Executive Memorandum
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RUSH!

HUMAN RIGHTS TREATY POSES DANGERS FOR AMERICA

Four years after the fall of the Berlin Wall symbolized the fall of Communism, the Clinton Administration intends to present for ratification a treaty shelved at the height of the Cold War because of its embrace of socialist principles. The International Covenant on Economic, Social and Cultural Rights establishes the rights to housing, food, a fair wage, paid vacations, health care, and other expensive benefits. The treaty was signed in 1977 by Jimmy Carter and has been pending in the Senate Foreign Relations Committee since 1978. This treaty should remain on the shelf. If ratified, it could become law and have the same force as legislation passed by both houses of Congress and signed by the President.

The International Covenant on Economic, Social and Cultural Rights was passed by the United Nations General Assembly in 1966 with the support of the Soviet Union and the Third World non-aligned movement. Presidents Johnson, Nixon, and Ford refused to sign it, but Jimmy Carter reversed that policy and signed the document on October 5, 1977, as part of his international human rights agenda. In a speech to the World Conference on Human Rights this June, Secretary of State Warren Christopher declared that the treaty "constitutes [an] important advance," which the Clinton Administration views as a "solemn commitment to be enforced."

As a practical matter, signing a treaty laden with economic rights is foolish. It accepts as a premise that government can create wealth. If the 75-year communist experiment proved anything, it is that government gets in the way of producing goods and services. Abundant health care, housing, and food are byproducts of wealth created by private individuals pursuing a profit. Even the most hard-core former communists in Russia and China have come to understand this.

"Supreme Law of the Land." Unfortunately, the treaty may do more than simply put the U.S. on record in support of bankrupt ideas. These ideas may actually become part of U.S. law. Article VI, section 2 of the U.S. Constitution states, "...all treaties made, or which shall be made, under the authority of the United States, shall become the supreme law of the land." Once the Senate ratifies international treaties, they sometimes become the basis for American case law as practiced in state and federal courts. One factor courts consider is whether the cooperation of the other signatories is needed to enforce the agreement.

The classic legal example of this involves the 1918 Migratory Birds Treaty covering the U.S. and Canada. In a landmark case two years later, the state of Missouri challenged the right of the federal government to mandate closed seasons and other treaty measures to protect migratory birds like geese. The Supreme Court, however, agreed with the argument that the birds were valued both as food and as destroyers of insects, and that preserving them was in the national interest. Protecting this interest required the cooperation of Canada. The Court ruled that the Migratory Birds Treaty was part of federal law and therefore pre-empted Missouri state law.[1]

1 *Missouri v. Holland*, 252 U.S. 416 (1920).

Another important consideration often taken into account by the courts is whether the terms of the treaty can be met without spending federal money. Article I, section 7, clause 1 of the U.S. Constitution states, "All bills for raising revenue shall originate in the House of Representatives." In the case of the International Covenant, enforcing the right to housing and other economic rights would require the government to appropriate funds. This cannot be done without additional legislation from Congress.

Based on these considerations, no reasonable judge would conclude that the International Covenant is meant to apply to domestic law. However, not all judges are reasonable. For example, in the early 1950s, a state appellate court struck down the California Alien Land Law solely on the grounds that it conflicted with the human rights provisions of the U.N. Charter. The state's highest court rejected the rationale, but upheld the decision based on the U.S. Constitution.[2]

There have been other examples of U.N. documents being cited in court cases. For example, several courts have cited the U.N. Standard Minimum Rules for the Treatment of Prisoners when deciding cruel and unusual punishment cases, although none have based their decisions on that document.[3] And the Supreme Court in 1963 made a passing reference to the Universal Declaration of Human Rights to support the right of due process for a man denied a passport by the State Department.[4]

Reading New Meaning. Activist judges use broadly worded documents like the International Covenant to achieve a variety of social goals. One such document on the U.S. statute books is the National Environmental Policy Act. In a recent decision, federal Judge Charles Richey read new meaning into the broad language of that Act, applying its provisions for environmental impact statements to the North American Free Trade Agreement, and thus endangering early ratification of the agreement by Congress. Ignoring congressional intent, past practice, and years of judicial precedent, Judge Richey's ruling in favor of radical environmentalists could cause a foreign policy crisis with Mexico if it leads to U.S. rejection of the agreement.[5]

Clinton's proposal to ratify this treaty ignores centuries of Western intellectual and economic history, while at the same time embracing the theories of Karl Marx and Vladimir Lenin. Their ideas are enshrined in the Soviet Constitution of 1936, written at the behest of Josef Stalin. It contained many of the rights in the International Covenant, including the right to housing, education, medical care, a job, and leisure time. This cynical document identified rights that were never meant to be granted. For decades, though, it gave Soviet totalitarian governments the cover that justified their accumulation of power and property.

For years, legal activists have tried to get American courts to recognize this concept of economic rights. Generally, the courts have refused.[6] This could change if courts decide that the International Covenant is U.S. law.

Ratification of this treaty could be a costly disaster. It would violate the intellectual spirit of freedom and individual liberties that has characterized America since its founding.

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2 *Sei Fujii v. State*, 38 Cal. 2d 718 (1952).

3 See, e.g., *Estelle v. Gamble*, 429 U.S. 97 (1976).

4 *Zemel v. Rusk*, 381 U.S. 1 (1963).

5 See Marshall Breger, "Trade on Trial: NAFTA in the Dock," Heritage Foundation *Backgrounder Update* No. 199, July 12, 1993.

6 See, e.g., *Harris v. McRae*, 448 U.S. 297 (1980) (no constitutional right of poor women to have taxpayer-funded abortions); *Lindsey v. Normet*, 405 U.S. 56 (1972) (no constitutional guarantee of free housing).