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The International Human Rights Treaties

Testimony By Phyllis Schlafly
to the U.S. Senate Foreign Relations Committee, November 15, 1979

Thank you for inviting me to testify on the Four International Human Rights Treaties. I oppose Senate ratification of these treaties for the following reasons:

1) The treaties do not give Americans any rights whatsoever. They do not add a miniscule of benefit to the marvelous human rights proclaimed by the Declaration of Independence, guaranteed by the United States Constitution, and extended by our federal and state laws.

2) The treaties imperil or restrict existing rights of Americans by using treaty-law:

a) to restrict or reduce U.S. constitutional rights,
b) to change U.S. domestic federal or state laws,
c) to upset the balance of power within our unique system of federalism.

3) The treaties provide no tangible benefit to peoples in other lands and, even if they did, that would not justify a sacrifice of U.S. rights or upsetting the American system of checks and balances.

4) The proposed Reservations, Statements of Understanding, and Declarations are like shaking hands to make a deal with fingers crossed on the other hand. They constitute an admission that the treaties are unsatisfactory to us and offensive to the U.S. Constitution. The Statements of Understanding and the Declarations would have no legal effect. The legal effect of the Reservations would be doubtful. Even if all these patchwork addenda were binding, they would not safeguard the rights of Americans from most of the dangers in the treaties.

5) The effect of non-ratification of the treaties would be to proclaim to the world that we will not imperil the sacred rights of American citizens for the sake of negotiations with any foreign country, and that our contribution to the international cause of human rights will be to set a shining example of our own great respect for human rights. It is because we have achieved such a high level of individual liberty, political justice, and economic freedom that people all over the world are voting with their feet in courageous attempts to escape from totalitarian countries and to migrate to America.

Our first responsibility is to maintain our high standard of leadership in human rights. It would be a default of this responsibility to "pass the buck" to committees of nations which are clearly our inferiors in showing respect for human rights. Instead of putting our heads in the noose of treaty-law, which will bring constraints on our constitutional rights and unwanted changes in our domestic laws, we should strive to perfect our own standard of human rights so that other nations can imitate us. Example, not words, is the best teacher.

The Danger of Treaties

The inherent difference between the Universal Declaration of Human Rights proclaimed by the United Nations in 1948 and the four treaties under consideration here must be noted at the outset. Enthusiastic statements of goals to be sought have their place as rallying cries to promote freedom, justice, peace, and better government. No objection is voiced here to the Universal Declaration of Human Rights or to similar statements of pious hopes for a better world.

A treaty, on the other hand, is a solemn agreement between nations which has a legally binding effect on the governments which sign it and on their peoples. We would be derelict in our duty if we did not examine a treaty, line by line, with the critical eye which should be turned on any piece of legislation or any contract. We do not want to find ourselves in the position after the fact of being told, as some lawyers tell their clients who have made a bad deal, "Too bad, Mr. and Mrs. American; you should have read the fine print." As in any contract, we should seek out the loopholes and examine all the potentials for bad effects which the terms allow.

Treaties pose far more of a hazard to Americans than to any other nation because of the preeminence of treaties in our system of government. Under the U.S. Constitution, laws passed by Congress must be "in pursuance" of the Constitution, but there is no such express limitation on treaties. The broad language of the U.S. Supreme Court in *Missouri v. Holland*, 252 U.S. 416 (1920), permitted a treaty to authorize a domestic law which, in the absence of the treaty, would have been unconstitutional.

The dangerous business of treaty ratification was best described by former Secretary of State, John Foster Dulles, who told the American Bar Association on April 12, 1952: "Under our Constitution treaties become the supreme law of the land. They are indeed more supreme than ordinary laws, for Congressional laws are invalid if they do not conform to the Constitution, whereas treaty laws can override the Constitution. Treaties ... can cut across the rights given the people by the constitutional Bill of Rights."

Civil and Political Rights

Here is a partial statement of some of the ways in which

the International Covenant on Civil and Political Rights would restrict or reduce U.S. constitutional rights, change U.S. domestic federal or state laws, or upset the balance of power within our unique system of federalism.

I. The Covenant would impose upon the United States the obligation to register and conscript women for military service any time men were so registered and conscripted, and to assign women to all military jobs including combat duty any time men were so assigned. Both would be contrary to U.S. policy of two centuries, contrary to all draft statutes ever enacted, contrary to the draft registration bill voted on by the U.S. House on September 12, 1979, and contrary to the three federal laws which exempt servicewomen from military combat (62 Stat. 359, 368, 373). This would be a grievous takeaway of women's rights and a massive interference with the right of the American people, through their Congress, to determine military policies by democratic decision-making.

