

INTERNATIONAL HUMAN RIGHTS TREATIES: Their Origins, Purpose, and Significance to the United States

Opening Statement, Congressional
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Human Rights: Time to Ratify,”
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In 1977, President Jimmy Carter signed five international human rights treaties and sent them to the Senate for its advice and consent toward ratification. These were the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention for the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, and the American Convention on Human Rights. To date, only one of the treaties—the Covenant on Civil and Political Rights—has been ratified. The other four have languished in the Senate for lack of interest from the Reagan and Bush administrations.

On June 14, however, Secretary of State Warren Christopher announced that the Clinton administration will pursue ratification of the remaining four treaties, beginning with the Race Convention. This congressional seminar has, accordingly, been convened to examine the content of the treaties, as well as their origin and larger significance. The next several speakers will address the particulars of each treaty in turn. I shall confine my remarks to a broad view of the importance of the treaties, and why I believe it is in the national interest that they be ratified.

On the Origins of the Treaties

This month marks the two hundred seventeenth anniversary of the birth of this nation, founded on a declaration that “all men are created equal” and “endowed by their Creator with certain inalienable rights,” including rights to “life, liberty, and the pursuit of happiness.” What set this country apart from the outset was that it derived its identity not from ethnicity or royal lineage but from an ideal of universal human rights. Despite the

existence of slavery, Thomas Jefferson deliberately avoided limiting his proclamation of rights to any particular race or nation, and was seconded in that judgment by Ben Franklin and John Adams, as well as the signers of the Declaration.

The universality of the Declaration created an immediate and continuing tension between the American ideal and reality. Measured against such an absolute standard, slavery, sweatshops, and all forms of mistreatment and discrimination would ultimately prove irreconcilable with our sense of national identity. From Abraham Lincoln to Martin Luther King, our great reformers have reminded us of the principles of the Declaration as they persuaded Americans that love of one's country must ultimately entail full respect for the rights of all fellow-citizens, without regard for distinguishing characteristics.

In this century, the tragedy of the Great Depression and the ensuing horrors of world war and genocide drove home the fact that our civil and political rights could no longer be made secure without a complement of economic and social rights, and without seeking to secure all of these rights abroad as well as at home.

Conscious of the origins of fascism and totalitarianism in economic and political insecurity, President Franklin Roosevelt in 1941 proclaimed the "Four Freedoms," adding freedom from fear and want to the traditional freedoms of speech and worship. Later that year, Winston Churchill endorsed the new freedoms in the Atlantic Charter, a joint declaration which prefigured the United Nations and committed the two powers to seek "improved labor standards, economic advancement and social security," and "assurance that all the men in all the lands may live out their lives in freedom from fear and want."

Though Roosevelt died in 1945, President Truman named Eleanor Roosevelt to represent the United States in the drafting of the Universal Declaration of Human Rights. Reflecting its American parentage, the preamble of that document draws from both the Declaration of Independence and the Four Freedoms. In content, the Declaration similarly incorporates both the civil and political rights protected by our Bill of Rights and the economic and social rights set forth by President Roosevelt in his 1944 message to Congress on the State of the Union—the "Economic Bill of Rights" (see Appendix B).

To give force of law to the rights proclaimed in the Universal Declaration, U.S. and foreign negotiators drafted a series of international human rights treaties. The broadest and most prominent of these—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights—are complementary documents that together with the Universal Declaration constitute what is known as the International Bill of Rights. Two additional treaties—the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women—are targeted at particular forms of discrimination inconsistent with the moral principle that all human beings are created equal.

Under the aegis of the Organization of American States, similar negotiations led to the American Convention on Human Rights, which likewise draws on the language of the Declaration of Independence and of the Four Freedoms in its preamble. The Convention establishes civil and political rights in the Americas, and creates both an Inter-American Commission on Human Rights and an Inter-American Court of Human Rights to seek compliance with its provisions. It also affirms economic, social and cultural rights, both

in its preamble and in Article 26. These are elaborated in the Additional Protocol on Economic, Social and Cultural Rights (Protocol of San Salvador), which, because it was negotiated in the late 1980s, was not among the treaties signed by President Carter, but—for reasons that will become clear further on—should be included in this discussion.

