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International Human Rights Standards on Sexual Violence against Women as They Apply to Pornography

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INTERNATIONAL HUMAN RIGHTS STANDARDS ON SEXUAL VIOLENCE AGAINST WOMEN AS THEY APPLY TO PORNOGRAPHY

Claudia Giunta
INTERNATIONAL HUMAN RIGHTS STANDARDS
ON SEXUAL VIOLENCE AGAINST WOMEN
AS THEY APPLY TO PORNOGRAPHY

by

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INTERNATIONAL HUMAN RIGHTS STANDARDS
ON SEXUAL VIOLENCE AGAINST WOMEN
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The United Nations Fourth World Conference on Women, held in Beijing in September 1995, represented an important step towards the achievement of equality for women. In the Beijing Declaration, governments participating in the Conference committed themselves to "ensure the full implementation of the human rights of women and of the girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms."¹

At the Conference, the progress made towards equalizing women's and men's rights and opportunities was acknowledged, but it was also acknowledged that many goals have not been achieved yet, and that cultural changes of fundamental importance remain to be made. In fact, cultural changes represent a pre-condition to any real and lasting improvement of the status of women.

In many countries the cultural approach to violence and discrimination against women is quite fatalistic. Thus, many believe that violence against women is an issue that laws

¹ Beijing Declaration, Article 9, in The Beijing Declaration and the Platform for Action, Fourth World Conference on Women, Beijing, China, 4-15 September 1995, Department of Public Information, United Nations, New York (1996).
cannot solve. This approach overlooks the role played by societies in tolerating practices of discrimination based on race, religion, political opinion, and sex.

Stereotypes based on sex are repeatedly promoted and circulated through communication channels. This is particularly evident in pornography. Through the use of mass-media, pornography advertises images of women deserving and enjoying degrading treatment, and thus promotes the belief that women in fact enjoy sexual degradation and beg for pain and humiliation.

By presenting sexual degradation as natural and enjoyable, pornography encourages sexual violence and recommends its pursuit as a source of pleasure. Thus, pornography functions as the means by which actual and potential sex offenders can justify to themselves violence against women.

Scientific and experimental research as well as first-hand testimonies represent evidence of the links between pornography and actual perpetration of sexual violence. Unfortunately, this evidence is largely ignored. With its high profits and its ramifications in a myriad of non-pornographic businesses, the pornography industry has been consistently working to conceal or label as anti-obscenity censorship the movement against pornography as a whole. A large part of the movement against pornography, however, does not regard pornography as an obscenity issue but as an
equality issue. Pornography itself has very little to do with obscenity. The judgment on obscenity, in fact, relies on the violation of moral codes. Pornography, on the other hand, is a practice portraying the dehumanization of real women and leading to the actual perpetration of violence and abuse against real women. Nevertheless, in many countries, while obscenity is proscribed by law, pornography is not actionable for the harms it causes, because it is socially and legally constructed as protected expression.

The purpose of this thesis is to illustrate the links between pornography and sexual violence that make pornography a human rights issue, and to indicate prospective measures to be taken in national laws and policies as well as in international law, especially in view of the recent trend developed after the Beijing Conference.

The first chapter of the thesis will discuss violence against women as a human rights issue, considering the relationship between human rights law and women's rights. The second chapter will explore the content and social message of pornography. The third chapter will focus on the evidence of the harms of pornography, and on the Canadian and the European Union legislative and judicial approaches to pornography and freedom of speech. The fourth chapter will review and discuss the recent orientation of the United Nations on the issue of stereotyping of women in the media, particularly in view of the guidelines contained in the
Beijing Platform for Action, and also in view of the follow-up to the Beijing Conference.²

² Ibid., pp. 133-137.
CHAPTER I

Violence Against Women as a Human Rights Violation

A. Women's Rights and Cultural Relativism

The condition of many women all over the world is a reflection of the ongoing violation of their basic human rights and fundamental freedoms. According to the United Nations Human Development Report of 1994, women represent 70% of the world's poor and two thirds of the world's illiterate, while approximately 80% of the world refugee population is made up of women and children.3

In some countries, women's political and civil rights are exceedingly restricted or entirely suppressed. Thus, women may be restrained from owning property, inheriting, and testifying in court; from gaining access to education, health care, employment, and food, and from acquiring

nationality,\textsuperscript{4} managing property,\textsuperscript{5} securing employment,\textsuperscript{6} and traveling.\textsuperscript{7}

There are countries where women are forced to endure sterilization or abortion, and where prenatal sex selection is made with the purpose of committing female infanticide; where women are abused by government officials and suffer rape and sexual intimidation in custody; where female children as young as three years are raped while held in detention and where rape allegations against police officers are rarely investigated and even more rarely result in convictions.

In some cultures, violence and discrimination against women are sanctioned by customs and laws.\textsuperscript{8} This is the case, for example, of genital mutilation, which targets an estimated 100 million little girls annually, with devastating effects on their physical and mental health.

The international community, including governments, international organizations, human rights groups and

\textsuperscript{4} In West Asia and North Africa, women married to foreigners cannot transfer citizenship to their husbands (while men in the same conditions can), ibid.

\textsuperscript{5} In Botswana, Chile, Lesotho, Namibia and Swaziland, married women are under the permanent guardianship of their husbands and do not have the right to manage property, ibid.

\textsuperscript{6} In Bolivia, Guatemala and Syria, a woman’s employment outside the home can be restricted by her husband, ibid.

\textsuperscript{7} In some Arab countries, a woman must obtain her husband's consent to have a passport (a man must not); in Iran, women cannot leave the country without their husbands' permissions, ibid.

activists worldwide, has been criticizing sharply the policy of those countries where discrimination and violence against women are perpetrated in the name of cultural values. Accused countries, however, have responded by calling this criticism western colonialism and by defending their right to cultural relativism. The defense of cultural relativism, however, is problematic. Often this defense conflicts with basic principles of human rights law that protect the physical and psychological integrity of all individuals. These principles are clearly violated when cultural values deprive women of their rights to move, to participate in activities of various nature, and sometimes even to own their bodies.

Women who live in developed countries have greater opportunities than women living in developing countries to attain a good level of education and material comfort. However, they, too, are targeted by sexual violence and discrimination. According to studies conducted in Canada, New Zealand, the United States and the United Kingdom, one woman out of six is raped at some point in her life. In Canada, the Netherlands, New Zealand, Norway and the United States, a woman out of three reports to have been sexually abused during her childhood or adolescence.

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10 Human Development Report, op. cit.
11 Ibid.
Although low social and economic conditions can facilitate the incidence and persistence of violence against women, violence and discrimination based on sex can make of any woman its potential victim, without distinction of age, race and social condition. Despite the fact that it is condemned by most societies and legal systems, sexual abuse against women sometimes may be, by a part of the society, either accepted or considered impossible to eliminate, due to a quite common opinion that regards the tendency to sexually assault women as an element of men's natural instincts and as a consequence of nature.

In many developing and developed countries, laws punishing sex crimes are inadequately enforced. Women who suffer sexual abuse often do not have full access to legal information and aid. As a result, violence against women is rarely reported, at least in comparison with its actual incidence. To women who have been sexually abused, in fact, the trauma of sexual violence is aggravated by the social shame connected to the denunciation of sex crimes and by the inadequacy of the law enforcement machinery, which leads them to lose their trust in the legal system.

The private sphere is probably the context where the most pervasive abuse to women is made, because it is the

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12 In Chile, Mexico, Papua New Guinea and in the Republic of Korea, two thirds of women report to have experienced domestic violence. In Germany, up to four million women per year suffer from domestic violence. More than half of all murders of women in Bangladesh, Brazil, Kenya, Papua new
context where the perpetration of violence is less reported and therefore almost impossible to detect, especially in the family and in the home. Generally, laws have tended to overlook forms of violence and discrimination against women occurring “in private,” in order to leave the sphere of individual privacy completely free from public intrusion. Thus, forms of violence deeply rooted in the private sphere but totally free from external interference, have been allowed to proliferate and have become so common that they are socially tolerated.

Far from being a private matter, violence against women is an obstacle to women’s achievement of equality and development. The fear of violence restrains women from speaking up for their rights and from engaging in activities in which they would otherwise take part. It is a continuous violation of women’s fundamental freedoms and human rights. Ultimately, the public failure to intervene in this area contributes to the perpetuation of this violation.