Article 4 of the Covenant would authorize the derogation of civil and political rights involved in military conscription, but would prohibit any such measures which "involve discrimination solely on the ground of ... sex ..." Article 4 reads: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

Every Selective Service Act passed by the U.S. Congress would be in violation of that Article because such acts typically read, "*male* citizens of age 18 must register." The existing federal laws which exempt women from military combat are in violation of that Article. For the United States to put its head in this treaty trap would be a takeaway of the right of American women to be exempt from future conscription, of the right of U.S. servicewomen to be exempt from combat assignment, of the right of mothers to be treated differently from fathers in regard to the draft and combat duty, and of the right of the U.S. Congress to legislate different treatment in the military based on sex. It would be ridiculous to transfer such fundamental questions of policy to a treaty or to an international tribunal.

II. The Covenant would change the marriage laws of most of the fifty states of the United States by imposing an equality which would take away fundamental legal rights now possessed by American wives. The Covenant would also take away the rights of state legislatures in the fifty states to enact and retain the marriage laws desired by the people of each state and devised in a process of democratic decision-making.

Article 23, Section 4 states: "States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution."

But most U.S. laws pertaining to "during marriage" do not "ensure equality of rights and responsibilities of spouses," but rather impose on the husband and father the primary obligation of financial support in recognition of nature's rule that only women bear children and of society's consensus that laws should respect and defend the family unit.

Thus, *American Jurisprudence, 2d,* volume 41 under "Husband and Wife," states: "One of the most fundamental duties imposed by the law of domestic relations is that which requires a man to support his wife and family. . . . The duty of a husband to support his wife arises out of the marital relationship and continues during the existence of that relationship."

It is self-evident that state laws, such as the typical New York state law reading "husband liable for the support of his wife," are in violation of Article 23's mandate for "equality of rights and responsibility of spouses . . . during marriage . . ."

Article 23, on its face, would be a grievous takeaway of American wives' right of support by their husbands. It would also transfer each state's right to legislate about marriage to the Federal Government because, by ratifying the Covenant, the Federal Government (the "States Parties") binds itself to "take appropriate steps" to fulfill Article 23's mandate for "equality . . . during marriage."

III. Article 26 of the Covenant illustrates the potential dangers of writing treaty-law with undefined terms which have no legislative or judicial definitions in international law, and which may be defined in the future by non-American bodies as yet even unselected. Article 26 states: "All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, natural or social origin, property, birth or other status."

The phrase "equal protection of the law" is defined in American law to mean *not* that every person must be treated equally, but that persons similarly situated must be treated equally, and that the classification must be rationally prescribed by a legislature. Thus, we have many differences of treatment among groups which are classified by sex (e.g., conscription laws, combat laws, marriage laws, laws benefiting wives, mothers or widows such as the one upheld in *Kahn v. Shevin,* 416 U.S. 351 (1974); classified by birth (e.g., the right to vote at age 18 not 17, Social Security benefits paid at age 62 not 61); classified by property (e.g., the progressive income tax code and estate tax code, the entire fabric of welfare benefits, loans and scholarships paid to those below a certain income level).

Who knows what "equal protection of the law" will mean in treaty-law when defined by some international tribunal? There is no reason to assume it will accept our definition rather than that of any other country's. The phrase is a blank check to some as yet uncreated tribunal.

IV. The Covenant conflicts with the First Amendment rights of the U.S. Constitution. The Covenant's sections which limit or restrict our precious freedom of speech are Article 5(1) and Article 20. The U.S. State Department admits this conflict and proposes a Reservation stating that "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." But who knows whether the Reservation will be effective or binding?

V. The Covenant sets up a Human Rights Committee of 18 members, on which (under Article 31) the United States might have at most one representative or might have none at all. The Committee will establish its own rules (Article 39), according to some unknown standard. The United States would be required (under Article 40), "to submit reports on the measures [it has] adopted" to carry out the Covenant.

Under Article 41, any other government (signatory to the Covenant), friendly or unfriendly, could complain to the United States that we are violating the Covenant. We would have to answer, explain our actions, and propose remedies within three months. If the foreign government doesn't like our explanation, it can complain to the international Human Rights Committee which will consider the complaint and demand information from us, and issue a report. In case of disagreement, the complaint against us would then travel an expensive route through the world of the international bureaucracy, for the costs of which we would be assessed but over which we would have no control.

