

AN ANALYSIS OF STRUCTURAL WEAKNESSES IN THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

I. FACTUAL BACKGROUND

Fifteen years ago, the Convention on the Elimination of All Forms of Discrimination Against Women ("Convention") came into existence amid much scholarly acclaim.¹ It has been called "the definitive international legal instrument requiring respect for and observance of the human rights of women; it is universal in reach, comprehensive in scope, and legally binding in character."² Unfortunately, however, the document's practical effects have not been as revolutionary as its ideals.

The Convention has never attained the force of law in the United States. President Carter signed the document in 1980 and submitted it to the Senate for its advice and consent.³ However, Congress and the Reagan and Bush administrations virtually ignored the Convention during the 1980s.⁴ The Senate did not hold a single day of hearings on the Convention until 1988.⁵ Currently, 131 states are parties to the Convention.⁶ The United States remains the only industrialized nation that has not ratified the Convention,

¹ Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Mar. 1, 1980, 1249 U.N.T.S. 14 (entered into force Sept. 3, 1981) [hereinafter Convention].

² Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 VA. J. INT'L L. 643 (Spring 1990).

³ President's Message to the Senate Transmitting the Convention on the Elimination Against All Forms of Discrimination Against Women, S. Exec. Doc. 96th Cong., 2d Sess. (Nov. 12, 1980) [hereinafter President's Message].

⁴ See Richard B. Lillich, *The United States Constitution and International Human Rights Law*, 3 HARV. HUM. RTS. J. 53 (1990). Lillich describes the Reagan Administration's position on international human rights law as one of "benign neglect or even outward hostility." *Id.* at 54.

⁵ *Issues Relating to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women: Hearing Before the Subcomm. on Terrorism, Narcotics and International Operations of the Senate Comm. on Foreign Relations*, 100th Cong., 2d Sess. (1988).

⁶ *Adoption of the Report of the Committee on the Elimination of Discrimination Against Women on its Thirteenth Session*, Committee on the Elimination of All Forms of Discrimination Against Women, 13th Session, U.N. Doc. CEDAW/C/1994/L.1 (1994).

although President Clinton recently announced his intent to seek ratification.⁷

The Commission on the Status of Women ("Commission"), a functional body of the U.N. Economic and Social Council, began working on the Convention in the early 1970s in response to the inadequacies of existing human rights instruments in addressing the disadvantaged position of women.⁸ While general human rights treaties, including the Universal Declaration on Human Rights,⁹ the United Nations Charter,¹⁰ and the Civil and Political Covenant,¹¹ guarantee rights without any distinctions based on gender, women's rights have not been commonly classified as part of the general human rights field.¹² The Commission's efforts culminated with the drafting of the Women's Convention, which was unanimously adopted by the U.N. General Assembly in 1979 and entered into force with twenty ratifying states in 1981.¹³

Prior human rights treaties have specifically addressed women's issues,¹⁴

⁷ See David B. Ottaway, *U.S. Calls for Human Rights Czar, Seeks Vote on Carter-Era Treaties*, S.F. CHRON., June 15, 1993, at A7.

⁸ Andrea E. Stumpf, *Re-examining the U.N. Convention on the Elimination of All Forms of Discrimination Against Women: The U.N. Decade for Women Conference in Nairobi*, 10 YALE J. INT'L L. 384 (1985).

⁹ Universal Declaration of Human Rights, G.A. Res. 217 (III), U.N. Doc. A/810 (1948). "Everyone is entitled to the rights set forth in this Declaration without distinction of any kind." *Id.* at art. 2.

¹⁰ U.N. CHARTER art. 55(c). For the text of the provision, see *infra* note 45.

¹¹ International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter Civil and Political Covenant]. "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant." *Id.* at art. 2.

¹² See Charlotte Bunch, *Women's Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 HUM. RTS. Q. 486 (1990). Bunch asserts that failure to see oppression of women as "political" has resulted in the exclusion of gender discrimination and violence against women from the general human rights agenda. *Id.* at 491. See *infra* notes 104-111 and accompanying text.

¹³ Convention, art. 27.