B. Women’s Rights and Human Rights Law

The question of whether or not women’s rights are human rights has not been fully answered. The very notion of human

guinea and Thailand are committed by current or former partners, and domestic violence is a leading cause of female suicide in Africa, South America, Melanesian Islands and the United States, Human Development Report, op. cit., p. 74.
rights implies universal application and respect, hence the debate on whether or not women's rights are human rights should not exist in theory. In practice, however, continued and continuing discrimination against women at all levels, along with the fact that the international law of human rights has evolved without acknowledging women's peculiar experiences and status, have dictated the necessity for women's rights to be clearly acknowledged as human rights by international law and policies.

It is also necessary to acknowledge that women's rights have a special dimension. This does not mean that women's rights are not human rights stricto sensu, but rather that the long-standing failure of domestic and international laws to recognize, treat and protect women's rights as human rights, has created such an unbalance that now special adjustments are needed.

Human rights law represents a departure from the traditionally state-oriented dimension of international law. Focusing on the rights of individuals and groups that would otherwise be denied access to an international legal system of protection, human rights law has developed into three branches, or "generations." The first generation of human rights includes civil and political rights; the second generation includes economic, social and cultural rights; the third generation, which has developed in relatively
recent times, under the pressure of developing countries, includes people's rights.

Hilary Charlesworth points out that these three generations of rights have been built on the basis of men's experiences, and that therefore, for a long time they have not addressed the risks and hardships that women face during their lives.\(^\text{13}\) Stressing that this male-oriented nature of human rights law has been analyzed and criticized only in recent times, Charlesworth suggests that because the structure itself of human rights is relatively weak - at least within the traditional "state-to-state" dimension of international law - there has been no intent to challenge this structure to promote women's rights, for fear of exposing human rights law to a further external critique that could "reduce the hard-fought-for advances in this area."\(^\text{14}\)

Human rights treaties focusing on women's rights have been created through long and difficult processes. Their implementation structure is generally weak, and their ratification has been often conditioned by States on a large number of substantive reservations. While the problem of reservations affects human rights treaties in general, reservations to treaties on women's issues and rights have


\(^{14}\) Ibid., p. 64.
often been close to the limit of incompatibility with the very substance of these treaties, and therefore to the violation of international treaty law.

The inadequacy of human rights instruments to deal in a satisfactory way with women's issues can also be perceived in the language adopted by these instruments. This language often implies that if a formal equality of rights is recognized to women, they will have equal opportunities as men to exercise fully those rights. But promising to, or even recognizing equal rights for women, is not sufficient. A formal recognition that does not also address in a critical way existing political and social structures, which have been created and have developed in a context of inequality between the sexes, implicitly legitimizes those structures and thus "gives women access to a world already constituted,"\(^{15}\) in the constitution of which women have not adequately participated. Instead, the history of discrimination against women, as any other history of discrimination, requires that more substantial "affirmative actions" be taken up at the national and international level.

International human rights law has generally refused to face a conflict that at times may occur between human rights - including women's rights - and a certain interpretation of freedom of speech. Indeed, there are forms of speech, known

\(^{15}\) Ibid.
as hate speech or hate propaganda, that create serious danger and damage to the dignity and to the physical and psychological safety of some groups of people. At the national and international level, the guarantee of freedom of speech has been drafted with little consideration of this reality, and most national laws lack provisions on this regard.
CHAPTER II

Pornography: Moral Issue or Hate Propaganda?

A. The Creation and Defense of Pornography

Hate speech is a form of propaganda that promotes bigotry and contempt against certain groups of people on the basis of ethnicity, religion, gender, social status and political opinion. Pornography represents a form of hate "speech." In fact, it represents an incitement to sexual contempt and is closely linked to the actual perpetration of violence against women. Research studies have demonstrated that pornography is one of the causal factors that leads to abuse, rape, battery, sexual harassment, child molestation and sexual murder.

The word "pornography" comes from the ancient Greek "porneia" and "graphos," where "porneia" means "prostitute" or "female captive" and "graphos" means "depiction." Accordingly, the depiction of women in pornography is a depiction of prostitution and sexual slavery, and the message that pornography spreads in society is consistent with the meaning of the word. In the definition of Helen Longino, pornography is material that explicitly represents
or describes degrading or abusive sexual behavior “so as to endorse and/or recommend the behavior as described.”

Pornography describes women as sexual objects who enjoy abusive treatment and even forced sex, which in turn generates the view that when women refuse sex, they do so only because of their social inhibitions, but in reality they do truly enjoy being sexually abused and even look for it. Generally, defenders of pornography define movements of opinion against pornography as movements concerned with moral issues and with the preservation of conservative values. To support such an argument, they rely on the fact that in many countries pornography is regulated under obscenity laws, which cover a broad range of topics, from nudity to abortion and birth control information.

Dealing similarly with pornography and obscenity, however, is inappropriate, because pornography and obscenity are two different issues that should be regulated under different frameworks. There is a movement of opinion that looks at pornography as an equality issue, and another, different movement that considers pornography as a moral issue. These two movements are ideologically different and work towards different objectives: the first towards the prevention and the elimination of the sexual abuse that

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pornography endorses and recommends, the second towards the assertion of specific morality standards.

Morality standards do not help to achieve an accurate understanding of pornography, and obscenity laws are inadequate to address it. While obscenity is concerned with nudity and explicitness and does little harm per se, in pornography there are often real situations of forced sex and degradation on real women, in a pictorial and verbal framework purporting to demonstrate that women enjoy forced sex, and leading to patterns of abuse and violence consistent with the instructions provided by pornography.17

Defenders of pornography suggest that pornography has a positive influence on men because it represents a "safety valve" for men's sexually violent instincts;18 thus, pornography would enable men to obtain sexual release through fantasy rather than through the actual perpetration of violence. This theory, however, is incorrect. Taken into another context, in fact, it could lead to the conclusion that hypothetical films portraying children who enjoy being beaten, would be a "safety valve" for abusive parents and thus would prevent child physical abuse. It could also lead to the conclusion that child pornography helps preventing child sexual abuse.

17 Ibid.
18 Diana E. H. Russell with Laura Lederer, Question We Get Asked More Often, in Take Back the Night, op. cit., p. 28.
Defenders of pornography also claim that pornography is harmless because it is fiction. This theory, however, is incorrect. Unlike fiction pornography is not simulated, but real because requires real women and real action to be filmed.\(^{19}\) Alternatively, defenders of pornography claim that pornography reflects reality and thus is no more harmful than reality. However, this "reality" approach is not appropriate to discuss pornography. The results of research studies based on random samples of pornographic magazines, pictures and films describe a world that can hardly be said to reflect reality. A typical pornographic story displays a grotesque context where women have sex with any man within their reach, beg to be hurt, have sex with animals and are covered with excrements used as sex instruments. In pornography, women have sex with their children, parents, siblings; with pets, neighbors, milkmen, plumbers, salesmen, burglars,\(^{20}\) etc. In "snuff" pornography, women and children are tortured to death and murdered to make a sex movie.\(^{21}\)


\(^{20}\) Ibid.

Pornography represents women getting sexual arousal from being raped\textsuperscript{22} and generating an ideology which is consistently adopted in defense of rapists in rape trials. Consequently, victims of sexual attacks refuse to report the aggressions for fear to be exposed to society not as victims of a crime but rather as provoking factors of that crime. Pornography normalizes forced sex, promoting women as targets of violence and discrimination.

B. Hate Propaganda and Ethnoviolence

As a form of intolerance against women and their rights pornography is close to other forms of hate propaganda such as racism and religious intolerance. Hate propaganda, or hate speech, includes speech or conduct directed at humiliating, harassing and at encouraging violence against historically discriminated groups, with the purpose of keeping these groups in a condition of subordination. As such, hate propaganda not only harms the specific individuals targeted, but also contributes to maintain stereotypes and to promote discrimination by keeping entire groups of people in a position of second-class citizens,

\textsuperscript{22} The continuing increase in depiction of sexual violence is documented in works such as Neil M. Malamuth & Barry Spinner, A Longitudinal Content Analysis of Sexual Violence in the Best Selling Erotic Magazines, 16 J. Sex. Res., pp. 226-27 (1980).
silencing their voices and endangering their full participation in the democratic debate.

Like other forms of hate propaganda, pornography relies on the hostility and contempt of certain social groups against others. Often it interacts with other forms of hate propaganda. This is evident, for example, in the high degree of dehumanization and depersonalization typical of interracial pornography. Research studies investigating the incidence of racial themes in pornography have found that in pornography the degradation of black female characters in pornography is predominant and women and men show stronger verbal aggression towards partners of a different race than they do towards partners of the same race.