Both the State Department letter of transmittal to the President, and the President's letter of transmittal to the Senate, state unequivocally that the President will make an Article 41 Declaration by which "the United States would recognize the competence of the Human Rights Committee . . . 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.' " The Senate will never have a chance to reject this declaration under which an international tribunal, consisting only of foreigners, could decide such wholly domestic matters as our military law, our family law, and our First Amendment rights.

VI. Article 50 of the Covenant constitutes a tremendous interference with the distribution of power in the American federal system. It provides: "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions." Recognizing the defect of Article 50, the State Department proposes a Reservation which states: ". . . with 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."

But that language does not solve the problem at all. For example, the Federal Government has no right, under our present Constitution and laws, to take any measures, "appropriate" or otherwise, "to the end that" the fifty states "take appropriate measures" to ensure the equality of spouses during marriage. Marriage is not a matter of federal jurisdiction now, and it is wrong to make it so by the device of treaty-law.

The State Department further urges that we append a Declaration that "the United States declares that the provisions of Articles 1 through 27 of the Covenant are not self-executing." Such a Declaration would not solve any problem because, first, a Declaration has no binding effect, and second, any effect it might have is vitiated by the

Reservation referred to above in which the Federal Government promises "to implement all the provisions of the Covenant" and to "take appropriate action" to induce the separate states to do likewise.

Economic, Social, & Cultural Rights

Here is a partial statement of some of the ways in which the International Covenant on Economic, Social, and Cultural Rights would restrict or reduce U.S. constitutional rights, change U.S. domestic federal or state laws, or upset the balance of power within our unique system of federalism.

I. Article 2, paragraph 1, of the Covenant states: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation especially economic and technical, to the maximum of its available sources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." When this language is combined with the broad statement of economic, social and cultural rights spelled out in Articles 1 through 15, Article 2 could mean that the United States is making a legally binding commitment to legislate unlimited taxes on ourselves in order to support every other country in the world.

Look at Article 11 to see what kind of foreign economic "rights" which the Covenant binds the United States to fulfill, "to the maximum of [our] available resources," "by all appropriate means, including particularly the adoption of legislative measures." Article 11 binds us to "recognize the right of everyone [in the world] to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." Article 11 further binds us "to ensure an equitable distribution of world food supplies in relation to need." The additional taxes that could be levied on Americans in order to realize these foreign "rights" are simply incalculable.

No generosity in all history can compare to the lavish foreign aid which Americans have supplied to more than a hundred foreign countries since 1945. There is no possible way that the American people would agree to ratify a treaty which binds us to tax ourselves to do more and more of the same on into the future, especially in our present era of high taxes and inflation.

Recognizing the nonsense of such a treaty obligation, the State Department proposes a "Statement" as follows: "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." Of course such a unilateral statement would have no legal effect. Just because the United States "understands" that statement is no evidence that other countries will understand it after their expectations have been raised by the terms of the Covenant. Furthermore, the "progressive" transferal of U.S. wealth to foreign countries is not any more acceptable than its "immediate implementation."

Then, the State Department's letter of transmittal to the President adds as an afterthought: "It is also understood that paragraph (1) of Article 2, as well as Article 11, which calls for States Parties to take steps individually and through international cooperation to guard against hunger, import no legally binding obligation to provide aid to foreign countries." But by whom is this "also understood"? This sentence, which is not in the Covenant, or in any proposed Reservation or Declaration or other document which would ever reach the other signatory nations, is a piece of word chicanery to deceive the American people as to the effect of the Covenant. It is a worthless placebo which would have no effect whatsoever on our obligations.

II. This Covenant should be rejected because it specifically refuses to recognize one of the most fundamental American rights, the right to own property. A little history is needed to explain why this is a fatal defect in the Covenant.

The United States supported the Universal Declaration of Human Rights only after President Harry Truman, over the strenuous objection of the Soviet Union, insisted on an article recognizing the right to own private property. As a result of his insistence, Article 17 of the Declaration proclaimed: "Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property."

The right to own property is the unique cornerstone of our American Constitution and free economic system. The Fifth Amendment states: ". . . nor shall any person . . . be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation." The Fourteenth Amendment restated the right of all Americans to "life, liberty [and] property."

