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Why Has the United States Never Ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women?

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WHY HAS THE UNITED STATES NEVER RATIFIED THE UN CONVENTION ON
THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN?

by

HANNAH ELIZABETH KINGTON

Under the Direction of Sam McFarland

ABSTRACT

The *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), adopted by the United Nations in 1979, has now been ratified by 185 countries, consisting of more than ninety percent of all UN members. The United States, however, has never ratified the *Convention*. The history of the *Convention* provides evidence of global support for women's rights. While there are complex reasons behind the United States' failure to ratify CEDAW, the United States' commitment to unilateralism, an attitude of "American exceptionalism" and the long-term inequality and discrimination against women in the U.S. all contribute to the stifling of multilateral initiatives, such as the *Convention*. President Obama's support for women's rights in early 2009 offers hope for ratification of CEDAW under his administration. In conclusion, an international standard on the equal rights of women should be a priority for every nation, especially the United States.

INDEX WORDS: Women's rights, Gender discrimination, United Nations, Convention, United States, Ratification

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HANNAH ELIZABETH KINGTON

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The Beginnings of the Convention on the Elimination of All Forms of Discrimination
against Women

The *Convention on the Elimination of All Forms of Discrimination against Women*, adopted by the United Nations in 1979, has now been ratified by 185 countries, consisting of more than ninety percent of all UN members. The United States, however, has never ratified the *Convention*. This thesis describes the history of the *Convention*, addresses the complex reasons behind the United States' failure to ratify it, comments on the possibility of ratification under the Obama Administration, and concludes by urging its ratification.

The Rights of Women in the United Nations Charter and International Bill of Rights

From its beginning, the United Nations embraced the equal rights of women. The Preamble to the *Charter of the United Nations* sets one of the United Nations' primary goals as the reaffirmation of "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women." Article 1 also states that one of the main purposes of the United Nations is

to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

The *Charter to the United Nations* was, in fact, the first international document to refer specifically to the equal rights of men and women. The League of Nations Charter, written just 26 years earlier, contained no similar commitment to equal rights for women, nor had any earlier international covenant contained such a commitment. All members of

the United Nations are legally bound to strive for the full realization of all human rights and fundamental freedoms.

The *International Bill of Human Rights*, which includes the *Universal Declaration of Human Rights*, the *International Covenant on Economic, Social, and Cultural Rights*, and the *International Covenant on Civil and Political Rights* and its two optional protocols, strengthens and extends this emphasis on the rights of women. The *Universal Declaration of Human Rights* states in Article 2 that

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 7 states,

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 16 states,

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR), which translate the principles of the Declaration into legally binding form, make clear that the rights set forth are applicable to all persons without distinction of any kind and, again, specify sex as an impermissible distinction. The ICESCR states in Article 2 that

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The ICESCR also requires in Article 7 that

Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

The ICCPR states in Article 2 that

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

It also states in Article 3 that

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

The Commission on the Status of Women

As the articles cited above show, the *Universal Declaration of Human Rights*, combined with related human rights treaties, sets forth a comprehensive set of rights to which all persons, including women, are entitled. Unfortunately, women's humanity proved insufficient to guarantee them the enjoyment of their internationally recognized rights. For that reason, the Commission on the Status of Women (CSW) was formed in 1946 and has sought to define and elaborate the general guarantees of non-discrimination in these proclamations and treaties. The work of the CSW has resulted in a number of influential declarations and conventions designed to promote the human rights of women (United Nations, Division for the Advancement of Women; DAW).

The CSW was originally established as a sub-commission of the Commission on Human Rights, but was quickly granted the status of full commission as result of advocacy by women's activists. The mandate of the CSW included preparing recommendations relating to urgent problems requiring immediate attention in the field of women's rights, with the objective of implementing the principle that men and women should have equal rights, and the development of proposals to give effect to such recommendations (United Nations, DAW).

During the 1950s and 1960s, the Commission prepared conventions aimed at furthering its objectives that were adopted by the General Assembly. The *Convention on*

the Political Rights of Women, adopted by the General Assembly on December 20, 1952, recognized that women have the right to take part in government, have equal access to public services, and enjoy the exercise of political rights. The *Convention on the Nationality of Married Women*, adopted by the Assembly on January 29, 1957, stated that the nationality of a woman should not be affected by the creation or the dissolution of a marriage, nor should the change of nationality by the husband automatically affect the nationality of the wife. The *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, adopted on November 7, 1962, established that women are entitled to equal rights as to marriage, during marriage, and at its dissolution, regardless of race, nationality or religion. The *Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*, adopted on November 1, 1965, recognized that the family unit should be strengthened and that men and women of full age have the right to marry and found a family, are entitled to equal rights as to marriage and that marriage shall be entered on with free and full consent. Each of these treaties protected and promoted the rights of women in areas where the Commission believed that these rights were most vulnerable. However, it was believed that, other than in the particular areas covered by these conventions, women were best protected by general human rights treaties (United Nations, DAW).

Creating the Convention on the Elimination of All Forms of Discrimination against Women

Although these actions reflected the admirable goals of the United Nations, the approach they represent was incomplete in that it failed to deal with discrimination against women in a comprehensive way. In addition, there was concern that the Commission on Human Rights was not working as well as it might to promote and

protect the rights of women. For these reasons, the General Assembly, on December 5, 1963, adopted Resolution 1921, in which it requested that the Economic and Social Council invite the CSW to prepare a draft declaration that would combine into a single document international standards on the equal rights of women. A committee selected within the CSW began drafting the Declaration in 1965 (United Nations, DAW).