Pornography enforces racial and sexual stereotypes by stereotyping of black men and describing them in function of the dimension of their genitals - which complies with the prejudice concerning their sexual prowess; by stereotyping of black women and presenting as animals, bonded and bleeding; by portraying of Asian women hanging from trees and light fixtures, in compliance with the prejudice of

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23 See Laura Lederer, Pornography and Racist Speech as Hate Propaganda, in The Price We Pay, pp. 131-40.
their passivity. Pornographic magazines have also represented Jewish women orgasming in reenactment of actual death camp tortures.25

The incidence of hate speech on human behaviors has been the object of a major study conducted by the Institute/Center for the Applied Study of Ethnoviolence26 in Maryland. The Institute created the concept of ethnoviolence to promote social awareness of incidents connected to hate propaganda, and defined ethnoviolence as a single act or a series of acts determined by prejudice and pursuant to the infliction of physical or psychological harm to certain individuals, on the basis of their actual or perceived membership in a society, their ethnicity, their skin color, their religion, and their national origin. In 1986 the Institute conducted a study on the traumatic effects of hate speech on individuals and on society.27 This study showed a high incidence of ethnoviolent crimes, the rate of which was found to vary according to social setting and targeted group. It also appeared from the study that most ethnoviolent acts were not reported to official

25 MacKinnon, Pornography as Defamation and Discrimination, op. cit.
sources and remained hidden to public scrutiny, and that victims of ethnoviolent crimes had a greater average of symptoms and behavioral changes when compared to victims of different crimes.\(^{28}\)

The study also dealt with the problem of credibility of these research results. The researchers adopted methodological safeguards, including multiple variations of the same questions and reviews of questionable cases with interviewers, to ensure validity to the results achieved. After eight years of monitoring incidents, the researchers were able to assert that in their study false claims of victimization from hate speech had occurred with a frequency below one percent, and that half of these false reports had been made in order to bring to the attention of the community other real - and demonstrable - incidents.\(^{29}\)

In the United States, a high number of hate-related incidents against women, people of color, and Jews has been reported in the past few years. Verbal attacks, mailing of neo-nazi literature to Jewish families, threatening phone calls and other forms of anti-Semitic hatred have gone along with harassment, threat, assault, schools incidents, vandalism, skinhead attacks, paid advertisements in campus newspapers claiming that the Holocaust never existed, spreading of anti-Semitic graffiti, arsons, and cemetery

\(^{28}\) Ibid.
\(^{29}\) Ibid.
desecration. According to a study conducted by the Anti-Defamation League, the incidence of acts of assault, threat and harassment against Jews increased 23% between 1992 and 1993.\textsuperscript{30} Social scientists believe that if the numbers missed because of incomplete reporting were included, these figures may be even eight times higher.

According to the study, however, episodes of violence by skinhead gangs decreased as the law enforcement improved. This conclusion suggests that the provision of adequate human and financial resources directed towards creating appropriate law enforcement systems or improving existing ones could play a key role to prevent hate-related incidents.\textsuperscript{31}

\textsuperscript{30} See Alan Schwartz, Hate Activity and the Jewish Community, in \textit{The Price We Pay}, New York, Hill & Wang, pp. 97-103 (1994).

\textsuperscript{31} Ibid. at 102.
CHAPTER III

Links Between Pornography and Violence

A. Results of Scientific and Experimental Research on Pornography

A large body of research studies demonstrated that the propensity to rape and/or to condone rape increases in individuals that consume pornography.32 Generally, however, this evidence is largely ignored or questioned in its validity. For example, the validity of laboratory results documenting the increase of violent attitudes towards women resulting from watching pornography has been questioned on the grounds that laboratory results are artificial. Artificiality, however, is the typical character of most types of laboratory-conducted research. Thus, not only in pornography, but also in any other field that involves behavioral studies and laboratory research, causality as a 100% standard of proof can rarely be achieved. This does not mean, however, that a correlation between pornography and

sexual violence does not exist.\textsuperscript{33} As Edward Donnerstein writes, "the relationship between ...sexually violent images in the media and subsequent aggression and changes in or towards callous attitudes towards women, is much stronger statistically than the relationship between smoking and lung cancer."\textsuperscript{34} Commenting on these conclusions, Catherine Itzin adds that as with smoking and lung cancer, there are other factors, in addition to pornography, that can lead to sexual violence, but at the same time "there is certainly sufficient evidence to say that it is highly likely that pornography is one of the factors that contributes to sexual violence."\textsuperscript{35}

Social science studies on pornography conducted in the last decade have included laboratory experiments and attitudinal surveys proving the existence of a causal link between pornography and sexual violence.\textsuperscript{36} These studies claim that pornography promotes sexist attitudes, encourages

\textsuperscript{34} Ibid.
\textsuperscript{35} Ibid. p. 559.
rape myths, sexualizes gender dominance and subordination and reduces men's inhibition to rape. For example, experiments conducted by Zillman and Bryant and by Donnerstein and Linz reveal that men exposed to violent pornography are less likely to sympathize with women who have experienced rape, and tend to trivialize women's physical and psychological trauma.

Other studies and experimental research also show that men react differently than women towards pornography. Thus, male subjects exposed to pornography display progressive acceptance of the "rape myth," according to which women desire to be raped. Female viewers, on the other hand, show anxiety and confusion, and perceive the women portrayed in the pornographic material as experiencing pain and humiliation.

The question of whether or not pornography harms women is particularly controversial with regard to the so-called non-violent pornography. Non-violent pornography does not contain physical violence. However, it includes verbal abuse and non-reciprocated sex, portrays men or women with

38 Ibid.
39 Ibid.
40 See Wendy Stock, How Hate Harms, in The Price We Pay, op. cit., p. 83.
41 Ibid.
animal characteristics and represents women as sexual toys, instantly responsive to sexual demands of men. Some researchers have claimed that this type of pornography does not have a negative influence on men’s behavior; however, they have supported this conclusions with studies that focus on material with a relatively low level of degradation and dominance. More comprehensive research studies, on the other hand, show that after viewing non-violent pornography men are more likely to trivialize rape or showed proclivity to rape, and that therefore the depiction of degradation and dehumanization of women, even when explicit violence is not portrayed, can injure women in real life.

Researchers of non-violent pornography are relatively few. Many researchers, in fact, have confined their field of study and critique to violent pornography for ideological disagreement with the possible policy implications of research results proving that non-violent pornography is harmful. While it is essential that research on the effects of pornography continues to be made, it is equally essential that more and comprehensive information be produced and made public, in order for people to fully

42 Ibid.
44 Ibid.
45 Ibid.
46 Ibid.
acknowledge the influence of pornography, however characterized, on human behaviors.

B. First-Hand Testimonies

The inadequate level of information surrounding pornography affects an essential source of evidence, represented by the testimonies of victims and of other witnesses on the links between pornography and violence.

Many people do not realize how pornography functions in the lives of its victims. They ignore that pornography is forced on women by husbands, boyfriends and lovers, and that it is directly involved in many sexual assaults. As reported by several rape crisis centers in the United States, many rapes are photographed, and pictures are sold as pornographic material.

In her book Ordeal, 47 Linda Marchiano, formerly known as porno-actress Linda Lovelace, gives a detailed and frightening account of her personal experience in the world of pornography. After being kidnapped and physically abused, she was coerced to prostitution and to pornography for two and a half years with systematic beatings, horrible sexual abuses, and threats of death to her and her family. Under these conditions, Marchiano performed in the pornography

47 Linda Lovelace and Michael McGrady, Ordeal, New York, Berkley Books (1980).
best-seller movie *Deep Throat*. Several times she attempted to run away, and suffered horrible punishments in retaliation.\textsuperscript{48} Eventually, she succeeded to escape. She subsequently lead for several years a legal battle to obtain that the movies that she filmed under conditions of coercion and abuse be retired from video stores and movie theaters. Her battle, however, has been unsuccessful.\textsuperscript{49}

Although shocking, Marchiano’s story is not uncommon. Many women report being forced to act and model in pornography through intimidation as well as physical and mental abuse. Although there are women in pornography who claim not to be coerced, this circumstance should not be used to take away credibility from those women who have been, in fact, coerced.