¹⁴ These include: Convention on the Political Rights of Women, *opened for signature* Mar. 21, 1953, 193 U.N.T.S. 135; Convention on Equal Pay for Work of Equal Value for Men and Women, *opened for signature* June 29, 1951, 165 U.N.T.S. 303; Convention on Consent to Marriage, of Minimum Age for Marriage and Registration of Marriage, *opened for signature* Dec. 12, 1962, 521 U.N.T.S. 231; Convention on the Nationality of Married Women, *opened for signature* Feb. 29, 1957, 309 U.N.T.S. 65; Convention on the Recovery

but none have done so in such a comprehensive way. The Women's Convention forbids any distinction, exclusion, or restriction between the sexes which "has the purpose or effect of impairing or nullifying the recognition, enjoyment, or exercise by women . . . of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field."¹⁵ A unique and important feature of the Convention is its recognition of discrimination outside of the public sphere, as evidenced by the "any other field" language. In addition, by defining discrimination in terms of "effect," the Convention obviates the need to prove discriminatory intent.¹⁶

The substantive provisions of the Convention, covering a broad range of subjects, specifically enumerate forms of discrimination that States Parties agree to eradicate. Article 2 places an affirmative obligation on States Parties to procure equality of the sexes through national constitutions or through legislation.¹⁷ Article 5 requires parties to take all appropriate measures to "modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices" which are based on the idea that women are inferior.¹⁸ Articles 7 and 8 address equality for women in the political life of States Parties.¹⁹ Under Article 9, States must grant women equal rights to acquire, change, or retain their own nationality and the nationality of their children.²⁰ Parties are required to provide equal educational opportunities for women according to Article

Abroad of Maintenance, *opened for signature* June 20, 1956, 268 U.N.T.S. 3.

¹⁵ Convention, art. 1.

¹⁶ THEODOR MERON, HUMAN RIGHTS LAW-MAKING IN THE UNITED NATIONS 60 (1986). De facto discrimination stands as one of the biggest obstacles to equality for women. See *Implementation of Article 21 of the Convention on the Elimination of All Forms of Discrimination Against Women*, Committee on the Elimination of All Forms of Discrimination Against Women, 13th Session, Provisional Agenda Item 4, U.N. Doc. CEDAW/C/1994/4 (1993).

¹⁷ Convention, art. 2. This article requires states to establish equal legal protection for women by modifying or abolishing existing laws, practices, and customs which constitute discrimination against women.

¹⁸ *Id.* at art. 5.

¹⁹ *Id.* at arts. 7, 8. Obligations under Article 8 include the opportunity for women to "represent their Governments at the international level and to participate in the work of international organizations." *Id.* at art. 8.

²⁰ *Id.* at art. 9. This article ensures that women are not rendered stateless as a result of marriage.

10.²¹ Article 11 addresses employment and includes the right to equal job opportunities, benefits, and pay.²² This article also mandates paid maternity leave.²³ Article 12 requires equal access to health care, including appropriate services in connection with pregnancy.²⁴ Article 15 provisions cover equal rights with respect to the legal capacity of women, including the equal right to form contracts and own or inherit property.²⁵

The Convention established the Committee on the Elimination of All Forms of Discrimination Against Women (composed of twenty-three individuals from States Parties) which oversees the implementation of the terms of the Convention.²⁶ The Committee meets once a year to consider the progress of women's rights under the Convention and to make general recommendations to states.²⁷ Article 20(1) of the Convention authorizes the Committee to meet for "a period of not more than two weeks each year."²⁸ During its meeting time, the Committee examines reports submitted by states on their progress toward eliminating gender discrimination.²⁹ After reviewing the reports, Committee members can make suggestions and general recommendations to state representatives.³⁰ The Committee has set some

²¹ *Id.* at art. 10. In order to meet equal education obligations, parties must take measures toward the "elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education." *Id.* at art. 10(c).

²² *Id.* at art. 11. This article advocates equal pay for "work of equal value."

²³ *Id.*

²⁴ *Id.* at art. 12. This article states that women shall have equal access to "health care services, including those related to family planning," but does not specifically mention abortion. *Id.* at art. 12(1).

²⁵ *Id.* at art. 15. Under this article, States Parties agree that all contracts and private instruments with any kind of legal effect which is directed at restricting the legal capacity of women are "null and void." *Id.* at art. 15(3).

²⁶ *Id.* at art. 17(1). Currently all members of the Committee are women. *See List of Participants*, Committee on the Elimination of All Forms of Discrimination Against Women, 13th Sess., U.N. Doc. CEDAW/C/INF.1/Rev.2 (1994). Any State Party may nominate one of its nationals to serve on the Committee. Members are selected by secret ballot. Convention, art. 17(2).

