

# **H.R. 1146 – The American Sovereignty Restoration Act of 2003**

Analysis  
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## **I. Introduction**

Over half a century has transpired since the United States of America became a member of the United Nations. Purporting to act pursuant to the treaty power (Article II, Section 2) of the Constitution of the United States of America (Constitution), the president of the United States signed and the United States Senate ratified the Charter of the United Nations. Yet, as Edwin S. Corwin's classic study of The President: Office and Powers, has observed, "the debate in government circles over the United Nations' charter scarcely touched on the question of the constitutional power of the United States to enter such an arrangement...." E. Corwin, The President 248 (5th Rev. ed. 1984) Instead, the only questions addressed concerned the respective roles that the president and Congress would assume upon the implementation of that charter.

On the one hand, some proposed that once the Charter of the United Nations was ratified, the president of the United States would act independently of Congress pursuant to his executive prerogative to conduct the foreign affairs of the nation. Others insisted, however, that Congress play the major role of defining U.S. foreign policy, especially because that policy implicated the power to declare war, a subject expressly reserved to Congress by Article I, Section 8 of the Constitution of the United States of America.

At first, it appeared that Congress would take control of America's participation in the United Nations. By the enactment of the United Nations Participation Act on December 20, 1945, Congress laid down several rules by which America's participation would be governed. Among those rules was the requirement that before the president of the United States could deploy United States armed forces in service of the United Nations, he was required to submit to Congress for its specific approval "the numbers and types of armed forces, their degree of readiness and general location, and the nature of the facilities and assistance, including rights of passage, to be made available to the United Nations Security Council on its call for the purpose of maintaining international peace and security." As Corwin has pointed out "*the controlling theory of the act is that American participation in United Nations shall rest on the principle of department collaboration, and not on an exclusive presidential prerogative in the diplomatic field.*" Id., at 251

Since the passage of the United Nations Participation Act, however, congressional control of presidential foreign policy initiatives in cooperation with the United Nations has been more theoretical than real. Presidents from Truman to Clinton have again and again presented Congress with military *faits accomplis*, thereby forcing Congress' hand to support United States troops or risk the accusation of having put the nation's servicemen and servicewomen in unnecessary danger. Instead of seeking congressional approval of the use of United States armed forces in service of the United Nations, presidents from Truman to Clinton have used the United Nations Security Council as a substitute for congressional authorization of the deployment of United States armed forces in that service.

This erosion of congressional power, and hence United States sovereignty, has not been accidental. The seeds were planted from the beginning, both in the text of the Charter of the United Nations and in the vision of its most ardent supporters. Article 24 of the Charter of the United Nations proclaimed that, as necessary prerequisite for "prompt and effective action," the members of the United Nations "confer [red] on the Security Council primary responsibility for the maintenance of international peace and security," agreeing "that in carrying out its duties under this responsibility the Security Council acts on their behalf." With such expansive language as this, it is not surprising that, even before the charter was ratified, President Franklin Delano Roosevelt expressed hope that some day "the lion's share" of "the direction of American foreign policy" would pass gradually to the United Nations Security Council. Id., at 249-50

This transfer of power from Congress to the United Nations has not, however, been limited to the power to make war. Increasingly, presidents are using the United Nations not only to implement foreign policy in pursuit of international peace, but also domestic policy in pursuit of international, environmental, economic, education, social welfare, and human rights policies, both in derogation of the legislative prerogatives of Congress and of the 50 state legislatures, and further, in derogation of the rights of the American people to constitute their own civil order. As Cornell University government professor Jeremy Rabkin has observed:

Although the Charter specifies (Art. 2, Para. 7) that none of its provisions “shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state,” nothing has ever been found so “essential domestic” as to exclude UN intrusions. J. Rabkin, *Why Sovereignty Matters* 31 (AEI Press, Washington, D.C.: 1998).

The release in July 2000 of the United Nations Human Development Report 2000 provides unmistakable evidence of the universality of the United Nation's jurisdictional claims. Boldly proclaiming that “[g]lobal integration is...eroding national borders,” the report calls for the implementation and, if necessary, the imposition of global standards of economic and social justice by international agencies and tribunals. In a “special contribution” endorsing this call for the internationalization of domestic policy-making, United Nations Secretary General Kofi Annan wrote:

At the dawn of the 21st century the United Nations has become more central to the lives of more people than ever.... Above all...we have committed ourselves to the idea that no individual...shall have his or her human rights abused or ignored. This idea is enshrined in the Charter of the United Nations.... The United Nations achievements in the area of human rights over the last 50 years are rooted in the universal acceptance of those rights enumerated in the Universal Declaration [of Rights].... Emerging slowly, but I believe, surely, is an international norm...that *must and will take precedence over concerns of state sovereignty*. UN Human Development Report\_2000 31 (July 2000) [Emphasis added.]

Although such a wholesale transfer of United States sovereignty to the United Nations as envisioned by Secretary General Annan, has not yet come to pass, it will – unless Congress takes action.