The *Declaration on the Elimination of Discrimination against Women* was adopted by the General Assembly on November 7, 1967. Although the *Declaration* was more of a statement of moral and political intent, without the contractual force of a treaty, and given the controversial nature of global women's rights, its drafting was a difficult process. For example, articles such as Articles 6 and Article 10, focus on issues such as marriage, family and employment, and the manner in which these issues are dealt with vary greatly on a global scale. Article 6 states,

1. Without prejudice to the safeguarding of the unity and the harmony of the family, which remains the basic unit of any society, all appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law, and in particular:

- (a) The right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage;

- (b) The right to equality in legal capacity and the exercise thereof;

- (c) The same rights as men with regard to the law on the movement of persons.

2. All appropriate measures shall be taken to ensure the principle of equality of status of the husband and wife, and in particular:

(a) Women shall have the same right as men to free choice of a spouse and to enter into marriage only with their free and full consent;

(b) Women shall have equal rights with men during marriage and at its dissolution. In all cases the interest of the children shall be paramount;

(c) Parents shall have equal rights and duties in matters relating to their children. In all cases the interest of the children shall be paramount.

3. Child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Article 10, relating to employment, states,

1. All appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the field of economic and social life, and in particular:

(a) The right, without discrimination on grounds of marital status or any other grounds, to receive vocational training, to work, to free choice of profession and employment, and to professional and vocational advancement;

(b) The right to equal remuneration with men and to equality of treatment in respect of work of equal value;

(c) The right to leave with pay, retirement privileges and provision for security in respect of unemployment, sickness, old age or other incapacity to work;

(d) The right to receive family allowances on equal terms with men.

2. In order to prevent discrimination against women on account of marriage or maternity and to ensure their effective right to work, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave, with the guarantee of returning to former employment, and to provide the necessary social services, including child-care facilities.

3. Measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory.

The 1960s saw an emergence in many parts of the world of a deeper consciousness of the patterns of discrimination against women and a rise in the number of non-governmental organizations (NGOs) committed to ending such discrimination, such as Amnesty International. Beginning in 1972, five years after the adoption of the *Declaration* and four years after the introduction of a voluntary reporting system on the implementation of the *Declaration* by the Economic and Social Commission, the CSW considered the possibility of preparing a binding treaty that would give force to the provisions of the *Declaration* and decided to request that the Secretary-General call upon UN Member States to give their opinion on such a proposal. The following year, a committee was established to consider the preparation of such a convention. In 1974, in

light of the report of this group, the Commission began to draft a single, comprehensive and internationally binding document calling for the elimination of all discrimination against women (United Nations, DAW).

The text of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW; see Appendix A for full text) was prepared by working groups within the Commission during 1976. Extensive deliberations by a working group of the Third Committee of the General Assembly followed from 1977 to 1979. Drafting work within the Commission was encouraged by the World Plan of Action for the Implementation of the Objectives of the International Women's Year, adopted by the World Conference of the International Women's Year held in Mexico City in 1975. That conference called for a convention on the elimination of discrimination against women, with effective procedures for its implementation. Work was also encouraged by the General Assembly, which had urged the Commission on the Status of Women to finish its work by 1976, so that the Convention would be completed in time for the 1980 Copenhagen mid-decade review conference of the World Conference on the United Nations Decade for Women: Equality, Development and Peace, which ran from 1976 - 1985.

Although suggestions were made to delay completion of the text for another year, the *Convention on the Elimination of All Forms of Discrimination against Women* was completed and adopted by the General Assembly on December 18, 1979 by votes of 130 to none, with 10 abstentions. These abstentions included nations with long histories of human rights abuses and of denying equal rights for women, such as Afghanistan, Iran and Sudan. In Resolution 34/180, in which the General Assembly adopted the

Convention, the Assembly expressed the hope that the *Convention* would come into force at an early date and requested the Secretary-General to present the text of the *Convention* to the mid-decade World Conference of the United Nations Decade for Women (United Nations, DAW).

At the special ceremony at the Copenhagen Conference on July 17, 1980, 64 states signed the *Convention* and two states submitted their instruments of ratification. On 3 September 1981, 30 days after the twentieth member state had ratified it, the *Convention* entered into force - faster than for any previous human rights convention - thus bringing to a climax United Nations efforts to codify comprehensively international legal standards for women (United Nations, DAW).

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

On October 6, 1999, the United Nations General Assembly, acting without a vote, adopted a 21-article *Optional Protocol* to the *Convention on the Elimination of All Forms of Discrimination against Women* (see Appendix B) and called on all State parties to the *Convention* to become a party to the new instrument as soon as possible. By ratifying the *Optional Protocol*, a State recognizes the competence of the *Committee on the Elimination of Discrimination against Women*, the body that monitors State parties' compliance with the *Convention*, to "receive and consider complaints from individuals or groups within its jurisdiction" (United Nations, DAW).

The Protocol contains two procedures:

1. A communications procedure allows individual women, or groups of women, to submit claims of violations of rights protected under the *Convention* to the Committee. The Protocol establishes that in order for

individual communications to be admitted for consideration by the Committee, a number of criteria must be met, including that domestic remedies must have been exhausted.

2. The Protocol also creates an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights.

In either case, States must be a party to the Convention and the Protocol. The Protocol includes an "opt-out clause," allowing States upon ratification or accession to declare that they do not accept the inquiry procedure, but they are still subject to the communications procedure. Article 17 of the Protocol explicitly provides that no reservations may be entered to its terms (United Nations, DAW).

The *Optional Protocol*, entered into force on December 22, 2000, followed the ratification of the tenth State party to the Convention. The entry into force of the *Optional Protocol* puts it

on an equal footing with the *International Covenant on Civil and Political Rights*, the *Convention on the Elimination of All Forms of Racial Discrimination*, and the *Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment*, which all have communications procedures.

The inquiry procedure is the equivalent of that under the *Convention against Torture* (United Nations, DAW).