²⁷ *Id.* at arts. 20, 21.

²⁸ *Id.* at art. 20(1). The two week term was extended in 1993 and 1994, but that is highly unusual. *Ways and Means of Expediting the Work of the Committee, Report by the Secretariat*, Committee on the Elimination of Discrimination Against Women, 13th Sess., Provisional Agenda Item 5, at 4, U.N. Doc. CEDAW/C/1994/6 (1993) [hereinafter *Secretariat Report*].

²⁹ Convention, art. 20(1).

³⁰ *Id.* at art. 21.

general reporting guidelines, but frequently states do not adhere to those guidelines.³¹ In spite of the breadth of the Convention, the Committee's success has been limited.³²

The Committee has functioned for thirteen years without any input or assistance from the United States. However, after spending more than a decade lingering on the back burner of American politics, the Convention faces a more optimistic future in the United States. The Clinton Administration has taken a more favorable stance toward the Convention and other unratified human rights treaties,³³ and has pledged to seek the advice and consent of the Senate.³⁴ Whether the United States will ratify the Convention remains to be seen.

II. LEGAL BACKGROUND

Human rights treaties have historically enjoyed little success in the United States, in part because American courts have not interpreted their provisions liberally. The Constitution provides that all treaties made "under the Authority of the United States shall be the supreme Law of the Land."³⁵ However, the courts in this country have not interpreted human rights treaties as having this level of binding authority, even though American constitutional rights have served as the basic model for many international human rights

³¹ The Committee's guidelines suggest that a country's initial report be divided into two parts. The first part should contain information about the country's political, legal, and social framework, as well as measures taken to implement the Convention. The second part should detail steps taken to implement individual articles of the Convention. *General guidelines regarding the form and content of reports received from States Parties under Article 18 of the Convention*, Committee on the Elimination of Discrimination Against Women, 2nd Sess., U.N. Doc. CEDAW/C/7 (1983).

³² Andrew C. Byrnes, *The "Other" Human Rights Treaty Body: The Work on the Committee on the Elimination of Discrimination Against Women*, 14 YALE J. INT. L. 1, 5. (1989). See *infra* notes 83-103 and accompanying text.

³³ The other treaties are: International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 [hereinafter *Race Convention*]; International Covenant on Economic, Social, and, Cultural Rights, *adopted* Dec. 16, 1966, 993 U.N.T.S. 3; American Convention on Human Rights, Nov. 22, 1969, O.A.S. Treaty Series No. 36, at 1.

³⁴ Ottaway, *supra* note 7, at A7.

³⁵ U.S. CONST. art VI, § 2.

instruments.³⁶

In order to provide enforceable rights, a treaty must be self-executing, or non-self-executing but accompanied by implementing legislation.³⁷ A self-executing treaty becomes law immediately upon entering into force. In contrast, Congress must pass implementing legislation before a non-self-executing treaty can have any legal effect in the United States. After Congress passes legislation, that legislation becomes the binding rule of law for U.S. courts, rather than the treaty itself.³⁸ If implementing legislation is not passed, the United States could, technically, be held in violation of the treaty for non-compliance.³⁹

Courts have determined whether a treaty is self-executing by examining the language of the treaty and the intention of the parties.⁴⁰ Although the Supreme Court has suggested that treaties should be construed in a "broad and liberal spirit,"⁴¹ the courts have not approached human rights treaties in this way, almost uniformly holding that human rights clauses are non-self-executing.⁴² Many states are apprehensive about the consequences of human rights treaties because interpretation of their scope is less predictable than that of commercial treaties.⁴³

³⁶ Lillich, *supra* note 4; Louis Henkin, *Rights: American and Human*, 79 COLUM. L. REV. 405 (1979). Henkin observes that most of the Universal Declaration of Human Rights and the Civil and Political Covenant are essentially American constitutional rights. *Id.* at 415.

³⁷ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 115 cmt. e (1987). A non-self-executing agreement is "not effective as law until implemented by legislative or executive action." *Id.*

³⁸ Lillich, *supra* note 4, at 62.