To date, Congress has attempted to curb the abuse of power of the United Nations by urging the United Nations to reform itself, threatening the nonpayment of assessments and dues allegedly owed by the United States and thereby cutting off the United Nation's major source of funds. America's problems with the United Nations will not, however, be solved by such reform measures. The threat posed by the United Nations to the sovereignty of the United States and independence is not that the United Nations is currently plagued by a bloated and irresponsible international bureaucracy. Rather, the threat arises from the United Nation's very existence, the Charter of the United Nations of which – from the beginning – was designed to displace the national charter of the United States of America – the Declaration of Independence and her national covenant – the Constitution of the United States of America. The American people have not, however, ever approved of the Charter of the United Nations which, by its nature, cannot be the supreme law of the land for it was never “made under the Authority of the United States,” as required by Article VI of the Constitution of the United States of America.

## **II. The Charter of the United Nations is Illegitimate, Having Never Been Lawfully Ratified**

It is commonly assumed that the Charter of the United Nations is a treaty. It is not. Instead, the Charter of the United Nations is a constitution. As such, it is illegitimate,

having created a supranational government, deriving its powers not from the consent of the governed (the people of the United States of America and peoples of other member nations) but from the consent of the peoples' government officials who have no authority to bind either the American people nor any other nation's people to any terms of the Charter of the United Nations.

By definition, a treaty is a contract between or among independent and sovereign nations, obligatory on the signatories only when made by competent governing authorities in accordance with the powers constitutionally conferred upon them. I Kent, Commentaries on American Law 163 (1826); Burdick, The Law of the American Constitution section 34 (1922) Even the United Nations Treaty Collection states that a treaty is (1) a binding instrument creating legal rights and duties (2) concluded by states or international organizations with treaty-making power (3) governed by international law.

By contrast, a charter is a constitution creating a civil government for a unified nation or nations and establishing the authority of that government. Although the United Nations Treaty Collection defines a "charter" as a "constituent treaty," leading international political authorities state that "[t]he use of the word 'Charter' [in reference to the founding document of the United Nations] ...emphasizes the constitutional nature of this instrument." Thus, the preamble to the Charter of the United Nations declares "that the Peoples of the United Nations have resolved to combine their efforts to accomplish certain aims by certain means." The Charter of the United Nations: A Commentary 46 (B. Simma, ed.) (Oxford Univ. Press, NY: 1995) (Hereinafter U.N. Charter Commentary). Consistent with this view, leading international legal authorities declare that the law of the Charter of the United Nations which governs the authority of the United Nations General Assembly and the United Nations Security Council is "similar... to national constitutional law," proclaiming that "because of its status as a constitution for the world community," the Charter of the United Nations must be construed broadly, making way for "implied powers" to carry out the United Nations' "comprehensive scope of duties, especially the maintenance of international peace and security and its orientation towards international public welfare." Id. at 27

The United Nations Treaty Collection confirms the appropriateness of this "constitutional interpretive" approach to the Charter of the United Nations with its statement that the charter may be traced "back to the Magna Carta (the Great Charter) of 1215," a national constitutional document. As a constitutional document, the Magna Carta not only bound the original signatories, the English barons and the king, but all subsequent English rulers, including Parliament, conferring upon all Englishmen certain rights that five hundred years later were claimed and exercised by the English people who had colonized America.

A charter, then, is a covenant of the people and the civil rulers of a nation in perpetuity. Sources of Our Liberties 1-10 (R. Perry, ed.) (American Bar Foundation: 1978) As Article 1 of Magna Carta, puts it:

We have granted moreover to all free men of our kingdom for us and our heirs forever all liberties written below, to be had and holden by themselves and their heirs from us and our heirs.

In like manner, the Charter of the United Nations is considered to be a permanent “constitution for the universal society,” and consequently, to be construed in accordance with its broad and unchanging ends but in such a way as to meet changing times and changing relations among the nations and peoples of the world. U.N. Charter Commentary at 28-44

According to the American political and legal tradition and the universal principles of constitution making, a perpetual civil covenant or constitution, obligatory on the people and their rulers throughout the generations, must, first, be proposed in the name of the people and, thereafter, ratified by the people’s representatives elected and assembled for the sole purpose of passing on the terms of a proposed covenant. See 4 The Founders’ Constitution 647-58 (P. Kurland and R. Lerner, eds.) (Univ. Chicago Press: 1985). Thus, the preamble of the Constitution of the United States of America begins with “We the People of the United States” and Article VII provides for ratification by state conventions composed of representatives of the people elected solely for that purpose. Sources of Our Liberties 408, 416, 418-21 (R. Perry, ed.) (ABA Foundation, Chicago: 1978)

Taking advantage of the universal appeal of the American constitutional tradition, the preamble of the Charter of the United Nations opens with “We the peoples of the United Nations.” But, unlike the Constitution of the United States of America, the Charter of the United Nations does not call for ratification by conventions of the elected representatives of the people of the signatory nations. Rather, Article 110 of the Charter of the United Nations provides for ratification “by the signatory states in accordance with their respective constitutional processes.” Such a ratification process would have been politically and legally appropriate if the charter were a mere treaty. But the Charter of the United Nations is not a treaty; it is a constitution.