Answering the Critics

Critics of the treaties have variously argued that human rights should remain a domestic concern, that further protection of the rights of women and ethnic minorities is unnecessary, and that economic, social and cultural rights are alien to American history and values.

The argument that human rights should remain an exclusively domestic concern is, as I've already pointed out, at variance with the universal language of the Declaration of Independence, to say nothing of the Gettysburg Address and the Four Freedoms. It has also become impractical in a globalized economy in which business, communications, and pollution flow freely across borders, and in which a nuclear-tipped missile can travel thousands of miles in a matter of minutes.

To the contention that additional safeguards against racial and gender discrimination are unneeded, I would argue that such rights can never be too well protected, given due respect for the equal rights of others. Though women and racial and ethnic minorities have made substantial gains in the U.S. and many other countries, inequities remain, as do much larger injustices in other parts of the world, as we are reminded by the outrage of “ethnic cleansing” in the Balkans.

The argument that the concept of economic and social rights is alien to our history and values is also demonstrably wrong. The commandment to feed the hungry, clothe the naked, and heal the sick is an essential component of Christian morality, as it is in Judaism and Islam. Even in our political culture, the concept of economic rights antedates the New Deal by more than a century. In 1776, Thomas Jefferson proposed a right to 50 acres of land for “every person of full age” in his draft constitution for the Commonwealth of Virginia. Lincoln, who was a careful student of Jeffersonian thought, revived that concept with the Homestead Act of 1862, which gave 160 acres to any head of family willing to cultivate the land for five years.

Underlying both initiatives was the perception that economic security was essential to the proper functioning of democracy, a concept articulated by Franklin Roosevelt in his 1944 State of the Union message: “We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence.

‘Necessitous men are not free men.’ People who are hungry and out of a job are the stuff of which dictatorships are made.”

These three presidents, incidentally, are the only ones besides Washington who have been honored with public memorials in our capital city. Should that not persuade the doubters, let them consult the American people. Ask them whether they consider public education, social security, and free trade unions to be essential American rights. Ask them also about health care; since the election of Harris Wofford to the Senate and Bill Clinton to the presidency, no one is arguing this point any more. The only question now, as well it should be, is how to make decent health care available to all at reasonable cost.

Far from contradicting our values, the four treaties we are examining today embody and universalize our most authentic American values, ranging from the civil and political to the economic and social. They represent the globalization of the human rights proclaimed in the Declaration of Independence, the Bill of Rights, and the Four Freedoms. Hence ratification of the treaties is, in a very real sense, a reaffirmation of our identity as a society dedicated to the fulfillment of universal human rights.

The Case for Ratification

I can think of at least six other compelling reasons to ratify these treaties:

1) **Credibility**: As a country that routinely appeals to the concept of human rights in its foreign policy, it is important that we demonstrate our willingness to judge and be judged by the same rules.

2) **Consistency**: If we are to be persuasive and effective in making human rights a major element of our foreign policy, we shall also have to be more consistent in their application, subjecting all nations to the same standard. Past inconsistencies, exemplified by support for “friendly” dictatorships in Spain, Greece, Iran, Cuba, and Nicaragua, have cost us a high price in credibility and anti-American sentiment, not to mention diplomatic and strategic embarrassment.

3) **Stability**: It is an empirical fact that democracies are more stable than autocracies, for three reasons. First, because they derive their authority from the consent of the governed. Second, because when democratic governments lose popular support, citizens may replace them in free elections, without resort to violence. Furthermore, democracies almost never go to war with one another. Hence the cornerstone of a foreign policy to promote global stability should be support for democratization. The American Convention on Human Rights addresses this need through a guarantee of free elections (Art. 23). The International Covenant on Economic, Social and Cultural Rights advances other prerequisites for democracy, such as free labor unions and universal education.