³⁹ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 115 cmt. b (1987). "Although Congress may supersede a rule of international law or an international agreement as domestic law, the United States remains bound by the agreement internationally." *Id.*

⁴⁰ *See, e.g., Saipan v. United States Dep't of Interior*, 502 F.2d 90 (9th Cir. 1974). Factors the court examined to determine intention included purpose of the treaty, institutions available for direct implementation, and immediate and long range social consequences of self or non self-execution. *Id.* at 97.

⁴¹ *Asakura v. Seattle*, 265 U.S. 332, 341 (1924). Although this case involved a bilateral treaty, the principle of construction and the test used to determine whether the treaty was self-executing are equally applicable to multilateral international human rights instruments. Lillich, *supra* note 4, at 62.

⁴² Lillich, *supra* note 4, at 62.

⁴³ Cook, *supra* note 2, at 650. A state sacrifices a degree of autonomy by ratifying any international agreement. However, human rights treaties do not offer a commercial advantage to states that would make this sacrifice worthwhile. *Id.*

The leading case on this point is *Sei Fujii v. State*,⁴⁴ where the California District Court of Appeals struck down a provision of the California Alien Land Law which vested power in the state to seize land transferred to an illegal alien. The Court of Appeals held that the statute violated the nondiscriminatory provisions found in Article 55(c) of the U.N. Charter.⁴⁵ The California Supreme Court affirmed the decision based solely on the Equal Protection Clause of the Fourteenth Amendment.⁴⁶ It rejected the lower court's reliance on the U.N. Charter, stating that Articles 55 and 56 "lack the mandatory quality and definiteness which would indicate an intent to create justiciable rights in private persons upon ratification."⁴⁷ The court objected to the use of the words "shall promote"⁴⁸ in the Charter's nondiscriminatory provisions.⁴⁹ Many clauses in the Women's Convention contain similarly "vague" language, obligating parties to "take appropriate measures".⁵⁰

The Convention, if ratified, will probably encounter considerable legal obstacles resulting from the prevailing attitude of the U.S. courts toward international law.⁵¹ These legal obstacles may prevent the Convention from having any practical impact on U.S. law.

III. ANALYSIS

Thirteen years after entering into force, it is clear that the Convention has not brought about the revolutionary changes in women's rights that its provisions mandate. Flaws in the document itself partly account for the Convention's limited success. The Convention's vague policy on reservations, the limited authority it delegates to the Committee, and pervasive

⁴⁴ 217 P.2d 481 (Cal. Dist. Ct. App. 1950), *aff'd on other grounds*, 242 P.2d 617 (Cal. 1952).

⁴⁵ *Id.* at 486. The text of this article states that nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." U.N. CHARTER art. 55(c).

⁴⁶ *Sei Fujii v. State*, 242 P.2d 617 (1952).

⁴⁷ *Id.* at 621-22. This view has been generally rejected by scholars in the international human rights field but routinely followed by the U.S. courts. Lillich, *supra* note 4, at 63.

⁴⁸ U.N. CHARTER art. 55.

⁴⁹ Lillich, *supra* note 4, at 63. See *supra* note 45 for the text of Article 55(c).

⁵⁰ Articles 2, 3, 5-8, 10-14, and 16, representing twelve of the Convention's sixteen substantive articles, contain this language.

⁵¹ See Lillich, *supra* note 4.

cultural gender bias among its parties have impeded progress in women's rights under the Convention.

A. Reservations

Effects of the Convention have been diluted, with at least twenty-five parties making a total of sixty-eight reservations⁵² to substantive provisions.⁵³ This large number of reservations makes the Convention among the most heavily reserved of international human rights instruments.⁵⁴ The Convention allows reservations that do not conflict with the "object and purpose" of the treaty, but it contains no objective criteria to determine if this requirement has been met.⁵⁵ This approach stands in contrast to the International Convention on the Elimination of All Forms of Racial Discrimination, which has served as the model for the Women's Convention in many other respects.⁵⁶ According to the Race Convention, reservations are not allowed unless they are approved by two-thirds of all other States Parties.⁵⁷ Drafters of the Women's Convention had to choose between the conflicting policies of maximizing participation and maintaining the integrity of the document.⁵⁸ A look at some of the reservations entered by States Parties indicates that the Convention's drafters opted for the former.