First of all, Charter of the United Nations, executed as an agreement in the name of the people, legally and politically displaced previously binding agreements upon the signatory nations. Article 103 provides that “[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.” Because the 1787 Constitution of the United States of America would displace the previously adopted Articles of Confederation under which the United States was being governed, the drafters recognized that only if the elected representatives of the people at a constitutional convention ratified the proposed constitution, could it be lawfully adopted as a constitution. Otherwise, the Constitution of the United States of America would be, legally and politically, a treaty which could be altered by any state’s legislature as it saw fit. 4 The Founders’ Constitution, *supra*, at 648-52

Second, an agreement made in the name of the people creates a perpetual union, subject to dissolution only upon proof of breach of covenant by the governing authorities whereupon the people are entitled to reconstitute a new government on such terms and for such duration as the people see fit. By contrast, an agreement made in the name of nations creates only a contractual obligation, subject to change when any signatory nation decides that the obligation is no longer advantageous or suitable. Thus, a treaty may be altered by valid statute enacted by a signatory nation, but a

constitution may be altered only by a special amendatory process provided for in that document. Id. at 652

Article V of the Constitution of the United States of America spells out that amendment process, providing two methods for adopting constitutional changes, neither of which requires unanimous consent of the states of the Union. Had the Constitution of the United States of America been a treaty, such unanimous consent would have been required. Similarly, the Charter of the United Nations may be amended without the unanimous consent of its member states. According to Article 108 of the Charter of the United Nations, amendments may be proposed by a vote of two-thirds of the United Nations General Assembly and may become effective upon ratification by a vote of two-thirds of the members of the United Nations, including all the permanent members of the United Nations Security Council. According to Article 109 of the Charter of the United Nations, a special conference of members of the United Nations may be called “for the purpose of reviewing the present Charter” and any changes proposed by the conference may “take effect when ratified by two-thirds of the Members of the United Nations including all the permanent members of the Security Council.” Once an amendment to the Charter of the United Nations is adopted then that amendment “shall come into force for all Members of the United Nations,” even those nations who did not ratify the amendment, just as an amendment to the Constitution of the United States of America is effective in all of the states, even though the legislature of a state or a convention of a state refused to ratify. Such an amendment process is totally foreign to a treaty. See Id., at 575-84.

Third, the authority to enter into an agreement made in the name of the people cannot be politically or legally limited by any preexisting constitution, treaty, alliance, or instructions. An agreement made in the name of a nation, however, may not contradict the authority granted to the governing powers and, thus, is so limited. For example, the people ratified the Constitution of the United States of America notwithstanding the fact that the constitutional proposal had been made in disregard to specific instructions to amend the Articles of Confederation, not to displace them. See Sources of Our Liberties 399-403 (R. Perry ed.) (American Bar Foundation: 1972). As George Mason observed at the Constitutional Convention in 1787, “Legislatures have no power to ratify” a plan changing the form of government, only “the people” have such power. 4 The Founders’ Constitution, *supra*, at 651

As a direct consequence of this original power of the people to constitute a new government, the Congress under the new constitution was authorized to admit new states to join the original 13 states without submitting the admission of each state to the 13 original states. In like manner, the Charter of the United Nations, forged in the name of the “peoples” of those nations, established a new international government with independent powers to admit to membership whichever nations the United Nations governing authorities chose without submitting such admissions to each individual member nation for ratification. See Charter of the United Nations, Article 4, Section 2. No treaty could legitimately confer upon the United Nations General Assembly such powers and remain within the legal and political definition of a treaty.

By invoking the name of the “peoples of the United Nations,” then, the Charter of the United Nations envisioned a new constitution creating a new civil order capable of not only imposing obligations upon the subscribing nations, but also imposing

obligations directly upon the peoples of those nations. In his special contribution to the United Nations Human Development Report 2000, United Nations Secretary-General Annan made this claim crystal clear:

Even though we are an organization of Member States, the rights and ideals the United Nations exists to protect are those of the peoples. *No government has the right to hide behind national sovereignty in order to violate the human rights or fundamental freedoms of its peoples.* Human Development Report 2000 31 (July 2000) [Emphasis added.]

While no previous United Nations' secretary general has been so bold, Annan's proclamation of universal jurisdiction over "human rights and fundamental freedoms" simply reflects the preamble of the Charter of the United Nations which contemplated a future in which the United Nations operates in perpetuity "to save succeeding generations from the scourge of war...to reaffirm faith in fundamental human rights...to establish conditions under which justice...can be maintained, and to promote social progress and between standards of life in larger freedom." Such lofty goals and objectives are comparable to those found in the preamble to the Constitution of the United States of America: "to...establish Justice, insure domestic tranquility, provide for the common defence, promote the general welfare and secure the Blessings of liberty to ourselves and our posterity..."

There is, however, one difference that must not be overlooked. The Constitution of the United States of America is a legitimate constitution, having been submitted directly to the people for ratification by their representatives elected and assembled solely for the purpose of passing on the terms of that document. The Charter of the United Nations, on the other hand, is an illegitimate constitution, having only been submitted to the United States Senate for ratification as a treaty. Thus, the Charter of the United Nations, not being a treaty, cannot be made the supreme law of our land by compliance with Article II, Section 2 of Constitution of the United States of America. Therefore, the Charter of the United Nations is neither politically nor legally binding upon the United States of America or upon its people.