Research shows that pornography is used as an important part of a strategy to abduct young women and adolescents and to lead them to prostitution.\textsuperscript{50} As Kathleen Barry points out, usually, the victim is young and vulnerable and often she is homeless. Once she is secured, pornography becomes the means by which she is forced into prostitution. Sometimes she will be shown pornography described as

\textsuperscript{48} Ibid.
\textsuperscript{49} Ibid.
pleasing and gratifying to the women who appear in it; or she will be raped, and photographed or filmed during the rape. The pictures and films will be afterwards sold to pornographers for mass production and used to threaten the victim. Afraid that the pictures will be sent to her family, she will agree to prostitute.\textsuperscript{51}

In pornography there are often women who have been abused as children and led to prostitution and pornography by their abusers.\textsuperscript{52} Run-away girls, poor and homeless women, and drug addicts also populate the world of pornography. Pornography may sometimes be done by choice, but too often women in pornography do not have real life choices. Furthermore, being largely operated as an organized crime industry, pornography makes it virtually impossible for women to escape it once they are trapped in it.\textsuperscript{53}

In the United States, a powerful source of evidence of the connections between pornography and sexual violence is represented by public hearings where public authorities in the process of deciding the adoption of anti-pornography laws, hear testimonies of victims of sex-related crimes and experts on the field. The first public hearings on the effect of pornography on women and more generally on its impact on society, were held in 1983 Minneapolis. In that circumstance, the city council heard evidence of harm caused

\textsuperscript{51} Ibid.
\textsuperscript{52} See MacKinnon, Only Words, op. cit.
\textsuperscript{53} Lovelace and McGrady, op. cit.
by pornography in the discussion of civil rights legislation proposed by Andrea Dworkin and Catharine MacKinnon.  

Testimonies given included a woman raped at the age of thirteen by three men who were reading pornography before they saw her and decided to chase an "alive one;" a woman sexually abused as a three-years old child by a young boy who had learned from pornography how to sexually abuse; a woman drugged and forced to perform strip-tease in public and to engage in sexual acts in condition of total unwillingness, while the entire event was filmed; women raped or sexually abused by boyfriends and husbands, asked or forced by them to submit to unwanted bondage, sodomy and group sex, under the directions and descriptions of pornography magazines and films; prostitutes sexually tortured and forced to perform on disabled men sexual acts under instructions provided by pornography contemporaneously shown on video; prostitutes paid extra-money to perform painful sex and to act as they were enjoying it, for the purpose of tape filming and distribution; a native

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54 The ordinance passed twice in Minneapolis; it also passed in Cambridge, MA, and Bellingham, WA. The ordinance was found unconstitutional in two decision, American Booksellers v. Hudnut, 598 F. Supp. 1316 (S.D. Ind. 1984) (Barker, J., Reagan appointee); Hudnut v. American Booksellers, 771 F.2d 323 (7th Cir. 1985) (Easterbrook, J., Reagan appointee); the U.S. Supreme Court summarily affirmed, 106 S.Ct. 1172 (1986).
56 Testimony of Elaine V., II Hearings, pp. 47-53.
57 Testimony of Nancy C., II Hearings, pp. 53-55; testimony of Ruth M., pp. 57-69.
58 Testimony of Therese S., II Hearings, pp. 69-73.
59 Ibid., pp. 75-80.
American woman raped by two men who during the violence mocked her with continuous references to the porno video game "Custer’s revenge," which served as a model for the rape; women harassed through pornography displayed in the workplace, name calling and other forms of harassment; a woman reporting on the harassment suffered by herself, her family and her neighbors when porno clubs and theaters started to spread in her neighborhood; clinic emergency service staff, reporting on patients raped and subjected to painful practice displayed in pornography as healthy and enjoyable; workers in women’s shelters reporting on women taken to hospitals and to shelters because their husbands or boyfriends had abused them after watching pornography; psychologists and specialists in treatment group for men physically, verbally or sexually abusive, who described pornography as a merely temporary relief to sexually violent instincts, and as a powerful source of addiction and a mood-altering that does not liberate men but captures them leading them to want the experience seen in pictures and films to happen in real life.

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60 Testimony of Carol L. III Hearings, pp. 18-20.
62 Testimony of Shannon M., II Hearings, pp. 90-100
63 Exhibit 13 (letter), I Hearings, p. 60.
64 Testimony of Wanda R., III Hearings, pp. 21-26.
65 Statement of Floyd Winecoff submitted to the Minneapolis City Council in the testimony of Michael L., III Hearings, pp. 85-88.
Rarely the testimonies of pornography's victims have been recognized as evidence of human rights violations. Often, they have been regarded as exaggerated, anecdotal or simply dismissed, which in the view of some commentators, demonstrates a disinterest towards women's problems and at the same time reflects the low weight given to women in society.66 The civil rights legislation enacted following the Minneapolis hearings did not survive attacks based on First Amendment grounds. The legislation consisted of an ordinance which defined the harms made by pornography as violations of equality and made them actionable as practices of discrimination. On the basis of the ordinance, anyone hurt through pornography could have proved the role played by pornography in the abuse, recover for his/her civil rights' violation and stop it from continuing. The ordinance was found unconstitutional for violation of the First Amendment by the Seventh Circuit in American Booksellers v. Hudnut.67

The analysis of this decision shows almost a contradiction between its premise and its conclusions. The paradox that characterizes this decision resembles the paradox which is typical of legislative status of pornography, violation of civil rights but protected as civil right itself. The Hudnut court recognized that

66 Itzin, op. cit., p. 568.
67 Hudnut v. American Booksellers, 771 F.2d 323 (7th Cir. 1985)
pornography harmed real human beings by stating that "depictions of subordination tend to perpetuate subordination" and that "the subordinate status of women in turn leads to affront and lower pay at work, insult and injury at home, battery and rape on the street. In the language of the [anti-pornography] legislature, pornography is central in creating and maintaining sex as a basis of discrimination." Nevertheless, the court held that the power of pornography to affect human lives simply demonstrated its power as speech and therefore its protected status as first amendment's right. It has been observed that this conclusion of the Court is the same of saying that "the more a libel destroys a reputation, the greater is this power as speech. To say that the more harm speech does, the more protected it is, is legally wrong, even in this country."^68

The inability of the court to find a better and more congruous solution lies probably in the fact that the Court did not look at the attacked legislation as an anti-discrimination law but rather as an anti-defamation law, conceiving pornography as pure speech and disregarding its material, real substance.

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^68 According to this conception, women in pornography would be "transformed into ideas, sexual traffic in whom was protected as if it were a discussion...nothing in Hudson explains why, if pornography is protected speech based on its mental elements, rape and sexual murder, which have mental elements, are not as well." MacKinnon, Only Words, p. 92.
C. Speech and Equality

In many countries, the legal immunity of pornography is built on freedom of expression grounds. Generally, legal provisions on free speech protect as such words, speech, and symbols. They may exempt some forms of speech from protection, for example for reasons of national security or fair competition in commerce.\(^6^9\) Rarely, however, they exempt pornography from protection, and even more rarely provided with remedies for individuals who have been injured by pornography.

Some forms of private power work within societies to limit the freedom and equality of certain groups of people who have been historically discriminated against. Indeed, these forms of power allow these historical conditions of unbalance based on sex, race, religion, to continue to exist and to harm the well being of entire groups of people, silencing women and other historically discriminated groups. However, if speech were really free - for everyone - the injury done by suppression of speech by private actors should be fully acknowledged, and this acknowledgment should include the fact that some members of the community are less powerful than others and have less voices than others.

\(^{69}\) Exceptions are, for example, laws against treason, bribery, conspiracy, threats, blackmail, and libel.
Not all the different voices in society, in fact, participate equally and interact equally among each other in the political and social context. To this day, there are many groups of people who do not participate on an equal level with so-called mainstream groups, in the political and social debate. Sometimes, these groups do not have full and unconditioned access to information. This has happened, for example, to those individuals, women and men, whose speech has been concerned with women's issues and rights and has rarely if ever reached the information channels. This form of private censorship against speech has affected in particular speech documenting the exclusion and the trivialization of women and girls in educational material, but also speech documenting the incidence of sexual abuse and discrimination in the family, the workplace and the society at large. It has been along these lines that the criticism of pornography has been silenced and/or misrepresented.

In the absence of the conditions that make possible for everybody to enjoy justice, equality and respect, the very concept of freedom of speech loses its meaning. The sexual freedom that pornography celebrates has nothing to do with sexual self-determination or sexual justice, as pornography exploits experiences that in real people's lives represent pain and abuse (like rape).70 Pornography celebrates the

70 John Stoltenberg, Refusing To Be A Man, p. 130.
license to transform the abuse of human beings into a source of pleasure. The supposed sexual freedom that it represents is a sex which is free "from guilt, from responsibilities, and ultimately [freedom] from any obligation to take into account in one's consciousness that the other person is a person." Ultimately, in pornography the concept of freedom is misappropriated and used to cover an economically motivated business, which embodies society's most repressive and discriminatory feelings.