From 1948 on, the Soviet-bloc countries adamantly insisted on omitting the right to own private property from both the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights. The Truman, Eisenhower, Kennedy, Johnson, Nixon, and Ford Administrations consistently took the position that the United States would not approve the two treaties unless they recognize property rights as human rights.

By 1966, enough small nations had joined the United Nations so that the views of the United States were no longer respected, and the UN adopted the two treaties without any recognition of property rights. The United States continued to refuse to sign them.

When President Carter signed the two UN human rights treaties in October 1977, he reversed the 29-year U.S. position. However, nothing has changed and the arguments against a Covenant which specifically deleted the right to own private property, in deference to the Communists, are stronger than ever before. Senate ratification of these Covenants with such a lineage would only tarnish the luster of the U.S. constitutional right to own private property without doing anything at all for peoples in other lands who are denied all property rights.

The State Department attempts to meet this objection by suggesting that the Senate make a unilateral "Declaration" as follows: "The United States understands that under the Covenant everyone has the right to own property alone as well as in association with others, and that no one shall be arbitrarily deprived of his property." That Declaration is not only legally futile, it is inherently false. There is no basis whatsoever for a statement that the United States "understands that *under the Covenant* everyone has the right to own property . . ." There is absolutely nothing in the Covenant at all about *anyone* owning property, and for the Senate to "declare" that it "understands" that the right to own private property is "under the Covenant" -- after the property-ownership article was expressly deleted from the Covenant -- would make us a laughing stock.

III. Article 5 of the Covenant constitutes another limitation on our First Amendment freedom of speech, a fact which was recognized by the State Department when it recommended a U.S. "Statement" of explanation. Again, such unilateral "statements" would have no binding effect.

IV. Article 10 of the Covenant mandates that our government recognize that "working mothers should be accorded paid leave or leave with adequate social security benefits." Note the passive tense. Who is to pay the wages for mothers absent from their jobs? The taxpayers? The consumers of the product they manufacture? Their fellow employees? Article 10 is alien to our American system which, contrariwise, recognizes that the financial obligation of babies should fall on the parents, and not primarily on the taxpayers or on the mother's fellow employees. Some union contracts or employee-benefit plans provide wages for mothers of newborn babies, but it would constitute a giant step toward a socialist state if treaty-law were to require our government to pledge to pay wages to working mothers on maternity leave. The only kind of society in which such a rule can be justified is one in which all mothers have a continuing obligation to remain in the labor force, as in Communist countries.

V. Article 28 says, like the previous Covenant, that "the provisions of the present Covenant shall extend to all parts of the federal States without any limitations or exceptions." The State Department suggests the same reservation as in the other Covenant. And it has the same defects, as noted earlier.

Racial Discrimination

Here is a partial statement of some of the ways in which the International Convention on the Elimination of All Forms of Racial Discrimination would restrict or reduce U.S. constitutional rights, change U.S. domestic federal or state laws, or upset the balance of power within our unique system of federalism.

I. The Convention clearly pledges the U.S. Government, in Article 2, paragraph 1 (d), to "prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization." As the State Department recognizes, this would override our First Amendment freedom of association in private clubs and other private action, as upheld by the U.S. Supreme Court. The State Department, therefore, recommends an "Understanding" to the effect that "the United States understands its obligation . . . [would] extend only to governmental or government-assisted activities and to private activities required to be available on a non-discriminatory basis as defined by the Constitution and laws of the United States."

There is no assurance that such an "Understanding" would have any legal effect. We may "understand" it, but the Covenant does not "understand it," and there is no assurance whatsoever that the international tribunal set up under Article 8 would "understand" it.

II. Article 4 is another interference with our First Amendment right to free speech. The State Department recommends another Reservation similar to those recommended for the other Covenants. The doubtful validity of reservations is discussed below.

III. Article 8 establishes a Committee on the Elimination of Racial Discrimination of 18 persons, on which the United States may have at most only one representative or may have none at all. Under Article 10, the Committee will adopt its own rules of procedure, according to some unknown standard. The Committee would hear complaints against us, keep secret the identity of the governments, groups or individuals making the complaints, and demand explanations and remedies from us. The tremendously broad descriptions of racial discrimination throughout the Convention, combined with the Article 1 statement that "racial discrimination" can be judged either by "purpose *or* effect," offer endless opportunities for Committee mischief and harassment.

