opportunities for the forces of democracy and the rule of law throughout the world. I believe the United States has a special responsibility to assist those in other countries who are now working to make the transition to pluralist democracies. . . .

United States ratification of the Covenant on Civil and Political Rights at this moment in history would underscore our natural commitment to fostering democratic values through international law. . . . Subject to a few essential