D. Legislation and Judicial Review on Pornography in the EU and in Canada

Aiming to avoid the conflict between regulation of pornography and of its commercial distribution on the one hand, and to avoid as well absolute notions of free speech, legislators have been quite reluctant to consider legal approaches capable to balance speech and equality. Some countries, however, have taken important steps to reach this balance while fighting any stereotyped portrayal of women.

Interestingly, in countries traditionally concerned with human rights, the defense of free speech is not absolute. In these countries, often the right to exercise one's freedom of expression is subject to limitations.

\[71\] Ibid., p. 126.
designed to prevent violations, by such exercise, of other individual fundamental rights.

In the European Community several organs are responsible to protect human rights and to achieve the goal of equality between the sexes. One of the goals pursued by the Council of Europe, for example, is to protect and develop democracy and human rights, while the recognition of equality between the sexes as a fundamental human right is the responsibility of the Steering Committee for Equality between Women and Men (CDEG). This Committee also prompts, at both national and Council levels, action designed to achieve equality between the sexes. To this end the Committee not only does studies and evaluations and defines specific strategies, but also, when necessary, creates the framework for relevant and appropriate legal instruments. In this context, the recognition that language and words can harm individuals and threaten equality, and that the achievement of equality requires not only abstention from creating conditions of inequality but also positive action to combat those conditions when existing, can be the basis for the enactment of specific legislative measures. The use of language to maintain conditions of inequality for example, is confronted in Recommendation No. R(90)4, prepared by the European Committee for Equality between Women and Men in a Changing Europe, Poznan (Poland), 31 March-2 April 1992, Council of Europe Press, 1994.
Women and Men and adopted by the Committee of Ministers of the Council of Europe on 21 February 1990.\textsuperscript{73}

The exercise of freedom of expression is protected by Article 10 of the European Convention on Human Rights. Article 10(1) states that "everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises." \textsuperscript{74}

The case law under the European Convention allows states to exercise a relatively high degree of discretion in the implementation of Article 10.\textsuperscript{75} For example, "artistic expression" is given prima facie protection. At the same time, however, the possibility to regulate such expression if regulation is justified by other pressing social needs is acknowledged.\textsuperscript{76} Limitations on freedom of expression, thus, are permitted if they meet the criteria listed in article 10(2): "the exercise of [freedom of expression], since it

\begin{itemize}
\item \textsuperscript{73} \textit{The Elimination of Sexism from Language}, Council of Europe Press, 1991.
\item \textsuperscript{74} See Donna Gomien, David Harris, Leo Zwaak, \textit{Law and Practice of the European Convention on Human Rights and the European Social Charter}, Council of Europe Publishing, 1996.
\item \textsuperscript{75} Ibid., 273-300.
\end{itemize}
carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The jurisprudence of the European Court of Human Rights has created limitations on freedom of expression depending on the circumstances of the particular case, or on the particular public goal to be achieved. Judge MacDonald writes that "the exact width of the margin of appreciation in any particular case is difficult to specify in advance...because it varies in accordance with the precise balance...(of the) principles that the Court think is appropriate in the case at hand." 77

The potential of Article 1, however, has not always been used with a view to achieve equality and to prevent violence and discrimination, especially when the Court has stressed moral issues rather than equality concerns. Such a confusion carries all the problems connected with the relativity of moral concerns. Accordingly, the Court has

pointed out that given the great variation in different
countries on the issue of morality, it is appropriate (for
the Court) to defer to domestic laws the judgment as to what
measures were necessary to protect morals.78

In the Handyside case,79 the Court paid great
attention to the necessity that the right to free speech be
protected in its different expressions. The Court stated
that in a democratic society "freedom of expression
constitutes one of the essential foundation" as well as "one
of the basic conditions for its progress and for the
development of every man" and that as such it applied "not
only to information or ideas that are favorably received or
regarded as inoffensive as a matter of indifference, but
also to those that offend, shock or disturb any sector of
the population" as "such are the demands of that pluralism,
tolerance and broadmindedness without which there is no
"democratic society."80 However, the Court added that
states' action can be (and in this case was) justified under
the "protection of morals" clause. The controversy at issue
concerned the publication of a book for school children
containing advice on sexual matters. The publisher,
prosecuted and convicted by the United Kingdom Government

78 See, for example, Muller and Others v. Switzerland,
Judgment of May 1988 (No. 133), 13 E.H.R.R.212; see also
(No. 24) 1 E.H.R.R. 737.
79 Supra note 75.
80 Ibid., p. 23, para. 49.
under a law restricting obscene publications, claimed that his conviction violated his rights under article 10. The Court, however, rejected this approach, and upheld the position of the United Kingdom Government on the basis of moral concerns for young readers. The Court adopted the same approach in the Muller case, dealing with the confiscation by the Swiss Government of sexually explicit paintings.\textsuperscript{81}

It appears that in cases of alleged violations of article 10, the question that the Court poses is whether the means of expression that created the controversy are the only means by which the ideas or the information at issue can be expressed and/or conveyed. If this first test is passed, the Court will then examine the nature and purpose of the expression in light of the public interest test. In other words, the Court will look at the function served by the expression at issue in public life.\textsuperscript{82} Thus, political expression will be afforded a high level of protection. The same level of protection will not, however, be awarded to other forms of expression that meet only one or not even one of the tests.

The approach of the European Court seems to respond to the necessity of balancing the exercise of freedom of speech with the protection of other human rights. However, this approach needs a stronger and express commitment to equality

\textsuperscript{81} Ibid.
\textsuperscript{82} Ibid., p. 276.
rather than to morality concerns. Towards this direction, for example, has moved the Canadian Supreme Court. Finding proper the inquiry on the nature and content of the disfavored expression, this Court has decided that the Canadian Parliament could make criminal the publication of pornography. In one of its decision on this issue, the Court held that this kind of legislative response to pornographic material was appropriate since the material involved in pornography "lies far from the core of the guarantee of freedom of expression. It appeals only to the most base aspect of individual fulfillment, and it is primarily economically motivated." 83

In the course of its judicial review on hate speech and pornography cases, starting from 1992, the Supreme Court of Canada acknowledged that the harm to women, children and society provoked by some forms of hate speech justifies constraints on such speech. The Court recognized that the "expression" found in pornographic material had little to do with the historical and functional reasons underlying constitutional guarantees of free expression 84 and thus offered an useful example of how to balance equality and free speech.

This judicial approach has been developed by the Canadian Court on the basis of the Charter of Rights and

83 Ibid., p. 183.
84 The Court addressed pornography as an equality issue for the first time in Regina v. Butler, 1 S.C.R. 432 (1992).
Freedom, which Canada adopted in 1982. In interpreting the Charter, the Court adopted a "purposive" standard, identifying the purpose of the Charter in the protection of people who have little or no part in the political process, who are or have been excluded from full participation in the political and social spheres, and in the protection and advancement of the rights of poor and oppressed people, racial and religious minorities, and women. In the view of the Court, the Charter would serve the less privileged part of society, because the necessity to remedy past wrongs required concrete measures to promote equality.

The adoption of the purposive approach led the Court to find that a law would violate the Charter if its purpose or its effect violated the freedoms guaranteed by the Charter. For example, if a law created an economic, social or political disadvantage, the law would discriminate and thus violate the equality guarantee.

87 See for example Morgentaler, Smoling & Scott v. R., 44 D.L.R. (4th), 385 (S.C.C.), a Supreme Court decision which benefitted women; Re Singh and Minister of Employment and Immigration, 17 D.L.R. (4th) 422 (S.C.C.), (1985) which benefitted refugees.
89 Mahoney, op. cit., p. 281.
In application of these standards, in Regina v. Keegstra\textsuperscript{90} the Court, upholding an anti-hate law, maintained that the constitutional guarantee of equality could be achieved by placing some limitations on free speech.\textsuperscript{91} In the following Regina v. Butler,\textsuperscript{92} responding to a challenge to an obscenity law on freedom of expression grounds, the Court followed the standards adopted in Regina v. Keegstra but at the same time underscored the differences between pornography and other forms of hate speech.\textsuperscript{93} Thus, the Court identified a peculiar danger in pornography because of its diffusion and social acceptance by comparison with other forms of hate propaganda. The Court found that pornography promoted sexual subordination, dehumanized women and reduced them to sexual objects; that pornography had a direct correlation with battery, prostitution, incest and sexual harassment, that it undermined women's rights to equality and threatened their safety, and that the interest in preventing the harm caused by pornography outweighed the free speech interests of pornographers. Interestingly, in making a decision on this case, the Court departed from morality standards and prurient interests, traditionally at the basis of obscenity laws. According to the Court, the adoption of such standards would have placed the harm made

\textsuperscript{91} Ibid.
\textsuperscript{93} Ibid.
by pornography to women out of the focus of the Court. Instead, the Court decided to reinterpret the challenged obscenity laws under the purpose sought by the Charter of Human Rights and Freedoms and under “contemporary community values.”