Currently, 185 countries, constituting over ninety-five percent of the members of the United Nations, are party to the *Convention on the Elimination of All Forms of*

Discrimination against Women. An additional state, the United States of America, has signed but has not yet ratified the treaty and is therefore not bound to put the provisions of the *Convention* into practice (United Nations, DAW).

United Nations Lawmaking

The United Nations: An Unintentional Legislature

According to scholar of international law Oscar Schachter (1994), the United Nations was not originally intended to become a legislative body, nor were its specialized agencies. Its objectives were originally planned to be carried out through recommendations aimed at coordinating the actions of their member states. Member states were free, of course, to create new law or repeal existing law through the traditional processes of treaty and customary law. What was not realized in the beginning was that the UN political bodies, although they were denied legislative power, could act like legislatures by adopting lawmaking treaties and declarations of law. An example of this is the establishment of the International Law Commission (ILC) in 1948. It seems unsurprising that the major intergovernmental bodies have used their recommendatory authority to achieve binding law, as it served their goals and enjoyed the required political support. UN agencies have acted much like parliamentary bodies and member governments and international officials have often called for solutions to world problems through new law and legal regimes. Demand often determined supply and texts of legal basis were produced. These texts have affected virtually every area of human life that cuts across national boundaries and even matters entirely within states (Schachter, 1994).

Lawmaking by the United Nations in the Present

Schachter's (1994) research also illustrates that the most common instrument of law making in the UN system is the multilateral "norm creating" treaty. Hundreds of these have been produced and were initiated, negotiated and adopted by UN organs or by international conferences under the name of a UN body. The subjects of these treaties have varied greatly, and many deal with problems that are very technical. Others are addressed to problems affecting the ordinary person, such as food, health, education, human rights, pollution and transportation. All, including the most technical, are the products of a political process, usually marked by conflicting interests or concerns over grants of power (Schachter, 1994).

A major question has been whether or not UN lawmaking treaties bind states that choose not to become a party. In a formal sense, those states are not bound by the treaty. Some treaties, however, such as conventions codifying preexisting customary law, are applied universally. Others crystallize the emergent rules of law, and others generate custom embodying the treaty rules. Some UN texts, such as the covenants on human rights and other major human rights treaties, are also regarded as new customary law or recognized general principles of law with respect to the most essential rights which they express. In support of that conclusion, Schachter argues that government statements in UN bodies and resolutions of UN organs are evidence of state practice and *opinio juris* ("an opinion of law," and the belief that an action was carried out because it was a legal obligation). This is much different from the traditional view of customary law which requires the uniformity of state practices revealed by the behavior and claims of states against other states (Schachter, 1994).

The United States as Compared to Other Countries in Regard to UN Policy

The U.S. and Arab Countries

There is an interesting comparison to be made between the policies of Arab countries in relation to CEDAW and the stance of the United States on that very same issue. Ann Elizabeth Mayer (2004), an author on Islamic law, notes that when countries decide to join the international human rights system, they are required to respond to criticisms of their own policies where those policies fall short of international standards. Mayer (2004) posits that once a government goes on record as supporting equality for women in their statements, it becomes harder for that country to defend their discriminatory laws (Mayer, 2004).

Mayer (2004) states that while under the scrutiny of the United Nations, Arab countries concede that discrimination against women is wrong and resort to many different means to make their policies appear compatible with women's international human rights, even where they are completely at odds with these standards (Mayer, 2004). It is promising, however, that these countries are concerned with appearing compliant with the principles of international human rights because that concern signals a change in these countries' mindsets toward women's rights. These difficulties acclimating to international human rights law are not uncommon, and the Arab countries' struggles are only a part of the greater struggle for international women's rights, according to Mayer (Mayer, 2004).

The U.S.: Trying to Become Part of the UN

Struggle and conflict have long been part of the integration of the United States into the United Nations system. For example, U.S. laws allowing racial discrimination

were highlighted as violating the UN Charter when the United States first helped to establish the United Nations. Not that there hadn't already been long-standing tensions between the ideal of equality and the reality of racial discrimination, but these tensions were made even more apparent after the 1948 *Universal Declaration of Human Rights* was adopted. The United States' racially discriminatory laws "flagrantly violated the egalitarian principles of the declaration," Mayer states (Mayer, 2004, p.134).

This was not the first time that the United States' racially biased laws had been made apparent to the international governing bodies. For example, in 1919, just two months after World War I had ended, the victorious nations formed the League of Nations at the Paris Peace Conference. American civil rights leader W.E.B. Du Bois brought a group known as the First Pan-African Congress to Paris to lobby the Peace Conference for racial equality. Regarding all of Africa and those of African descent all around the world, Du Bois, on behalf of the First Pan-African Congress, wrote, in Article 3, Section I of the Pan-African Congress' petition to the Paris Peace Conference,

Civilized persons of African descent should be accorded the same rights as their fellow citizens. They should not be denied on account of race or color a voice in their own government, justice before the courts and economic and social equality according to ability and desert. (Du Bois, 1918)

Continuing into the 1950s, these racially discriminatory laws were more widely noticed and condemned by the international community. Mayer (2004) states that domestic laws and practices in the United States affecting nonwhites threatened to do fatal damage to U.S. prestige in the international arena

and to thwart its effort to win allies in the new UN system, where most members had populations that did not fit U.S. definitions of ‘white’.

(p.134)

Many UN delegates and Washington politicians already understood firsthand about slavery and discrimination, having been victims of that behavior by reason of their skin color. African-Americans were also demanding full equality with a renewed vigor, which complemented international pressures (Mayer, 2004).

Finally in 1954, the U.S. Supreme Court in *Brown v. Board of Education*, declared racial segregation in schools unconstitutional. This was prompted not only by domestic pressures, but by a fear of what racist laws and practices were doing to the United States international image and foreign policy (Mayer, 2004).