Even considering the Charter of the United Nations as a treaty does not save it. The Charter of the United Nations would still be constitutionally illegitimate and void, because it transgresses the Constitution of the United States of America in three major respects:

- (1) It unconstitutionally delegates the legislative power of Congress to initiate war and the executive power of the president to conduct war to the United Nations, a foreign entity;
- (2) It unconstitutionally transfers the exclusive power to originate revenue-raising measures from the United States House of Representatives to the United Nations General Assembly; and,
- (3) It unconstitutionally robs the states of powers reserved to them by the Tenth Amendment of the Constitution of the United States of America.

### III. The Charter of the United Nations Unlawfully Delegates Congressional and Presidential War Powers

Article 43 of the Charter of the United Nations requires “[a]ll Members..., in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance and facilities...necessary for the purpose of maintaining international peace and security.” To make sure that the president did not act unilaterally to place United States armed forces under United Nations command “to maintain or restore international peace and security,” the United States Congress passed the United Nations Participation Act of 1945. That act provides that no United States armed forces may be employed in a United Nations peacekeeping operation without the specific approval of the terms of agreement by Congress. 22 U.S.C. Section 287(d)

At present, Congress has never entered into an Article 43 agreement; yet, presidents from Truman through Clinton have deployed U.S. troops in service to the United Nations. How can this be explained? It began with the Korean War when President Truman “committed American forces to war on U.S. authorization but without a Congressional declaration”:

A State Department memorandum claimed that as Commander in Chief the President had full control over U.S. forces and could employ them without Congressional approval to “protect “the broad interests of American foreign policy.” Tuomala, “Just Cause: The Thread that Runs so True,” 13 *Dick. J. Int’l. Law* 1, 38 (1994)

So ingrained has this claim of presidential prerogative become that President George Bush remarked to the Texas State Republican Convention in Dallas, Texas on June 29, 1992, that he “didn’t have to get permission from some old goat in the United States Congress to kick Saddam Hussein out of Kuwait.” 28 “Weekly Comp. Pres. Doc.” 1119 (June 29, 1992) Although President Bush had only contempt for the U.S. Congress in his decision to wage war on Iraq, he assiduously courted the United Nations Security Council for support – and for good reason. Not only did President Bush need the political support of the world community, but also he sought legitimacy for his actions under the Charter of the United Nations.

According to Article 2(4) of the Charter of the United Nations, members are required to “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations” [Emphasis added.] According to Article 39 of the Charter of the United Nations, “the Security Council,” not individual states or collections of states, “determine[s] the existence of any threat to the peace, breach of the peace or act of aggression” by any state and the United Nations Security Council, not any individual states or collections of states, alone “decide[s] what measures shall be taken,” including the use of force, “to maintain or restore international peace and security.” Article 51 of the Charter of the United Nations allows for only one exception: national self-defense “if an armed attack” has occurred against a member, and even then, the member state must defer to the United Nations Security Council once it steps in with “measures necessary to maintain international peace and security.”

In short, the national interests of a member state must always be subordinate to the collective interests of the members, as determined by the United Nations Security Council.

Without question this subordination of America's national interests to those of the world community as determined by the United Nations Security Council is an unconstitutional delegation of the legislative power to declare war and the executive power to conduct war. As Cornell University government professor Jeremy Rabkin observed in 1998, "the Constitution presumes American sovereignty." Rabkin, Why Sovereignty Matters, *supra*, at 12 As Joseph Story wrote over one hundred years earlier: "A treaty to change the organization of the government, or annihilate its sovereignty, to overturn its republican form, or deprive it of its constitutional powers, would be void; because it would destroy, what it was designed merely to fulfill, the will of the people." II J. Story, Commentaries on the Constitution, Section 1508 (5th ed. 1891) Such views follow logically from the text of Article VI which states that, while the Constitution of the United States of America is *per se* the supreme law of the land, only treaties "made...under the authority of the United States" may be the supreme law. As Henry St. George Tucker wrote at the turn of the twentieth century:

The supremacy herein declared of the Constitution forbids the treaty-making power to annul any of its provisions. Its supremacy would not permit the treaty power to abrogate or annul other powers granted to any branch of the Federal Government. The long list of enumerated powers granted by this instrument to the Congress cannot be absorbed or annihilated by the treaty-making power because these powers, being parts of the Constitution, are supreme under Article VI. H. St. G. Tucker, Limitations on the Treaty-Making Power Under the Constitution of the United States Section 70 (Little, Brown, Boston: 1915)

According to Article I, Section 8 of the Constitution of the United States of America, it is Congress, not the president – and certainly not the United Nations Security Council – that has been granted the power to initiate the use of armed force in pursuance of American foreign policy. The president may only use such armed force in response to an imminent threat of invasion (*See generally*, Tuomala, "Just War," *supra*, at 30-35, 41-45), for Congress alone has the power:

- (1) to define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;
- (2) to declare war, grant letters of Marque and Reprisal, and make Rules Concerning Captures of Land and Water;
- (3) to raise and support Armies;
- (4) to provide and maintain a Navy;
- (5) to make Rules for the Government and Regulations of the land and naval forces; and,
- (6) to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers....