4) **Promoting liberalized trade and investment**: As illustrated by the present debate over NAFTA, public support for the removal of economic barriers between nations will only become attainable with guarantees of a level playing field for international competition. That in turn presupposes establishment of international labor and environmental standards comparable to the standards that protect the property and investments of foreigners. The International Covenant on Economic, Social and Cultural Rights provides a legal foundation for international labor standards, as does the Additional Protocol to the American Convention on Human Rights. The latter, which should be signed and ratified following ratification of the American Convention, also establishes a right to a healthy environment (Art. 11), that could serve as a foundation for international environmental standards (see Draft Declaration on Human Rights and the Environment).

5) **Enforcement**: Democracy and human rights presuppose the rule of law. For ratification of human rights treaties to be made fully meaningful and useful, we must also be concerned with enforcement. At the very least, there should be institutionalized means of drawing attention to violations. The right of individual petition (Art. 44) incorporated in the American Convention on Human Rights is a useful first step. It enables any

individual to appeal to the Inter-American Commission on Human Rights should he or she be denied due process at the national level. Though the Commission's rulings are advisory, they draw unflattering attention to violations of human rights, which can lead to compensatory reforms. A similar right of individual petition is the centerpiece of the First Optional Protocol to the Covenant on Civil and Political Rights, which the U.S. has also yet to ratify.

Better yet are international courts, such as the Inter-American Court of Human Rights, capable of rendering legally binding judgments. As with any other international court, the Inter-American Court depends for its authority on declarations by member states that they accept its compulsory jurisdiction. As a first step toward making the Court effective, the U.S. should make such a declaration following ratification of the American Convention, and encourage other countries that have not already done so to follow suit. I can think of no other single measure that would contribute more to the development of civil society and the rule of law in Latin American countries that have long suffered military and oligarchical rule. Most of the new democratic governments of Latin America have accepted the jurisdiction of the Court, and are hoping the United States will join in making the Court effective; we should not disappoint them.

6) **Near-universal acceptance:** The treaties in question already enjoy almost universal acceptance among democracies. The fact that they have been ratified by such countries as Great Britain, France, Germany, Sweden, Canada, Costa Rica, and Australia should reassure us that we will find little to object to in their content, and that such objections can be met with minor reservations. Conversely, the rogues' gallery of non-ratifiers should alert us to the company we shall have to keep if we fail to ratify.

The Convention on the Elimination of All Forms of Racial Discrimination has been ratified by all of Europe, Canada, and all of Latin America except Paraguay, a country that has engaged in genocide against its Indian populations. Other holdouts include South Africa, Saudi Arabia, and Japan, where racial prejudices contributed to mass slaughter of Koreans and Chinese earlier in this century, and continue to be suffered by Korean and Filipino immigrants. With our less than fortunate history of race relations, it is in our interest to break out of this club—fast.

Virtually every country in the world has ratified the Convention on the Elimination of Discrimination Against Women, with the prominent exception of the more fundamentalist Islamic countries. Failure to ratify this treaty would leave us in some very jolly company, including Iran, Syria, Sudan, Saudi Arabia, Kuwait, the United Arab Emirates, Pakistan, and Afghanistan.

The American Convention on Human Rights has been ratified by every country in the hemisphere except some tiny Caribbean islands, Belize, Guyana, and Cuba. Canada, which only recently joined the OAS, has submitted the treaty to its provinces for consultations, the first step in the process of ratification.

The International Covenant on Economic, Social and Cultural Rights has been ratified by all of Europe, Canada, Japan, South Korea, the Philippines, Australia, New Zealand, and virtually all of Latin America. The holdouts in this case include some of the world's most prominent autocracies and pariahs, including China, Myanmar, Thailand, Indonesia, Malaysia, Pakistan, Saudi Arabia, and Cuba. It is worth noting that one of the provisions

most objected to by the governments of these countries is the guarantee of free labor unions and other labor rights inconvenient to the perpetuation of authoritarian rule. This is all the more reason for the United States to weigh in on the side of its democratic counterparts.

President Clinton and Secretary of State Christopher are acting in the best American tradition by pursuing ratification of these treaties, and by proposing to make human rights a cornerstone of our foreign policy. It is now up to the Senate to determine whether the United States will keep its present strange company with autocracies, theocracies, and one-party states, or join the rest of the free world in endorsing universal human rights and fulfilling the promise of the Declaration of Independence.