Issues with Conforming to an International Human Rights Standard

Mayer (2004) states that, like many of the Arab countries, the United States has had difficulty adjusting to international human rights standards. She argues that this is in part due to the fact that the United States remains reluctant to part with time-honored elements of its legal heritage, including a constitution that is the oldest constitution in the world still in force, and that lacks many modern human rights provisions. While refusing to update its laws to meet international standards, United States representatives try to depict U.S. laws and policies as if they meet or even exceed international criteria during international forums. Mayer (2004) states that “they are not above dissimulating where there are embarrassing discrepancies.” For example, the facts that the Equal Rights Amendment has failed ratification by the states and the United States lacks a constitutional guarantee of equal rights for women, are issues that the United States

would like to suppress when discussing its laws on women's equality in international forums. The United States also misrepresented the constitutional protections afforded to women during the forums held on the *International Covenant on Civil and Political Rights*. Interestingly, the international community prefers to not argue over these discrepancies and chooses to instead treat countries such as the U.S. and the Arab countries as if they have already accepted the international human rights standards (Mayer, 2004).

American ambivalence toward integration with the UN human rights system is nowhere seen more clearly than in its struggles over ratification of CEDAW.

The Convention on the Elimination of Discrimination against Women in the U.S.
CEDAW Consideration in the U.S. Senate

In July of 1980, six months before he left office, President Carter signed CEDAW and submitted the treaty later that year to the U.S. Senate for ratification. However, the Senate Foreign Relations Committee did not hold hearings on CEDAW until 1988 and 1990, and even then did not act on the treaty. According to the Senate Foreign Relations Committee Report from 2002, the reason CEDAW did not proceed to a Committee vote on the Convention in 1988 and 1990 is because neither the Reagan administration nor the first Bush administration indicated that they supported ratification. In 1994, during the Clinton Administration, the Senate Foreign Relations Committee recommended that the full Senate ratify the treaty, subject to four reservations, four understandings and two declarations. A reservation is "a declaration made by a state by which it purports to exclude or alter the legal effect of certain provisions of that treaty in their application to that state" (United Nations, Treaty Reference Guide; TRG). An understanding is "an

international instrument of a less formal kind,” “sets out operational arrangements under a framework international agreement” and “is also used for the regulation of technical of detailed matters” (United Nations, TRG). While the term declaration has many meanings for the United Nations, in this instance a declaration, and more specifically an interpretive declaration, is “an instrument that in annexed to a treaty with the goal of interpreting or explaining the provisions of the latter” (United Nations, TRG).

These reservations, understandings and declarations included many different perspectives which have since been used to justify the United States’ lack of ratification. The first reservation stated that the United States “does not accept any obligation under the Convention to enact legislation or to take any other action with respect to private conduct except as mandated by the Constitution and laws of the United States.” The second reservation observed that the United States “does not accept an obligation under the Convention to assign women to all military units and positions which may require engagement in direct combat.” The third reservation held that the United States “does not accept any obligation under the Convention to enact legislation establishing the doctrine of comparable worth as that term is understood in U.S. practice.” Comparable worth, also known as pay equity, is a reform effort to pay different job titles the same based on their value to their employer, regardless of the gender predominance of those working in such titles. The fourth reservation stated that the United States “does not accept any obligation under Article 11(2)(b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances” (Cited in Nash, 1995, p.107-108).

The first understanding observed that the United States “understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the State and local government.” This understanding reflects the complicated situation of the U.S. federal government in that not all matters covered in the *Convention* are subject to federal law; many are a matter of state and local law. The second understanding held that the United States “does not accept any obligation under the Convention to restrict those rights (speech, expression, and association), through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States.” The third understanding stated that the United States “understands that Article 12 permits States Parties to determine which health care services are appropriate in connection with family planning, pregnancy, confinement, and the post natal period, as well as when the provision of free services is necessary.” The fourth understanding observed that “nothing in the Convention shall be construed to reflect or create any right to abortion and in no case should abortion be promoted as a method of family planning” (Cited in Nash, 1995, p.108).

The first declaration held that “for purposes of its (US) domestic law, the provisions of the Convention are non-self-executing” (Cited in Nash, 1995, p.108; “non-self-executing treaties require a legislative act in order to operate as domestic law). The second declaration stated that “the specific consent of the United States to the jurisdiction of the International Court of Justice concerning disputes over the interpretation or application of the Convention is required on a case by case basis” (Cited in Nash, 1995, p.109).

According to Marian Nash, these reservations, understandings and declarations (RUDs) were stated in order to address issues raised by the opposition to CEDAW, specifically those concerned with a supposed “right to abortion”. Nash also believes that these RUDs were put in place “to clarify the nature of the obligation being undertaken by the United States,” (Nash, 1995, p. 107) not to “effectively eviscerate the promise of equality enshrined in the treaty” as Marjorie Cohn claims. Cohn argues that the United States’ RUDS

purport to ensure that ratification of CEDAW would not require that the United States adopt greater protections than those afforded under the United States Constitution. Yet United States’ equal protection jurisprudence falls short of safeguards women would have under CEDAW.

It has become increasingly clear that there has been and there continues to be a great deal of controversy over the meanings of both CEDAW and the U.S. RUDs.

In 1993, sixty-eight Senators urged President Bill Clinton to press for the ratification of CEDAW. The Foreign Relations Committee hearings held in 1994 passed it by a vote of 13-5, and the five negative votes were by Republican senators. Though the ratification of CEDAW was up for consideration by the Senate with the aforementioned reservations, understandings and declarations, the Senate changed control in 1994 and Jesse Helms became the head of the Foreign Relations Committee. Senator Helms was unwilling to bring CEDAW to the full Senate for a vote. He actually made no comment about CEDAW until March 8, 2000 when a women’s rights group picketed his office.