President Carter's letter of transmittal to the Senate says that, if this Convention is ratified, he will then submit to the Senate for ratification a Declaration, pursuant to Article 14, recognizing the jurisdiction of the Committee to hear complaints against us. At that time, the Senate would be under great pressure to acquiesce in this Declaration on the argument that it makes no sense to ratify the Convention and then not acquiesce in the work of the Committee, no matter how much it interferes in U.S. domestic affairs.

IV. Article 20 prescribes a rule on Convention reservations which is completely unacceptable. It states in paragraph 2: "A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it." In other words, two thirds of the signatory foreign governments could disallow any Reservation we make. "Understandings" and "Declarations", such as the State Department's recommendation that we declare that "Articles 1 through 7 of this Convention are not self-executing," would have no legal status at all.

V. And what if we don't like the disallowance of our reservation of our First Amendment rights of free speech and freedom of association? What if we don't like the way the Committee handles complaints against us and interferes in our domestic affairs? In that case, we are locked in like a lobster trap. Article 22 prescribes that, in the last analysis, disputes "shall, at the request of *any* of the parties to the dispute, be referred to the International Court of Justice for decision . . ." In other words, any foreign government can send our case to the World Court despite our objection.

This language subjects U.S. domestic affairs to the unreserved jurisdiction of the International Court of Justice on all matters pertaining to the Convention on Racial Discrimination, and it deprives us of the protection of the Connally Reservation to U.S. participation in the World Court under which we refused international jurisdiction over "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America *as determined by the United States of America.*" Thus, if the Senate ratifies the Convention on Racial Discrimination, and a case arises in which our Supreme Court holds that the complaint is a domestic matter protected by our First Amendment, any foreign government, group or individual could still bring the matter before the International Court of Justice, which could disregard completely our Supreme Court's decision and hold that the matter is *not* protected by our First Amendment. The United States would be bound by that decision despite the Connally Reservation to the World Court's jurisdiction.

Thus, the Convention on Racial Discrimination effectively overrides the Connally Reservation to our participation in the International Court of Justice, and, for that reason alone, should be rejected.

Folly, Futility, and Frustration

It is obvious from the texts of the international treaties on human rights, as well as from the State Department's recommendations of reservations, statements of understanding, and declarations, that the treaties are incompatible with the United States Constitution, would override precious American rights, would interfere with our domestic law and matters of private concern, and would upset the distribution of power in our system of federalism.

The statements of understanding and declarations have no international standing or validity of any kind. Those are mere words, placebos designed to deceive the Senate and the American people into thinking our rights have not been interfered with, when in fact they have been severely prejudiced or overridden.

The validity of reservations in international law is nebulous. Some guidance is offered in the advisory opinion given by the International Court of Justice, I.C.J. Rep. 15 (1951), in which the Court ruled by a vote of seven to five: "that a State which has made and maintained a reservation which has been objected to by one or more of the parties to the Convention but not by others, can be regarded as being a party to the Convention if the reservation is compatible with the object and purpose of the Convention; otherwise, that State cannot be regarded as being a party to the Convention." It is not stated and is certainly not clear who would decide whether "the reservation is compatible." It is more than possible that other countries would consider our reservations incompatible and then, either the reservations would be of no effect, or the other nations would consider us not a signatory to the Covenants.

Our experience with the SALT I Agreements of 1972 is a powerful lesson in the futility (and stupidity) of attaching unilateral statements to international agreements. The United States attached seven "Noteworthy Unilateral Statements" to the SALT I Agreements concerning crucial matters on which the Soviet Union had been unwilling to agree. Those Unilateral Statements were, indeed, very "noteworthy": they covered the most vital issues of land-mobile ICBM launchers and the definition of "heavy" ICBMs. The Soviet Union paid no more attention to our unilateral statements than if we had been whistling in the air. Indeed, the Soviets had no obligation to pay any attention to our unilateral statements because they were unilateral -- and even our calling them "noteworthy" could not alter that essential fact.

The whole exercise of trying to use unilateral "reservations," "statements of understanding," and "declarations" to reconcile the international treaties on human rights with American constitutional and statutory law, with the unique American system of checks and balances, and with the superior American economic standard of living, is an exercise in folly, futility, and frustration. We cannot gain the respect of others by placing our own rights in jeopardy. We will have a better guarantee of our own rights and earn more respect from other nations if we reject the international human rights treaties in toto.

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