This amalgamation of congressional powers designed to initiate the use of armed force – whether it be a little or a lot – in the service of America's national interests in foreign affairs cannot be delegated by treaty to any foreign government or entity. Yet that is exactly what the United States Senate did in 1945 when it ratified the Charter of the

United Nations and that is exactly what the Congress did when, subsequent thereto, it enacted the United Nations Participation Act.

In the United States Senate debate over both the Charter of the United Nations and the enabling act, a minority of senators contended that Chapter VII of the Charter of the United Nations constituted an unconstitutional delegation of congressional war powers because the articles contained in Chapter VII generally conferred upon the United Nations Security Council authority to initiate armed force to maintain the international peace and security, and because Article 43 specifically obligated the United States of America to participate in such armed-force initiatives. See Stromseth, "Rethinking War Powers: Congress, the President, and the United Nations," 81 *Georgetown L. J.* 597, 601-03, 614-18 (1993).

In response, a bipartisan United States Senate majority contended that the only authority conferred upon the United Nations Security Council was the limited use of force in the form of a "police action," not full-scale mobilizations constituting a "war." *Id.*, 81 *Georgetown L. J.* at 607-12

Pursuant to this distinction between "police action", on the one hand, and "war," on the other, Congress enacted the United Nations Participation Act of 1945 authorizing the president to negotiate an agreement with the United Nations Security Council, making a limited number of American armed forces, after approval by Congress, available for the United Nations Security Council to use as it sees fit under Article 42 of the Charter of the United Nations. *Id.* at 614-18 Only a handful of senators dissented. Senator Burton Wheeler of Montana warned his colleagues that "[w]e are fooling ourselves and fooling the people of the country when we say that we will give to the President power to put down aggression with a small force, and not at the same time delegate to him the full power to declare war at any time." 91 CONG. REC. 11,393 (1945)

Senator Wheeler's warning soon proved prophetic. Within five years after enactment of the United Nations Participation Act, without the approval of Congress, President Truman launched a full-scale war in Korea, under the aegis of the United Nations Security Council. To justify his end run around Congress, the president called the Korean War a "police action." Had there been no Charter of the United Nations or any United Nations Security Council, President Truman would have had no political or legal ground on which to stand. As Ohio Senator Robert Taft proclaimed, "the Korean situation is changed by the obligations into which we have entered under the Charter of the United Nations." 96 CONG. REC. 9323 (1950) Indeed, the very idea that the employment of armed force in the name of the United Nations could be called a "police action" is was totally dependent upon the premise that the Charter of the United Nations created a new world-wide government entity with jurisdiction to use armed force, governed by the same rules that apply to a single nation's domestic police force.

As international legal scholar, Jeffrey Tuomala, has written, however, "there is no constitutional basis for distinguishing between police actions and war." Tuomala, "Just War," *supra*, 13 *Dick. J. Int'l. Law* at 38 It is, therefore, constitutionally impossible for Congress to retain its various war power initiatives and concur with Article 42 of the Charter of the United Nations, even if the United Nations Participation Act is complied

with, because Article 42, by design and effect, confers congressional power to initiate war upon the United Nations Security Council.

Not only is such a conferral an unconstitutional delegation of legislative power to initiate war, but it is an unconstitutional delegation of the president's exclusive power to act as the commander in chief of the armed forces of the United States of America and to appoint officers, with the advice and consent of the United States Senate, to exercise the executive power of the United States of America.

On May 3, 1994, President William Clinton signed Presidential Decision Directive 25 (PDD-25), a policy directive outlining the administration's position on reforming multilateral peace operations. One of the purposes of PDD-25 is to clarify United States' policy regarding command and control of United States' military personnel participating in multilateral peacekeeping operations, including those under Chapters VI and VII of the Charter of the United States. In order to preserve the president's role as commander in chief, and at the same time to permit the placing of American armed forces under United Nations' command, PDD-25 attempts to distinguish between "command" – defined as "the authority to issue orders covering every aspect of military operations and administration," and "operational control" – defined as a "subset of command" limited to "the authority to assign tasks to United States units led by United States officers," but excluding the authority to alter the composition of units, discipline personnel, confer promotions, redistribute supplies, separate units or to "change the mission or deploy U.S. forces outside the area of responsibility." In making this distinction between "command" and "operational control," the Clinton administration hoped to avoid the claim that by placing United States military personnel under the command of a foreign government military officer, the president would no longer be the commander in chief of the United States military personnel so assigned.