Senator Helm's speech on March 8 was one that attacked what he perceived to be the "radical agenda of CEDAW." He stated,

...they demand to be given urgent priority in the recommendation of this treaty, and that it be considered first by the Foreign Relations Committee and then by the Senate.

I say dream on, because it is not going to happen. Why has CEDAW, the Convention of Elimination of All Forms of Discrimination Against Women, never been ratified? Because it is a bad treaty; it is a terrible treaty negotiated by radical feminists with the intent of enshrining their radical antifamily agenda into international law. I will have no part in that.

Similar to arguments given later by Secretary of State Colin Powell, Helms also stated in that same speech,

What do they propose? They propose global legalization of abortion. The treaty has been intended, from the very beginning, to be a vehicle for imposing abortion on countries that still protect the rights of the unborn. For example, this committee has instructed Ireland, a country that restricts abortion, to "facilitate a national dialogue on the restrictive abortion laws" of Ireland and has declared in another report that under the CEDAW treaty "it is discriminatory for a [government] to refuse to legally provide for the performance of certain reproductive health services for women"--that is to say, abortion.

Another issue: Legalization of prostitution. In another report issued in February of, 1999, the CEDAW committee declared: The committee recommends the decriminalization of prostitution.

They even called for the abolishment of Mother's Day. The CEDAW crowd has come out against Mother's Day--yes, Mother's Day. Earlier this year, the committee solemnly declared to Belarus its "concern [over] the continuing prevalence of such [stereotypical] symbols as a Mother's Day" and lectured Armenia on the need to "combat the traditional stereotype of women in 'the noble role of mother.'"

There are not enough kids in day care, they claim.

The committee informed Slovenia that too many Slovenian mothers were staying home to raise their children. What a bad thing for mothers to do--think of it--staying home with their children. This committee warned that because only 30 percent of children were in day-care centers, the other 70 percent were in grave danger of, now get this, "miss[ing] out on educational and social opportunities offered in formal day-care institutions."

Another thing, mandating women in combat. Boy, they are hot to trot on that. In a 1997 report, the CEDAW committee mandated that all countries adopting the treaty must ensure the "full participation" of women in the military, meaning that nations would be required to send women into combat even if the military chiefs decided that it was not in the

national security interest of, for example, the United States of America.

(Helms, 2000)

In 1999, ten female members of the House of Representatives, including Nancy Pelosi, delivered to the hearing of the Senate Foreign Relations Committee a letter supporting ratification, signed by 100 members of Congress. Jesse Helms scolded them with, “Now you please be a lady,” before ordering uniformed officers to “escort them out” (Cohn, 2008).

In 2002, the Senate Foreign Relations Committee held additional hearings on a proposed Senate resolution to grant advice and consent to CEDAW. In his opening statement, the Committee chairman, Joseph Biden stated that the treaty,

is a landmark document. It sets forth a basic set of obligations to advance and protect equality for women. Most nations of the world- 169 in all- have become party to the treaty.

For the United States, the treaty will impose a minimal burden. The U.S. Constitution and existing federal laws will satisfy the obligations of the treaty. The United States will need to enter a handful of reservations to the treaty where it is inconsistent with the Constitution of current federal law. But the United States will not need to enact any new laws. The only new burden the treaty will impose will be a duty to file a periodic report on U.S. implementation with a U.N. committee.

For the United States, the treaty can be a powerful tool to support women around the world in the fight for equal rights. Our voice on women’s rights will be enhanced by becoming a party, because we will be

empowered to call on nations to account on their own compliance with the treaty. (ASIL, 2002, p.972)

As expected, the Bush administration officials sent letters to the Committee indicating their lack of support for the ratification of CEDAW. While certainly not an accurate portrayal of CEDAW, these were interesting reasons given by the administration. Secretary of State Colin Powell stated,

As you are aware, the Committee on the Elimination of Discrimination against Women prepares reports and recommendations to State Parties. Portions of some of these reports and recommendations have addressed serious problems in useful and positive ways, such as women and children who are victims of terrorism (Algeria) and trafficking in women and girls (Burma). However, other reports and recommendations have raised troubling questions in their substance and analysis, such as the Committee's reports on Belarus (addressing Mother's Day), China (legalized prostitution), and Croatia (abortion). (ASIL, 2002, p.972-973)

State Parties have always retained the discretion on whether to implement any recommendations made by the Committee. This existence of this body of reports, however, has led us to review both the treaty and the Committee's comments to understand the basis, practical effect, and any possible implications of the reports (Nash, 1995, p.109).

What the Committee report actually recommended to Belarus in relation to Mother's Day was,

The Committee is concerned by the continuing prevalence of sex-role stereotypes, as also exemplified by the reintroduction of such symbols as Mothers' Day and Mothers' Award, which it sees as encouraging women's traditional roles. It is also concerned whether the introduction of human rights and gender education aimed at countering such stereotypes is being effectively implemented. (United Nations)

Nowhere does it call for the "abolishment of Mother's Day" as Mr. Helms and Mr. Powell would have us believe. The Committee report regarding legalization of prostitution in China stated,

Another concern of the Committee was the illegal nature of prostitution. The Government was urged to recognize that poverty and economic deprivation had often led women to prostitution, which should, therefore be decriminalized. Given the HIV/AIDS pandemic, the Committee had also recommended due attention to health services for women in prostitution, and urged the Government to take measures to rehabilitate and reintegrate them into society. (United Nations)

This report in no way glorifies the practice of prostitution, but instead suggests that women who have had to engage in prostitution to support themselves should receive proper medical care and assistance from the government in finding a new occupation and becoming a member of society. Many Committee reports to countries regarding abortion contain similar arguments. For example, the Committee report to Ireland, referenced by Senator Helms, actually states,

While noting with appreciation the existence of a Plan for Women's Health, 1997-1999, and the establishment of a Women's Health Council, as well as the wide availability of various programs to improve women's health, the Committee is concerned that, with very limited exceptions, abortion remains illegal in Ireland. Women who wish to terminate their pregnancies need to travel abroad. This creates hardship for vulnerable groups, such as female asylum seekers who cannot leave the territory of the state.