1. Islamic Reservations

Among the more prevalent reservations to the Convention are those made by countries in which women have second-class status resulting from Islamic

⁵² The Vienna Convention on the Law of Treaties defines a reservation as a unilateral statement made by a state "whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to that state." Vienna Convention on the Law of Treaties, concluded May 23, 1969, 1155 U.N.T.S. 331, at art. 2(d).

⁵³ *Meeting of States Parties to the Convention of the Elimination of All Forms of Discrimination Against Women*, Committee on the Elimination of All Forms of Discrimination Against Women, 7th Meeting, Provisional Agenda Item 6, at 9-33, U.N. Doc. CEDAW/SP/1994/2 (1993) [hereinafter *CEDAW Report*].

⁵⁴ Cook, *supra* note 2, at 644.

⁵⁵ Convention, art. 28.

⁵⁶ Cook, *supra* note 2, at 644.

⁵⁷ Race Convention, *supra* note 33, at art. 20(2). The number of reservations to the Race Convention is much lower, with only 3 states making reservations to substantive provisions. RICHARD B. LILLICH, *INTERNATIONAL HUMAN RIGHTS INSTRUMENTS* 160.13-160.30 (1990).

⁵⁸ Cook, *supra* note 2, at 644.

law and other cultural practices.⁵⁹ Many states have made reservations stating that they do not consider themselves bound by provisions of Article 2 to the extent that those provisions conflict with provisions of Islamic law.⁶⁰ For example, Iraq has made unexplained reservations to Article 2(f) and (g).⁶¹ Article 2(f) requires states to "take all appropriate measures including legislation to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."⁶² Article 2(g) requires repeal of penal laws that discriminate against women.⁶³ Libya made a general reservation stating that accession to the Convention cannot conflict with Islamic laws on "personal status."⁶⁴ Egypt made a reservation to Article 16, which concerns equality of men and women in all matters of marriage and family relations.⁶⁵

All of these reservations have been accepted, even though they appear to conflict with the object and purpose of the treaty. The purpose of the Convention is the elimination of discrimination, and all of these reservations clearly hinder that objective. In essence, they permit discrimination. The Convention allows states to commit themselves to women's equality, while simultaneously admitting that they have no intention of granting women equality. In effect, the Convention permits a state to deny basic rights to half of its national population under the guise of freedom of religion. Although a number of other states have made objections to these reservations, the objections have no legal effect on the reserving states.⁶⁶ The Committee has decided to "take steps" in common with other human rights treaty bodies to seek an advisory opinion from the International Court of Justice that would clarify the issue of reservations and thereby assist states in ratification and implementation of human rights instruments like the Convention.⁶⁷ If the Committee takes those steps, reservations may have a less detrimental effect on the Convention in the future.

⁵⁹ For texts of reservations and declarations, see *CEDAW Report*, *supra* note 53.

⁶⁰ *Id.* Article 2 of the Convention requires states to "condemn discrimination against women in all its forms." *Id.*

⁶¹ *CEDAW Report*, *supra* note 53, at 16.

⁶² Convention, art. 2(f).

⁶³ Convention, art. 2(g).

⁶⁴ *CEDAW Report*, *supra* note 53, at 18.

⁶⁵ *Id.* at 12. The provisions of the Shariah require a husband to pay "bridal" money to the wife and "maintain her fully". In exchange, the wife's right to divorce is restricted. *Id.*

⁶⁶ For texts of objections entered, see *CEDAW Report*, *supra* note 53, at 34-41.

⁶⁷ *Secretariat Report*, *supra* note 28, at 4.

2. *Likely U.S. Reservations*

If the United States ratifies the Convention, it will likely join the ranks of states making extensive reservations, thereby giving the Convention little legal or practical effect in the United States. When the Convention was submitted to the Senate in 1980, the State Department included a memorandum which identified potential conflicts with U.S. law and recommended appropriate reservations or declarations to that effect.⁶⁸

Since many of the specific areas covered by the Convention are regulated in the United States by state law, the State Department recommends a general reservation stating the limits of federal jurisdiction.⁶⁹ The State Department lists education, family law, prostitution, and property rights as areas of concern, since each of these areas are regulated by state law.⁷⁰ Another proposed reservation would address possible constitutional conflicts. Article 2, which prohibits discrimination by any "person, organization, or enterprise,"⁷¹ may conflict with freedom of association under the Constitution.⁷² A final reservation would state that the Convention is non-self-executing in the United States, and therefore would require Congress to pass implementing legislation.⁷³

As repugnant as these reservations may be to anyone desiring change to come from ratification of the Convention, history suggests that the Senate will probably accept them. The Senate's approach to ratification of the Civil and Political Covenant and the Torture Convention illustrates the attitude of the Senate toward State Department recommendations.⁷⁴ Both of these documents were ratified subject to reservations similar to those that have

⁶⁸ President's Message, *supra* note 3, app. F, at 140.