The office of commander in chief, however, requires the president to be both in command and in operational control. The office contemplates that the president could "take actual command over troops in the field," as well as "to direct the movements of the armed forces, even to the extent of ordering them to deploy outside the United States in time of peace." Thus, "all phases and aspects [of] control over U.S. forces is vested [by the Constitution of the United States of America] in the President." J. Snyder, "Command' versus 'Operational Control': A Critical Review of PDD-25," p. 6) Therefore, the president may delegate "operational control" only to officers who are accountable and responsible solely to the president. That can be assured only if the officer in "operational control" of troops in the field has sworn an oath to uphold the Constitution of the United States of America, not one to uphold the Charter of the United Nations, as is the case of United Nations commanders in the field who are, after all, ultimately accountable to the United Nations' secretary general. "Operational control," then is not "merely a 'subset of command,' but an inseparable component of it which cannot be relinquished because of the break in the chain of accountability." Id.

Such a break in the chain of command not only results from "the command structure employed in traditional peacekeeping operations" of the United Nations, but from the "collective security scheme envisioned by Article 43 and Article 47" of the Charter of the United Nations:

Once called by the Security Council for service in an enforcement action, forces pledged under an Article 43 agreement would come under the political and strategic control of the Security Council, which would then be responsible for the strategic and political decisions regarding the use of those forces.

Although PDD-25 attempts to put a wedge between the United Nations Security Council and the president by authorizing the United States officer commanding the unit of United States military personnel to submit a request to the president to countermand a United Nations commanders' order, nonetheless such authority is tantamount only to a veto of that order. The president cannot - under the PDD-25 policy or under the Charter of the United Nations - act affirmatively, having relinquished that authority to the United Nations secretary general and the United Nations Security Council. Hence, deployment of United States armed forces - even under the PDD-25 directive - fails to preserve the full constitutional powers of the president as commander in chief. For as the United States Supreme Court observed in Fleming v. Page, 50 U.S. [9 How.] 603, 615 (1850), the president as commander in chief is "authorized to *direct* the movements of the naval and military forces placed in his command, and to *employ them in the manner that he may deem most effectual....*" [Emphasis added.]

It is true that, as commander in chief, the president need not personally exercise all of the powers conferred upon him. But he may only delegate those powers to executive officers appointed in accordance with the procedures prescribed in Article II, Section 2 of the Constitution of the United States of America that requires military officers be appointed with the advice and consent of the United States Senate. Weiss v. United States, 510 U.S. 163 (1994) Such a constitutional requirement is designed to ensure that the military be operated in such a manner as to be politically accountable to the American people through their elected representatives. Just as the Constitution of the United States of America does not permit Congress "to shift burdens and responsibilities of federal programs on the states," it does not permit the president to shift his burdens and responsibilities on foreign entities, including the United Nations and its officials. Otherwise, presidential accountability is diminished, thereby undermining the constitutional principle of vesting all of the executive power in a single executive officer. Printz v. United States, 521 U.S. 898, 936-37 (1997); J. Rabkin, Why Sovereignty Matters, *supra*, at 18-20.

#### **IV. The United Nations General Assembly Has no Lawful Power to Require the United States to Pay Dues to the United Nations**

Since the mid-1980's, the Congress of the United States of America has sometimes refused, and only reluctantly paid, its dues and other mandatory obligations to the United Nations. During this period, the United States grew increasingly weary of paying 25% of the United Nations' regular budget, not to speak of the additional monies spent on United Nations peacekeeping operations, while at the same time it had only one vote in the United Nations General Assembly, the body responsible for developing the United Nations' budget. Finally, having extracted promises of cost reductions and other budget reforms, including the formulation of the regular budget by consensus instead of a two-thirds vote, Congress appropriated nearly a billion dollars to pay its arrears and current obligations. Even if these promised reforms and budget cutbacks are affected, they will not cure the constitutional defect in the process by which the dues

and other mandatory obligations of the United States to the United Nations are determined.

According to Article 17(1) of the Charter of the United Nations, the United Nations General Assembly has the final authority to “approve the budget of the Organization.” According to Article 17(2) of the Charter of the United Nations, the United Nations General Assembly also determines the assessment upon each United Nations member to meet the expenses of the organization. Finally, according to Article 19 of the Charter of the United Nations any member state “which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for preceding two full years, unless the General Assembly is “satisfied that the failure to pay is due to conditions beyond its control.” [Emphasis added.] The “basic fiscal law of the Organization,” then, is that, under Article 17, the United Nations General Assembly makes the dues assessment obliging each nation to pay a certain amount in dues, and noncompliance with that assessment automatically triggers the penalty set forth in Article 19. The U.N. Charter Commentary, *supra*, at 295, 305-13, 327-39

Currently, the United Nations General Assembly calculates the assessment to be exacted upon a member state according to that member’s “capacity to pay,” subject to a cap of 25% of the United Nations’ regular budget. Id., at 309-10 To determine that “capacity,” the United Nations General Assembly takes into account “the aggregate of national income, that is, the totality of the national production of goods and services....” To “prevent anomalies in the assessment resulting from statistics,” however, the United Nations General Assembly considers a number of other factors, including “comparative per-head income,” “ability of members states to secure foreign currency,” comparative level of economic development and “state indebtedness.” Id., at 309

In essence, the United Nations’ assessment system is comparable to a graduated national income tax, with deductions authorized for certain national expenditures and outstanding obligations. And while this tax does not fall individually upon the citizens of each member state, it is measured, in part, by “the comparative per-head income” of the citizens of each member states, resulting in a higher assessment imposed upon states whose citizens have a relatively high personal income, other factors of national indebtedness and state of economic development notwithstanding. In other words, the assessment by the United Nations General Assembly constitutes an indirect tax upon the people of each member state, not just upon the state itself.