The Committee urges the Government to facilitate a national dialogue on women's reproductive rights, including on the restrictive abortion laws. It also urges the Government to further improve family planning services and the availability of contraception, including for teenagers and young adults. It also urges the Government to promote the use of condoms to prevent the spread of HIV/AIDS. (United Nations)

Senator Helms and Secretary of State Colin Powell suggest that the United Nations wished for abortion to be a regularly practiced form of birth control. However, the Committee report actually discusses implementation of family planning services to avoid unwanted pregnancy in the first place.

Though similarly an inaccurate portrayal of CEDAW, in 2002 the Department of Justice noted these concerns and further asserted that the Senate Committee's proposed resolution on ratification,

does not, for example, address whether other interpretive bodies...could adopt similarly bizarre interpretations of CEDAW's vague text, or what

deference, if any, these bodies would accord the official UN implementation committee. The implementation committee, moreover, has now begun the process of interpreting the substantive articles of the Convention and to formally interpret the rights guaranteed in the Convention. Your draft resolution, however, does not address the effect of these formal interpretations on domestic and international law. These concerns remain regardless of whether, in the words of your draft resolution, the implementation committee has the ‘authority to compel actions by State Parties’. (ASIL, 2002, p.973)

While many of these interpretations seem inaccurate or exaggerated, it is important to understand the weak rationales given by the administration at the time, so as to better understand the defeat of the ratification of CEDAW.

So Why Might the United States Not Ratify the *Convention*?

The Isolationist Approach

While it is true that the United States has been unwilling to ratify CEDAW, that is certainly not the only international convention on which the United States has taken an isolationist stand, rather than cooperating with other countries through the United Nations. In fact, in both the Clinton and Bush administrations, the United States has chosen to opt out of many human rights treaties and other initiatives, to limit its commitment to global institutions or organizations, and to act alone rather than collectively (Patrick, 2002).

Following is a brief summary of the United States’ failure to ratify UN human rights treaties (as of April 2009). The *International Covenant on Economic, Social and*

Cultural Rights, which was entered into force in 1976, has been ratified by 158 nations. It was signed by President Carter, but has not been ratified by the U.S. Senate. Similarly, the *Convention on the Rights of the Child*, entered into force in 1990, has been ratified by 193 nations. It was signed by President Clinton in 1995, but has not been ratified by the Senate- leaving the United States and Somalia as the only two countries which have not ratified this convention. The *Convention on the Prohibition, Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction*, entered into force in 1997, has been signed by 158 countries, but 37 states, including the United States, have refused to sign. The *Kyoto Protocol*, entered into force in 1997, which legally binds industrialized countries to reduce their greenhouse gas emissions by 2010, has not been ratified by the United States, which is the largest producer of greenhouse gases. The United States has also not signed or ratified the *Convention on the Rights of Persons with Disabilities*, entered into force in 2007, which 45 nations have ratified and 94 more have signed. A final example is the *Convention on Cluster Munitions*, entered into force in 2008, which prohibits the use of cluster bombs and has been signed by 94 nations, has not been signed or ratified by the United States.

Specifically, U.S. relations with the United Nations have been a source of concern. In the mid-1990s Congress withheld annual U.S. assessments and peacekeeping contributions, in violation of U.S. obligations, hoping to impose reform in the world organization. Simultaneously, the United States retreated from its early post-Cold War involvement in the UN peace operations and adopted a more restrictive and selective attitude. While willing to intervene in Europe, through NATO, the United States has devoted little support to UN peace operations in Africa (Patrick, 2002).

Even more to the point is that the United States has often resisted submitting itself to the jurisdiction of international legal bodies or embracing key human rights treaties, despite its purported support of the international rule of law. For example, in the summer of 1998, the Clinton Administration voted against the creation of International Criminal Court, but lost by a 120-7 vote. Although President Clinton eventually signed the Rome Statute (the treaty that established the International Criminal Court), George W. Bush unsigned it. He had no intention of submitting it to Congress, where there is also strong support for the American Service-Members' Protection Act (Patrick, 2002). The American Service-Members' Protection Act is a United States federal law, introduced by Jesse Helms, to protect U.S. military personnel and other elected and appointed officials of the United States government against criminal prosecution by an international criminal court to which the United States is not a party.

At the same time, the United States continued to use a variety of unilateral sanctions and annual certification processes to punish countries that do not conform to U.S. standards in areas like human rights and narcotics enforcement. The most controversial are extraterritorial sanctions like Helms-Burton that penalize foreigners doing business with what the United States considers pariah states (Patrick, 2002). The Helms-Burton Act is a United States federal law aimed at strengthening the United States embargo against Cuba, by extending the initial embargo to companies trading with Cuba.

Even in trade, U.S. multilateralism remains in doubt. In November 1999, the Seattle World Trade Organization summit collapsed when the Clinton Administration proposed to incorporate binding labor and environmental standards in the trade regime. Despite the strong leadership the United States showed the 2001 Ministerial Meeting at

Doha, the capital city of Qatar, to address the concerns of developing countries, protectionism remains strong (Patrick, 2002).