Some principles adopted by the Court could serve as a model for other countries’ legal systems, for prospective international legislation, and for future judicial review on pornography. By adopting these principles the Court faced and solved some among the most controversial issues connected to legal approaches to pornography.

1. PORNOGRAPHY AS FREE SPEECH AND THE BALANCE OF INTERESTS: to decide which of the opposite interests - speech OR equality - had priority, the Court used the proportionality text to balance the values underlying these interests. As the values underlying the constitutional protection of freedom of expression were identified by the Court in the search for truth, in the political participation and in the individual self-fulfillment, the Court concluded that these values were minimally present in the pornography dealt with by the anti-obscenity law and struck the balance in favor of equality.

2. CAUSALITY BETWEEN PORNOGRAPHY AND VIOLENCE: the Court held that the proof of a direct causal link between

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94 Ibid.
95 Ibid.
pornography and gender-based violence was not necessary to justify the creation and/or implementation of legislation on pornography. The Court observed that the issue was not whether or not the proof of a causal link could be found, but whether or not there was a reasonable basis to conclude that material portraying violence, cruelty and dehumanization in sexual relations, is likely to cause harm. The Court recognized that such reasonable basis existed, and that there was an appreciable risk that harm would be made as a consequence of pornography.96

3. OVERBREADTH: finally, the Court found that the law survived the overbreadth critique; the law, in fact, covered only material that created the risk of harm, but did not affect in any way scientific, artistic, literary or purely erotic material.97

Proposals of alternative solutions suggested by pro-pornography civil libertarians groups were found inadequate by the Court. One proposal suggested that the appropriate response to sexual violence would be the multiplication of rape crisis center. While the value and merit of these centers is certainly out of discussion, this proposal ignored the issue of prevention and thus an essential purpose of the law itself - prevention of the harm.

96 Ibid.
97 Ibid.
Another proposal suggesting to adopt time, place and manner limits to restrain access to pornographic material was found insufficient by the Court. In the view of the Court, alternative measures would be better used in addition to criminal restrictions, and not in substitution of them.98

In the later case Regina v. Ross Wise,99 the Supreme Court of Canada used the data provided by social sciences and psychological research to distinguish between different kind of sexually oriented material. The Court was thus able to convict dehumanizing pornography and to acquit purely erotic material. In this decision, the Court also used the community standard model, which considered whether or not the average person would regard the material at issue dehumanizing. After examining the evidence, the Court found that "no average Canadian, regardless of what part of the country he or she comes form, even remotely would permit his or her fellow Canadian neighbor to view any of these publications," and with particular regard to porno publications featuring adult women in a child-like appearance, the Court found that they constituted "blatant incitement to anyone who reads these publications to have sexual relations with children."100

98 Ibid.
100 Ibid.
The judicial approach of the Supreme Court of Canada challenges the traditional interpretation of civil liberties, which is concerned only with the relationship between the individual and the State but ignores the effects of other subtle forms of non-state discrimination. The decisions of the Court acknowledge the existence of private systems of oppression, and the fact that when certain forms of discrimination are deeply rooted in society, any distinction between public and private sphere loses much of its weight. Ultimately, the continuing increase in society of harms and abuse is in a large part due to non-interference or inaction of disinterested public actors.
CHAPTER IV

The United Nations Approach to Media Portrayals of Gender-Based Violence and Pornography

Particularly when national legislation is absent or does not provide adequate regulation to prevent the harm caused by mass distribution of false and stereotyped portrayals of women, it is essential to create and/or implement international standards of protection. In recent years, various activities have been undertaken at the intergovernmental level, under the aegis of the United Nations, against representations of women's stereotypes in consideration of their correlation to actual occurrence of violence against women.

Within the United Nations, action to improve the image of women in the media has been pursued particularly in the last two decades. During this time, in fact, relevant activities have been promoted, especially during the United Nations Decade for Women from 1975 to 1985.

At its 27th session, the General Assembly of the United Nations, proclaimed with resolution 3010 the year 1975 International Women's Year. A program of activities to be carried out during the international Women's Year,
recommended to the Council by the Commission on the Status of Women at its 25th session, included the organization of a world conference as a focal point of the international observance of the year. The Conference was held in Mexico City from June 19 to July 2, 1975. In the Conference plan of action, paragraphs 159 and 160 stress the necessity that specific legislative and other measures be taken to combat prostitution ad illicit traffic in women, and urge Governments which have not already done so to ratify or accede to the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Paragraphs 174-181 focus on Mass Communication Media. Paragraph 174 recognizes that a major obstacle in improving the status of women lies in "public attitudes and values regarding women’s roles in society" and that the mass communication media "have great potential as a vehicle for social change and could exercise a significant influence in helping to remove prejudices and stereotypes, accelerating the acceptance of women’s new and expanding roles in society and promoting their integration into the development process as equal partners." Paragraph 175 acknowledges that at the present time "the media tend to reinforce traditional attitudes, often portraying an image of women that is degrading and humiliating, and fail to

reflect the changing role of the sexes." Paragraph 179 urges those "in control of the media" to "seek to raise public consciousness with respect to these changing roles, and the serious concern that both women and men have about important issues that affect their families, communities and society at large" and to "project a more dynamic image of women, depict the roles and achievements of women from all walks of life, seek to develop in women confidence in themselves and in other women, and a sense of their own value and importance as human beings."

Among the resolutions and decisions adopted by the Conference, draft resolution I, entitled "Prevention of the exploitation of women and girls" (page 79) deals with the problem of forced recruitment of women and young girls into prostitution. More focus on women stereotyping and degradation in the media is contained in draft resolution XIII, entitled "Women and Communication Media." The language of the resolution, however, is mainly promotional, and indication of action to be taken by either governments or media organizations could have been more specific. In any event, pornography never receives specific focus, but comes to consideration almost incidentally and in connection with other issues receiving more focus. In any event, draft resolution XIII recognizes the role of the mass communication media "in determining the attitudes and values

of the community and in effecting social changes," in influencing "ways of thinking and the formation of opinion" and in contributing "to the adoption of new attitudes regarding the roles of men and women in society." The draft resolution also recognizes that often the mass communication media "tend to reinforce and present a stereotyped, degrading and immoral image of women," condemns "the exploitation of women as sex symbol and instrument of economic interest by certain media of social communication" and finally requests governments and responsible organizations "to promote and encourage, in the mass communication media of their countries, the projection of a dignified and positive image of women...with a view to bringing about changes in the attitudes and ways of thinking of both men and women that will be conducive to securing the equality and integrity of women and their full participation in society." It also requests, in operative paragraph 4, "those in charge of the mass communication media to cease projecting and gradually eliminate commercialized, tasteless and stereotyped images of women, particularly in pornographic publication, the use of such images in depicting sexual crimes and crimes of violence, and the dissemination of any material tending to create prejudices and negative attitudes with regard to the changes necessary for the revaluation of the role of women and to transmit an
image of men’s and women’s roles that is as varied as possible."

In 1979, a United Nations Rapporteur was appointed for the purpose of studying the impact of mass communications media on changing roles of men and women and of submitting a report on this issue at the World Conference of the United Nations Decade for Women, held in 1980 in Copenhagen.103

In preparation for the conference, and taking note of the report of the special rapporteur, the Economic and Social Council adopted resolution 1980/5, on the influence of mass communication media on the roles of women.104 The resolution emphasizes the potential of mass communication media for the training and education of the general public. Taking into account the likely increase of the mass communications media in the years to come, deploring the trend in the mass communications media to present women in stereotyped roles and pointing to the need to correct this trend, the conference called "upon those responsible for the content and presentation of material by mass communications media to make additional efforts to present in a more comprehensive and balanced way the right of women to enjoy equal rights and equal opportunities with men" and to this

104 Resolution 1980/5, as submitted by informal working group on agenda item 8, E/1980/L.17 and Add.1, and as further orally amended by Hungary, adopted without a vote by the Council on 17 April 1980, meeting 9.
ends "encouraged all relevant organizations, institutions and other associations to exercise their influence."

The tone of the resolution remains, like in many other U.N. resolutions on the subject, purely recommendatory. No significant action was proposed or undertaken at the Conference.