As a “revenue raising” mechanism, the current United Nations’ mandatory dues assessment process violates Article I, Section 7, Clause 1 of the Constitution of the United States of America which provides that “All Bills for raising Revenue shall originate in the House of Representatives....” What this means is that it is the United States House, and only the United States House, which is authorized to make the initial decision to raise revenue to support the programs and operations of the United States government. Article 17 of the Charter of the United Nations, by design and effect, transfers that initiative power from the United States House to the United Nations General Assembly insofar as revenues are to be raised to support America’s participation in the programs and operations of the United Nations.

This unconstitutional transfer of the power to originate revenue-raising bills to support the United States involvement in the United Nations has had significant legal and political consequences.

Legally, although Congress may refuse to appropriate funds in the amount of the “tax” determined by the United Nations General Assembly, it would do so at the risk of losing United States voting rights in the United Nations General Assembly. According to Article 19 of the Charter of the United Nations, such voting rights are automatically lost upon noncompliance with its terms. This automatic penalty was placed in the charter specifically to remedy a serious shortcoming of the League of Nations, “considerable arrears [having] accumulated” for nonpayment of the member obligations which could only be enforced by “diplomatic ways and means.” *Id.*, at 295, 328; *see generally*, Galey, “Reforming the Regime for Financing the United Nations,” 31 *Howard L. J.* 543 (1988)

Congress politically risks moral disapprobation if it fails to pay its “debts” to the United Nations. This moral risk has proved sufficient to persuade many members of Congress and the American people that the United States must pay its “U.N. debt arrearage, notwithstanding lingering doubts about the prospects of a “reformed” United Nations. In contrast, Congress or the president may suspend with comparative ease the United States “voluntary contributions” to United Nations programs funded outside the regular budget established by the United Nations General Assembly. For example, the Reagan administration, with relative impunity, unilaterally discontinued United States voluntary contributions to U.N.I.C.E.F. on grounds that its activities did not conform to the foreign policy goals and objectives of the United States.

There is, however, more at stake than just the potential legal and political fallout stemming from United States resistance to United Nations monetary importunities. By permitting the United Nations General Assembly to decide how much the United States owes, the Charter of the United Nations undermines a bedrock principle of the American republic - “no taxation without representation.” In the beginning, America’s founders resisted the imposition of a tax upon the American people imposed by the English Parliament because Parliament was not composed of any representative elected by the people of the English colonies in the New World. Resting upon the Magna Carta, then over 560 years old, America declared her independence as a sovereign nation because King George III and the English Parliament insisted on taxing the American people without their consent.

Today, like the 18th century English Parliament, officials that are not elected by the American people form the United Nations General Assembly. Yet, like that English Parliament, the United Nations General Assembly insists that it has the right to impose upon the American people tax assessments to support policies adopted by that assembly. It is time to return the power to tax the American people for support of the United Nations to the United States House of Representatives and United States Senate that, alone, are composed of the elected representatives of the American people. In light of Article 17 of the Charter of the United Nations, there appears to be only one way to accomplish this objective: complete withdrawal from the United Nation by the United States of America.

## V. The Charter of the United Nations Unconstitutionally Usurps Power Reserved to the States by the Tenth Amendment

From the outset, the Charter of the United Nations has embraced goals and objectives that, if implemented, transfer powers reserved to the states by the Tenth Amendment of the Constitution of the United States of America. The charter's preamble, for example, does not limit the "ends" of the charter to the maintenance of international peace and security among the nations of the world, but extends the reach of the U.N. to the "employ[ment] [of] international machinery for the promotion of economic and social advancement of all peoples." To that end, the Charter of the United Nations contains an entire chapter (Chapter IX) of articles providing for the establishment of international agencies to promote worldwide economic, social, health, cultural, and educational policies. See Articles 55-60. Chapter X of the Charter of the United Nations additionally provides for the creation of the Economic and Social Council within the United Nations organization similarly to promote a worldwide agenda of economic, social, health, cultural and educational policies. See Articles 61-72.