Reasons for U.S. Unilateralism

According to Stewart Patrick (2002), a research associate at the Center on International Cooperation at New York University, there are several ways of analyzing the United States' unilateralism. At the outset Patrick explains that the United States has two particular mindsets related to multilateral cooperation. First, the U.S. has proposed many of the world's most important international institutions while at the same time resisting the constraints of multilateralism, tempting the U.S. to act unilaterally. Secondly, the precise mix of U.S. concerns, motivations, and misgivings have varied by issue area; no issue is identical to any other (Patrick, 2002).

Patrick (2002) also describes three general sources of U.S. ambivalence and selectivity. First, there is "a natural desire on the part of the United States, as the world's most powerful country," (Patrick, 2002) to maximize its freedom abroad. On the other hand, in the post-Cold War world, the United States lacks a major opponent and is therefore able to secure many traditional objectives bilaterally or unilaterally. The U.S. then appears to have few obvious incentives to rely on global institutions and to run little risk in bypassing them (Patrick, 2002).

Second, there is "anxiety that the country's domestic legal framework, constitutional traditions, and political institutions will become subordinate to international regimes of widening scope and deepening intrusiveness" (Patrick, 2002). American ambivalence is reinforced by a sense that national sovereignty is under attack by undemocratic and unaccountable "organs of global governance." Such bodies may

strip the peoples elected representatives of their authority and open domestic institutions and private entities to “unwarranted external scrutiny.” Those who defend American sovereignty claim a doctrine of American “exceptionalism” and argue that domestic institutions and law are supreme over international commitments and that “domestic standards of political legitimacy may require opting out of certain international initiatives” (Patrick, 2002). Exceptionalism may be defined as the perception that a country is “exceptional” in some way and thus does not need to conform to normal rules or general principles that govern other nations.

Third, a structural problem with American multilateralism is the “constitutional separation of powers,” which grants the executive and legislature joint control over foreign policy. This mandate, which is absent in parliamentary democracies, complicates domestic approval of multilateral commitments, especially when the two branches are controlled by different parties. The ratification of treaties requires the concurrence of two-thirds of the Senate and often political minorities block the U.S. participation in proposed conventions. For example, the debate over the League of Nations in 1918 and 1919 demonstrated that the separation of powers can complicate America’s assumption about multilateral commitments. Due to the fact that the executive branch often times must bow to the wishes and demands of Congress, as Woodrow Wilson did, in relation to these conventions and treaties, separation of powers often becomes a hindrance to their ratification. The League of Nations, which was a pre-cursor to the United Nations, was viewed by Congress as a humiliating surrender of national sovereignty.

This was also apparent during the first post-Cold War decade, when Congress reasserted itself and made use of its legitimate constitutional prerogatives to compete

with the executive branch to “shape the terms of U.S. global engagement” (Patrick, 2002). While this competition can be healthy, encourage open debate, and increase the sustainability of foreign policy initiatives, Congress’ renewed activism also “increases prospects for fundamental conflict over America’s obligations, particularly when partisanship runs high” (Patrick, 2002).

Stifled Progress Toward Multilateral Initiatives

Shepard Foreman, Patrick’s colleague, believes that though the U.S. is becoming somewhat more receptive to multilateral initiatives, the Bush administration’s foreign policy, especially regarding U.S. involvement in the Middle East and the War on Terror, may have a negative effect on the success of multilateralism at this time. It is realistic to believe that conventions and treaties such as CEDAW are in a precarious situation given the political climate of our country at that particular time. Shepard states that the United States is operating under “dramatically different political and economic circumstances, especially in the wake of the September 11 terrorist attack on the Pentagon and the World Trade Center” (Patrick, 2002). While Congress may be much more open to multilateral opportunities, the Bush administration’s approach to “global engagement” appeared much more selective, based on an “overriding conviction in the right and responsibility of the United States to go it alone as circumstances require” (Patrick, 2002).

Shepard also discusses the idea that many people thought the September 11th attacks might increase the administration’s attention toward multilateral efforts, and that we, as Americans, may note the opposite lesson being learned. Despite the nation’s newly discovered vulnerability, or perhaps because of it, the Bush administration, like many citizens, believed that we are obligated to “go it alone.” Often this mindset is believed to

be part of the greater notion that “when it comes to the security of the American people, the United States trusts no one but itself” (Patrick, 2002). Shepard also states that even as globalization and interdependence have made the United States more vulnerable, the notions of indispensability, meaning that eventually others will follow because they cannot function without us, and exceptionalism, meaning that we “stand taller and see further,” compel us to act alone in the national interest (Patrick, 2002).

Shepard argues that September 11 should hold another lesson; “that globalization and interdependence have rendered sovereignty so porous as to require cooperative action, and that ensuring cooperation over the long term requires a continuing sense of partnership” (Patrick, 2002). What occurred on September 11 was the use of basic elements of globalization, which are the free movement of capital, goods, labor, and ideas, to terrible and terrifying ends. Turning these elements to a more positive advantage for the United States and rebuilding confidence in them requires that these elements become a major focus of U.S. foreign policy in the years to come. It will also require more cooperation, not less, and across a range of issues that “go beyond building and maintaining the type of transitory coalition we have pulled together for the current war on terrorism” (Patrick, 2002). It will require a common vision of the world in which we want to live and shared strategies to achieve it, as well as the kind of leadership that the United States has provided in the past and that “many European countries long for now” (Patrick, 2002).

Problems Which Must be Addressed to Achieve Multilateralism

Shepard believes that the United States is ill-equipped to deal with the new “world environment” and has adjusted poorly to it. He states that there are three problems

that need to be addressed. First, the United States needs to identify those collective action problems that are both national and global in scope and that require “concerted collective action to address” (Patrick, 2002). It needs to act collaboratively to examine the capacity of the current array of multilateral organizations designed to deal effectively with these problems and to seek innovative solutions where they are not effective, including “new forms of international public-private partnerships” (Patrick, 2002).