The Third United Nations World Conference on Women was held at Nairobi from 15 to 26 July 1985, in conformity with General Assembly Resolution 39/129 of 14 December 1984. No relevant draft resolutions addressed pornography or the links between pornography and violence. 105 However, a draft resolution entitled "Commercial publicity harmful to the dignity of women"106 states that the conference, "in view of the moral aggression of which women are victims...owing to the mass communication media in the majority of countries... by the use of their image as a sex object...urges governments to establish specific measures to eradicate from publicity harmful propaganda that affronts the dignity of women (and) offends children." No more specific action to be taken is mentioned. The draft resolution entitled "Sexual Violence Against Women and Children"107 acknowledges that "people in various societies


are scarcely aware about sexual violence against women" but does not include any statement relevant to the misrepresentation of the image of women in the media and to its effect on violence against women.

Under the section of the report entitled "Communication," paragraph 206 states that "in view of the critical role of this sector in eliminating stereotyped images of women and providing women with easier access to information, the participation of women at all levels of communication policy and decision-making...and monitoring should be given high priority" and that "the media's portrayal of stereotyped images of women...can have a profoundly adverse effect on attitudes towards and among women." Paragraph 288 urges governments to increase public awareness of violence against women as a problem concerning society as a whole, to "establish policies and legislative measures to ascertain its causes and prevent and eliminate such violence, in particular by suppressing degrading images and representation of women in society." Pornography is mentioned incidentally in paragraph 290, on women victims of trafficking and involuntary prostitution: "sex tourism, forced prostitution and pornography reduce women to mere sex objects and marketable commodities."

In the context of the Nairobi Conference, the Nairobi Forward-Looking Strategies for the Advancement of Women were created, stressing the crucial role of the media in
advancing women and called for the elimination of exploitative and stereotyped portrayals. In 1990, the first review of the implementation of the Strategies recognized that the perpetuation in the mass media of stereotypes was a major obstacle to women’s advancement in society and established a link between the portrayal of violence against women in the media and the incidence of actual violence against women in “real” life. The second review of the Nairobi strategies found a stringent connection among media, women’s roles and development. The understanding of this connection was considered crucial to the creation of appropriate national and international measures, in terms of both research and policy making.

The problem of misrepresentation and stereotyping of women in the media has received again consideration, but no specific action commitment, in the Platform for Action of the Fourth United Nations World Conference on Women. The Platform contains the commitments undertaken by world governments at the Beijing Conference.

By its own definition, the Platform for Action is "an agenda for women's empowerment," directed "at accelerating the implementation of the Nairobi Forward-Looking Strategies for the Advancement of Women and at removing all the obstacles to women's active participation in all spheres of

public and private life, through a full and equal share in economic, social and cultural and political decision making.\(^{109}\) The Mission Statement of the Platform adds that "equality between men and women is a matter of human rights and a condition for social justice" and "a necessary and fundamental prerequisite for equality, development and peace.\(^{110}\)

The Platform for action offers an opportunity for a coherent understanding and implementation of the Convention on the Elimination of Any Form of Violence Against Women (hereinafter CEDAW).\(^ {111}\) CEDAW calls upon States parties to take appropriate measures in all fields, in order to ensure the full development and advancement of women. Unfortunately, its enforcement provisions are relatively weak, and States are left with a significant amount of discretionary power as to the choice of means of implementation.

CEDAW provides standards under which States parties can be held accountable if they do not fulfill their obligations under the treaty. Under CEDAW, a monitoring body, the Committee on the Elimination of All Form of Discrimination Against Women, has been established to supervise States' compliance to the Convention.

\(^{109}\) The Beijing Declaration, op. cit., p. 17.
\(^{110}\) Ibid.
The Convention contains provisions that, if adequately implemented, could serve as legal basis to fight pornography and traffic in women. With particular regard to pornography, article 5 recognizes the role played by social and cultural standards in maintaining women in position of subordination and in making them victims of systematic strategies of discrimination, and addresses subtle forms of exploitation linked to cultural, religious and family conditions. Thus, article 5 requires States "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 inferiority or superiority of either of the sexes or on stereotyped roles for men and women." \(^{112}\)

Pornography and sexual violence have been addressed by the Committee on CEDAW in General Recommendation No. 19, which defines gender-based violence as a form of discrimination against women and recognizes that the propagation of pornography contributes to gender-based violence. Although the Committee's recommendations are not legally binding, this and other similar acknowledgments are significant because they regard gender-based violence as an international law issue and acknowledge the correlation between pornography and violence. On article 5, however, the Committee has not taken a firm position, probably with a

\(^{112}\) CEDAW, article 5.
view to mediate conflicting interests of States parties to
the Convention.113 Thus, the Committee has given to article
5 a merely promotional value and has urged States to adopt
instead educational and public information programs
addressing the goal of eliminating discrimination. The
adoption of similar programs, however helpful, is not
sufficient. In a more satisfactory way, a UN Declaration on
the Elimination of Violence Against Women condemns degrading
representation of women in the media, and notes that every
time that the right to freedom of expression conflicts with
women’s rights, too often it is women’s rights to be
compromised.114

Finally, the Beijing Platform for Action recognizes
that media images of violence against women and girls, in
particular depiction of rape and sexual slavery and the use
of women as sexual objects, are factors that contribute to
the continuation of sexual violence against women and
influence adversely the community, in particular children
and young people.115

Three of the strategic objectives of the Platform deal
respectively with 1) violence against women, 2) women and
the media, and 3) human rights of women. In the Platform
these three objectives are often intertwined. Under the

113 States have demonstrated overwhelmingly opposition to
interpret article 5 as binding.
115 The Beijing Declaration and The Platform for Action, op.
cit., p. 133.
strategic objective "Violence Against Women," violence against women is comprehensively defined as "any act of gender-based violence that results in, or is likely to result in, physical sexual or psychological harm or suffering to women, including threat of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life." 116 Accordingly, violence against women includes but is not limited to:

(a) physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs." 117

The causal link between certain images of violence against women and the actual perpetration of violence is acknowledged in the provision that includes, among action to

116 Ibid., p. 73.
117 Ibid., pp. 73-74.
be taken by various actors to prevent and eliminate violence against women, raising awareness of the responsibility of the media "in promoting non-stereotyped images of women and men, as well as in eliminating patterns of media representation that generates violence,"\textsuperscript{118} and of the important role of the media in informing and educating people on the causes and effects of violence against women.\textsuperscript{119}

Pornography is addressed as a human rights issue and as a cause of gender-based violence under the strategic objective "Human Rights of Women,"\textsuperscript{120} where it is listed along with racism, cultural prejudices, racism, racial discrimination, xenophobia, ethnic cleansing, armed conflict, foreign occupation, religious and anti-religious extremism and terrorism as a practice "incompatible with the dignity and the worth of human person,"\textsuperscript{121} to be "combated and eliminated."\textsuperscript{122} Under the strategic objective, it is stated that governments should take action and to cooperate internationally to implement all relevant human rights instruments in order to fight and eliminate trafficking in women and children for the purpose of sexual exploitation, pornography, prostitution and sex tourism.\textsuperscript{123}

\textsuperscript{118} Ibid., p. 79.
\textsuperscript{119} Ibid., p. 80.
\textsuperscript{120} Ibid., p. 121.
\textsuperscript{121} Ibid., p. 124.
\textsuperscript{122} Ibid.
\textsuperscript{123} Ibid., p. 127.
The relationship between stereotyping in communication channels and gender-based violence is addressed in the Platform for Action under the strategic objective entitled "Women and the Media." The insertion of this strategic area in the Platform takes into account the role played by media in the circulation of discriminating stereotypes. The revolution in the communication channels of the past few decades has given women new and more opportunities to participate and to gain active positions in the world of information.

Media's potential to enhance women's condition, however, has rarely been used for this purpose. On the contrary, women have often been excluded from, or silenced by communication channels, which have distributed public images of women that do not pay tribute to their participation and contribution to society, to their social and political involvement and to their achievements. In these images, women are consistently portrayed as sexual commodities or identified with feminine-caring archetypes.

There have been instances where media monitoring and adoption of educational measures have improved the representation of women by the media, and where self-regulatory bodies, such as press councils, have been created to provide individuals with complaint procedures to be used

124 Ibid., p. 133.
in case of discrimination displayed by media.\textsuperscript{125} However, adoption by media of self-disciplining guidelines has been extremely rare. A survey of broadcasting companies, made in 1993 in 23 countries, found that out of 75 respondent organizations, only 12 per cent maintained written policy statements concerning women stereotyping.\textsuperscript{126} This issue remains almost entirely unregulated.