In response, the United States government over the years has voluntarily cooperated in these international efforts, notwithstanding their adverse impact upon the exercise of traditional powers exercised by the state and local governments. Congress, for example, has appropriated hundreds of millions of dollars to support the United Nations Environment Fund, has authorized United States membership in the United Nations Educational, Scientific, and Cultural Organization, and the World Health Organization without consideration of the constitutional limitations upon congressional powers in these subject matter areas. Such wholesale delegation of power to influence domestic health, welfare and safety policy cannot be justified under the treaty power set forth in Article II, Section 2 of the Constitution of the United States of America. As Joseph Story observed in his *Commentaries on the Constitution*:

...[T]hough the [treaty] power is...general and unrestricted, it is not to be so construed as to destroy the fundamental laws of the State. A power given by the Constitution cannot be so construed to authorize a destruction of powers given in the same instrument.... A treaty to change the organization of government, or annihilate its sovereignty, to overturn its republican form, or deprive it of its constitutional powers, would be void; because it would destroy, what it was designed merely to fulfill, the will of the people. II J. Story, Commentaries on the Constitution Section 1508 (5th ed. 1891); *Accord*, H. St. G. Tucker, Limitations on the Treaty-Making Power, *supra*, at Sections 85-87

Twice recently, the United States Supreme Court has addressed the question of constitutionally reserved state powers in response to congressional legislation pursuant to grant of power over interstate commerce contained in Article I, Section 8 of the Constitution of the United States of America. On the second occasion, in United States v. Morrison, --- U.S. ---, 146 L Ed 2d 658 (2000), the high court ruled that Congress could not, under the guise of regulating interstate commerce, usurp traditional state power to prohibit rape when such conduct is not, by nature, "economic." Otherwise, Chief Justice William J. Rehnquist contended, "Congress might use the Commerce Clause to completely obliterate the Constitution's distinction between national and local authority...." *Id.*, 146 L Ed 2d at 674

If Congress cannot constitutionally draw on its power to regulate interstate commerce to enact laws against rape, may it rely upon the Charter of the United Nations to do so? After all, freedom from rape has now been designated in the United Nations Human Development Report 2000 as necessary to ensure the internationally recognized human right of "Freedom from fear - with no threats to personal security." Indeed, according to the July 2000 United Nations' report, "security from physical violence" is the most "vital" security condition necessary to realize all other human freedoms. UN Human Development Report 2000, *supra*, at 4

Surely, if Congress may not use the commerce clause to completely obliterate the constitution's distinction between national and local authority, the president and the United States Senate ought not be able to use the treaty power to completely obliterate the Constitution of the United States of America's distinction between international and local authority. Yet, that is precisely what the president and United States Senate did in 1948 by negotiating and ratifying the Charter of the United Nations; the purpose of which - if honored - would obliterate all distinctions between international and domestic matters. Congress did precisely that when it authorized United States' membership in the United Nations Educational, Scientific and Cultural Organization which purports to exercise jurisdiction over "the minds of men" to the end that they might be "constructed" in such a way as to bring about international peace and security. See 22 U.S.C. Section 287m and preamble to the constitution of the United Nations Educational, Scientific, and Cultural Organization.

Although it may be true that international peace and security depends upon the minds of men, as the constitution of the United Nations Educational, Scientific, and Cultural Organization states, there is no more foundational constitutional liberty protected by the First Amendment of the Constitution of the United States of America than the following: no government has jurisdiction over the minds of individual human beings. That is the legacy of Thomas Jefferson and James Madison; the latter the chief architect of the Bill of Rights. As Jefferson put it in his 1786 "Statute Establishing Religious Freedom":

Almighty God hath created the mind free...[but] that the impious presumption of...rulers,civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have...set...up their own modes of thinking as the only true and infallible, and as such endeavor[ed] to impose them on others, [thereby] establish[ing] and maintain[ing] false religions over the greater part of the world and through all time.

It is time for this Congress to return to these time-honored American principles of liberty; not to put their hope in the promise of some international organization like the United Nations which would replace the Constitution of the United States of America with its Universal Declaration of Human Rights, thereby compromising American liberties in favor of government-imposed programs designed to enhance the economic and social well-being of peoples all around the world. See generally UN Human Development Report 2000.

## **VI. Conclusion: H.R. 1146 – The American Sovereignty Restoration Act of 2003 is the Only Viable Solution to the Continual Abuses by the United Nations**

By repealing (1) the United Nations Participation Act of 1945; (2) the United Nations Headquarters Act; (3) the United Nations Educational, Scientific, and Cultural Organization Act; (4) the United Nations Environment Program Participation Act of 1973; and, (5) the World Health Organization Act, the Congress of the United States of America will remedy its earlier unconstitutional action embracing the Charter of the United Nations.

By terminating any further appropriations of funds to pay for (1) assessed or voluntary contributions to the U.N.; (2) contributions to any United Nations military operation; (3) contributions to any United Nations peacekeeping or peace enforcing operation; (4) contributions to support any United States armed forces or other personnel serving under the command of or auspices of the United Nations and the use of any United States facility or property by the United Nations, Congress will remedy its earlier unconstitutional authorizations of disproportionate spending of the American people's money to support governments whose national interests are diametrically opposed to the United States of America.

Finally, by directing the president to terminate United States' participation in the United Nations, including any organ, specialized agency, commission or affiliated body, by instructing the president not to grant diplomatic immunity for foreign United Nations' employees, and by requiring the president to terminate all United States' participation in all conventions and/or agreements with the United Nations, the United States will be set free to establish foreign and domestic policies in the national interest free from compromising foreign entanglements. Thereby, the United States take the advice of her first president, George Washington, who cautioned his countrymen to "steer clear of permanent alliances with any portion of the foreign world," lest the nation's security and liberties be compromised by endless and overriding international commitments.