Second, the executive and legislative branches need to work together to restructure the “current modalities” for making foreign policy in the United States. Shepard posits that more and more agencies with previously “domestic” mandates are now actively engaged in international affairs, including HHS, Treasury, Agriculture, Justice, Energy, and Education. Often the policies and interests of these agencies are at odds with the traditional state-to-state diplomacy of the State Department, which has had an increasingly difficult time coordinating U.S. policies and activities overseas (Patrick, 2002).

Third, the United States needs to inform the American public of the intersection between domestic and international affairs, the points at which the national interest and the shared global interest converge, and about how the United States government should and can engage cooperatively with other nations (Patrick, 2002).

Conclusions and Prospects for CEDAW in the United States’ Future

There is no simple answer for why the United States has never ratified CEDAW. The United States has historically feared being held accountable to any form of international jurisdiction. There have been a multitude of instances where the United States acted unilaterally, without regard to United Nations treaties. There is also an

overwhelming idea of American exceptionalism, which bolsters this idea that the United States answers to no one. Finally, there has been long-term inequality and discrimination against women in the United States.

I believe that the United States should ratify CEDAW for several reasons. In order for the United States to speak with authority in international human rights, and especially women's rights, it must fully embrace these rights as expressed in international covenants. We, as Americans, have no right to occupy other countries and demand that they treat people equally, if we are unwilling to treat people equally ourselves. While most proponents of CEDAW in the United States do not feel that much if any change would have to be made to achieve the ratification of CEDAW, I believe the ratification would be a sound basis on which other women's rights movements could be built. Given that countries who have ratified CEDAW are being held responsible for their treatment of women, it is logical to believe that the ratification of CEDAW has dramatically improved the lives of women in other countries. While women in the United States have a much higher quality of life than many other women around the world, the United States should advocate the highest quality of life for all its citizens, including women.

The 2008 election of President Barack Obama, will hopefully lead to change in this policy area. In December 2008, then President-elect Obama made a commitment to push for Senate ratification of the *Convention on the Elimination of All Forms of Discrimination against Women* (Cohn, 2008). In just a few short weeks after his inauguration in January 2009, President Obama showed his commitment to the rights of women. First, he signed the *Lilly Ledbetter Fair Pay Act* into law. Women, and others who have been unjustly discriminated against in the workplace, may now challenge their

employers for the same pay as their coworkers, even if they do not find out about the pay disparity immediately. President Obama has also rescinded the Bush administration's Mexico City Policy, also known as the Global Gag Rule, so that organizations all over the world can receive monetary aid for family planning tools such as birth control and condoms. However, given the economic situation of early 2009, I am certain that CEDAW is not at the very top of President Obama's priority list.

It is also unclear whether President Obama could get a two-thirds vote of Senate approval. There is hope in the fact that in 2009, 13 of the 17 female senators are Democrat and there is a Democratic majority in the Senate. As of April 2009, no hearings have been scheduled regarding CEDAW, but hopefully with the gradual rebuilding of the economy will come a renewed interest in the ratification of CEDAW.

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Appendix A

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article I

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- (c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
 - (c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in

alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.
2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. (amendment, status of ratification)

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.
2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.
2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

Appendix B

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

The States Parties to the present Protocol,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Also noting that the Universal Declaration of Human Rights⁵ proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Recalling that the International Covenants on Human Rights and other international human rights instruments prohibit discrimination on the basis of sex,

Also recalling the Convention on the Elimination of All Forms of Discrimination against Women⁴ (“the Convention”), in which the States Parties thereto condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women,

Reaffirming their determination to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms,

Have agreed as follows:

Article 1

A State Party to the present Protocol (“State Party”) recognizes the competence of the Committee on the Elimination of Discrimination against Women (“the Committee”) to receive and consider communications submitted in accordance with article 2.

Article 2

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 3

Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

Article 4

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

2. The Committee shall declare a communication inadmissible where:

(a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(b) It is incompatible with the provisions of the Convention;

(c) It is manifestly ill-founded or not sufficiently substantiated;

(d) It is an abuse of the right to submit a communication;

(e) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 5

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 6

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, and provided that the individual or individuals consent to the disclosure of their identity to that State Party, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.

2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 7

1. The Committee shall consider communications received under the present Protocol in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.

2. The Committee shall hold closed meetings when examining communications under the present Protocol.

3. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

4. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

5. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 18 of the Convention.

Article 8

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Article 9

1. The Committee may invite the State Party concerned to include in its report under article 18 of the Convention details of any measures taken in response to an inquiry conducted under article 8 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of six months referred to in article 8.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 10

1. Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 8 and 9.

2. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 11

A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

Article 12

The Committee shall include in its annual report under article 21 of the Convention a summary of its activities under the present Protocol.

Article 13

Each State Party undertakes to make widely known and to give publicity to the Convention and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party.

Article 14

The Committee shall develop its own rules of procedure to be followed when exercising the functions conferred on it by the present Protocol.

Article 15

1. The present Protocol shall be open for signature by any State that has signed, ratified or acceded to the Convention.
2. The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 16

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 17

No reservations to the present Protocol shall be permitted.

Article 18

1. Any State Party may propose an amendment to the present Protocol and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify her or him whether they favour a conference of States Parties for the purpose of considering and voting on the proposal. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 19

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 or any inquiry initiated under article 8 before the effective date of denunciation.

Article 20

The Secretary-General of the United Nations shall inform all States of:

(a) Signatures, ratifications and accessions under the present Protocol;

(b) The date of entry into force of the present Protocol and of any amendment under article 18;

(c) Any denunciation under article 19.

Article 21

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 25 of the Convention.