APPENDIX A:

On the meaning of Article 4(1) of the American Convention on Human Rights:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

In 1977, a year before President Carter signed the American Convention on Human Rights, two members of Catholics for Christian Political Action filed a complaint with the Inter-American Commission on Human Rights alleging that U.S. abortion laws violated Article 4(1). Though the U.S. had not ratified the treaty, the plaintiffs argued that the American Convention acts as an interpretive document to the American Declaration of the Rights and Duties of Man, to which the U.S. is a party. The Commission agreed to hear the case.

In its defense, the United States argued that the plaintiffs were misreading Article 4(1):

When dealing with the issue of abortion, there are two aspects of the Convention's elaboration of the right to life which stand out. First, the phrase "in general." It was recognized in the drafting sessions in San José that this phrase left open the possibility that states parties to a future Convention could include in their domestic legislation "the most diverse cases of abortion." Second, the last sentence focuses on arbitrary deprivations of life. In evaluating whether the performance of an abortion violates the standard of Article 4, one must thus consider the circumstances under which it was performed. Was it an "arbitrary" act? An abortion which was performed without substantial cause based upon the law could be inconsistent with Article 4.

By a margin of five to two, the Commission agreed with the United States, and dismissed all of the plaintiffs' allegations (Resolution 23/81, on 6 March 1981). In its majority opinion, the Commission also examined the drafting of the American Convention. It noted that Ecuador had tried to have the words "and, in general," stricken from the text of Article 4(1) in an attempt to proscribe abortion, but had been overruled by the majority. And it concluded:

In the light of this history, it is clear that the petitioners' interpretation of the definition given by the American Convention on the right to life is incorrect. The addition of the phrase "in general, from the moment of conception" does not mean that the drafters of the Convention intended to modify the concept of the right to life that prevailed in Bogotá, when they approved the American Declaration. The legal implications of the clause "in general, from the moment of conception" are substantially different from the

shorter clause “from the moment of conception” as appears repeatedly in the petitioners’ briefs.

The Commission has declined to hear all subsequent attempts to challenge domestic legislation on abortion, referring the plaintiffs to this resolution. The full text of the decision appears in the *Annual Report of the Inter-American Commission on Human Rights 1980-1981*, 25-54.

APPENDIX B:

Excerpt—“the Economic Bill of Rights”—from Franklin D. Roosevelt’s 11 January 1944 message to Congress on the State of the Union:

It is our duty now to begin to lay the plans and determine the strategy for the winning of a lasting peace and the establishment of an American standard of living higher than ever before known. We cannot be content, no matter how high that general standard of living may be, if some fraction of our people—whether it be one-third or one-fifth or one-tenth—is ill-fed, ill-clothed, ill-housed, and insecure.

This Republic had its beginning, and grew to its present strength, under the protection of certain inalienable political rights—among them the right of free speech, free press, free worship, trial by jury, freedom from unreasonable searches and seizures. They were our rights to life and liberty.

As our nation has grown in size and stature, however—as our industrial economy expanded—these political rights proved inadequate to assure us equality in the pursuit of happiness.

We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. ‘Necessitous men are not free men.’ People who are hungry and out of a job are the stuff of which dictatorships are made.

In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all—regardless of station, race, or creed.

Among these are:

The right to a useful and remunerative job in the industries or shops or farms or mines of the nation;

The right to earn enough to provide adequate food and clothing and recreation;

The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;

The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;

The right of every family to a decent home;

The right to adequate medical care and the opportunity to achieve and enjoy good health;

The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment;

The right to a good education.

All of these rights spell security. And after this war is won we must be prepared to move forward, in the implementation of these rights, to new goals of human happiness and well-being.

America's own rightful place in the world depends in large part upon how fully these and similar rights have been carried into practice for our citizens.

Source: *The Public Papers & Addresses of Franklin D. Roosevelt* (Samuel Rosenman, ed.), Vol. XIII (NY: Harper, 1950), 40-42

12 How. 152: "Necessitous men," says the Lord Chancellor, in *Vernon v Bethell*, 2 Eden 113 (1762), "are not, truly speaking, free men; but, to answer a present emergency, will submit to any terms that the crafty may impose on them."