Media, however, are not only powerful standard-makers that can create negative attitudes and perceptions of reality by misrepresenting and distorting it; they also have the potential to play a crucial role in fighting, and eventually, removing sexual stereotypes. Media could be key actors towards the changing of patterns of discrimination perpetrated through pictures and words. They could, for example, create programs to inform and educate people on the causes and effects of violence - including the celebration of violence against women by the media. They could create internal codes of conduct with commitments not to produce denigrating stereotypes and to promote instead a positive image of women's diverse roles. Consumers' groups and media watch organizations could play a crucial role in this


process, also launching information campaigns and debates on the issue.

At a broader level, States could exchange among them relevant experiences made and measures adopted to face this problem. Knowledge of experiences of different countries would serve to understand the process through which media reflect institutional structures and changes and to understand how the circulation of stereotypes by media resembling and at the same time enforcing social perceptions of women (and men), can easily be used as a vehicle to promote an ideology. As reported by the Secretary-General of the United Nations on the issue of elimination of stereotyping in the mass-media, in the former socialist countries of Central and Eastern Europe portrayals of women in the media have switched from one extreme to another. In these countries representations of politically involved and working women have been replaced by images of fashion models and beauty queens. Most importantly, depiction of violence against women and pornographic publications have dramatically increased, reaching their peak between 1991 and 1993. A powerful business linked to organized crime, forced prostitution and traffic in women, has grown simultaneously.\textsuperscript{127}

As the relationship between women and the media has become an area of concern in the Beijing Platform, the

\textsuperscript{127} Ibid., pp. 8-9.
Platform defines action to be taken in this field under two strategic objectives: 1) increase of participation and access of women to expression and decision making in and through the media and new technologies of communication; 2) promotion of a balanced and non stereotyped portrayal of women in the media.

In the Platform, mass media and advertising organizations are requested to develop, consistent with freedom of expression, professional guidelines and codes of conduct as well as other forms of self-regulation.\textsuperscript{128} Governments, nation and international media systems, non governmental organizations, media professional associations and the private sector are identified as key actors to achieve women's full and equal participation in the media by promoting research and implementing means of information directed at removing to remove the representation of women as inferior human beings and their exploitation as sexual objects.

The discriminatory nature of sexist stereotypes is acknowledged by the Platform, which recognizes that pornography affects negatively women and their participation in society,\textsuperscript{129} that it is necessary to create measures against pornography and against the projection of violence

\textsuperscript{128} The Beijing Declaration and the Platform for Action, op. cit., pp. 136.

\textsuperscript{129} Ibid., pp. 133.
against women and children in the media,\textsuperscript{130} and that a stronger position for women in the media would enhance their ability to fight the spreading of discriminatory stereotypes.\textsuperscript{131}

The text of the Platform is vague when it comes to measures to be taken to deal with the conflict between regulation of false and violence-inciting portraits of women on the one hand and freedom of expression on the other, and does not propose any solution that could balance free speech and equality and discern the contrast between the free speech of some people and the silence forced by this speech on other people. The problem is precariously fixed with a generic reservation of compatibility with freedom of expression of specific measures to be taken by governments, international organizations, mass-media and advertisement organizations.\textsuperscript{132} Despite this limitation, the recognition in the Platform of pornography as a human rights issue and as a cause of violence against women is extremely significant, especially in view of the prospective adoption of measures to implement the Platform. In this sense, the Platform's institutional and financial arrangements contain recommendations to the Commission on the Status of Women, and to the Committee on CEDAW to implement the Platform, and

\textsuperscript{130} Ibid., pp. 136.
\textsuperscript{131} Ibid., pp. 133-34.
\textsuperscript{132} Ibid., pp. 134-36.
urge States to provide adequate human and financial resources.\textsuperscript{133}

For the follow-up to the Fourth World Conference on Women, held at the United Nations Headquarters in March 1996, the item "Elimination of Stereotyping of Women in the Mass Media" was chosen by the Commission on the Status of Women as a priority theme for its fortieth session.\textsuperscript{134} Significantly, the item was placed under the rubric "equality." At the follow-up, the Vice-Chairperson submitted to the Commission a document containing the draft agreed conclusions on the item "Women and the Media."\textsuperscript{135}

The conclusions refer to gender stereotyping in advertising and the media as crucial to influence perceptions and attitudes towards women and to undermine equality between women and men. The conclusions also hold in high consideration freedom of expression, when applied equally to both sexes, stating that "if the goal of the full realization of the human rights of women, including freedom of expression, is to be achieved, human rights instruments must be applied in such a way as to take more clearly into consideration the systematic and systemic nature of discrimination against women that gender analysis has clearly indicated."\textsuperscript{136} With such a statement, the

\textsuperscript{133} Ibid., pp. 159-76.
\textsuperscript{136} Ibid., p. 2.
conclusions clearly acknowledge the impossibility for truly free expression to exist when the speech of some functions to suppress the speech of others.

Finally, and with regard to practical way of dealing with this issue, the conclusions stress the necessity for governments to support research and education programs and to undertake legislation against pornography and violence against women and children in the media.\textsuperscript{137} Unfortunately, the progressive approach adopted in the conclusions is not adequately reflected in the relevant draft resolution on the issue, voted and adopted by the Commission at the follow-up. The draft resolution entitled "Women and the Media,"\textsuperscript{138} in fact, does not make a single reference to pornography. This absence can be explained by the fact that, being the outcome of an intergovernmental debate, the resolution represents both an agreement and a compromise. Thus, this resolution really becomes a missed opportunity; although draft resolutions are not forcible, their systematic violation by some States could lead the international community to exert some political pressure, which in turn could encourage the enactment of future international legislation taking into adequate consideration the relationship between spreading of stereotypes and violence.

\textsuperscript{137} Ibid., p. 4.
At the follow-up, the Commission also voted and adopted the draft resolution "Traffic in Women and Girls,\textsuperscript{139} pursuant to the protection and implementation of human rights of women and girl children, with particular regard to women and girl children forced sexually or economically exploited for the profit of recruiters, traffickers and crime syndicates.\textsuperscript{140} Unlike the draft resolution "Women and the Media," this draft resolution recognizes the misuse of advanced information technology for pornographic and trafficking purposes and addresses child pornography; it does not, however, contain any reference to governmental commitments to regulate pornography and/or its distribution.

CONCLUSION

In spite of their limitations, caused by countries' conflicting views on the issue, the recent international developments mentioned above demonstrate at least a new attention by the international community towards the harm caused by women's stereotyping in the media, including pornography. This new interest could represent the basis for a movement, within the United Nations and its specialized agencies, supporting the adoption of an international convention addressing violence against women and containing a section addressing pornography and sexual violence, or a resolution addressing in a specific manner the causal connection between pornography and sexual violence. In such a context, space could be given to actual measures to be taken at the national and international level, and to states' commitments to undertake and execute these measures, which could include, for example, empowerment of women through a number of progressive steps, from the distribution at all levels of information on the links between pornography and sexual violence, to the creation of appropriate legislation on the responsibilities of pornographers on actual perpetration of sexual violence which they have caused or facilitated, to the provision of
compensatory relief for victims of pornography. Compensation to victims of pornography is a crucial issue, as its denial represents an implied permission to act out on other women the violence pornography recommends.

If international legislation were to be adopted on this issue, States' compliance with their obligations could be guaranteed through appropriate enforcement mechanisms. Thus, a supervisory body, for States to report to, could be established, on the model of the Commission on CEDAW, or the Human Rights Commission. In periodical reports to the supervisory body States could include information on the incidence of pornography, and of any evidence of the links between pornography and sexual violence, on the steps taken to implement their obligations and on the difficulties encountered in doing so. The enforcement machinery could be made accessible to injured individuals, through power of petition to relevant international bodies, on the model, for example, of the United Nation Commission on the Status of Women, holding the competence to review individual communications by individuals in order to identify consistent patterns of injustice and discrimination.141

It is essential that governments participate actively in similar projects, as the objective to create a universal mechanism helping to provide women with a working and living environment free of sexual abuse ultimately relies on

States' willingness to respect and promote women's human rights. Ultimately, the commitments made at the Beijing Conference have the potential to lead to the establishment of a set of rules capable of designing and realizing in a wholly new manner real equality for women. In this new conception of equality pornography would not be regarded as the harmless flow of ideas but as a threat to women's safety and to women's equality of speech. Violence against women is a form of torture and therefore a gross violation of human rights. To torture, pornography is incitement, causal factor, and too often on-stage perpetration. It is time that it is faced and treated as such.
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