⁶⁹ *Id.* A treaty supersedes inconsistent state law, but it cannot extend federal jurisdiction. The federal government cannot pass laws for the states. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 115 cmt. e (1987). A non-self-executing treaty may supersede an inconsistent state law, but not until it is implemented by federal legislation. *Id.*; U.S. CONST. amend X.

⁷⁰ President's Message, *supra* note 3, at 1-8.

⁷¹ Convention, art. 2(e).

⁷² President's Message *supra* note 3, at 1. By its terms the Convention would apply to private organizations and areas of personal conduct not covered by U.S. law. *Id.*

⁷³ *Id.* at app. F. Language throughout this document refers to appropriate implementing legislation.

⁷⁴ *Executive Session; International Covenant on Civil and Political Rights*, 138 CONG. REC. S4781 (1992).

been proposed for the Women's Convention.⁷⁵ While no formal proposals have yet been made on ratification of the Convention, recently proposed reservations for the Race Convention include those discussed above, which lends further support to the probability that these reservations will accompany the Women's Convention.⁷⁶

The position taken by some Convention supporters also indicates the likelihood of reservations. Somewhat paradoxically, many supporters of the Convention point out that it should be ratified because it is "basically compatible with U.S. law and would not effectuate any change."⁷⁷

Some detractors argue that without these reservations, the Convention is too broad and would have far-reaching and undesirable effects in the United States.⁷⁸ One commentator believes that the overbreadth of the Convention could lead to overly intrusive government action and interference with individuals' rights to privacy and freedom of association.⁷⁹ It seems highly unlikely, however, that ratification of the Convention would bring about a rash of legislation that would give women too many rights.

In addition, even if Congress ratifies the Convention without declarations or reservations, its practical effect will still be minimal. Other states know the inherent limitations of a federal system. Unconstitutional treaty provisions are never given any effect as law.⁸⁰ Lastly, without a self-executing provision, the courts would probably hold the Convention to be non-self-executing.⁸¹ Although the United States might technically be in violation of the Convention in these situations, the Convention contains no consequences for non-compliance.

⁷⁵ *Id.*

⁷⁶ *International Convention on the Elimination of All Forms of Racial Discrimination*, U.S. Dept. of State Dispatch, vol. 5, no. 22, May 30, 1994 (Statement of Conrad K. Harper before Senate Foreign Relations Committee), available in LEXIS, Exec Library, DState file.

⁷⁷ See *Convention on the Elimination of All Forms of Discrimination Against Women: Hearing Before the Senate Committee on Foreign Relations*, 101st Cong., 2d Sess. 68 (1990). The American Bar Association is one organization that takes this position about ratification. *Id.* at 68.

⁷⁸ MERON, *supra* note 16, at 62-79.

⁷⁹ *Id.* at 62. Meron speculates that freedom of opinion, expression, and belief could all be endangered by the Convention.

⁸⁰ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 115(3) (1987).

⁸¹ Lillich, *supra* note 4, at 76-77. Lillich believes that human rights instruments, like the Convention, will have their greatest impact through indirectly assisting courts in interpreting constitutional and statutory standards, rather than as self-executing domestic laws. *Id.*

B. *The Women's Committee*

The work of the Committee further illustrates the lack of serious commitment to women's rights in the international community. Although the Convention established the Committee as an enforcement mechanism, the Committee possesses extremely limited powers to enforce the Convention's provisions.⁸² In the years since its creation, the Committee has overcome some of its initial difficulties, but continues to lag behind other human rights treaty bodies and has failed to make much of a practical contribution in its field. Among the Committee's shortcomings are the limitations on its meeting time, its dependence on state self-reporting, its reluctance to adopt formal recommendations, its lack of power to interpret the Convention's substantive provisions, and its inability to hear individual complaints.

The Committee's short meeting time has resulted in a backlog of reports, with an average of three years elapsing from the time a state submits its report until the Committee considers that report.⁸³ The Committee's time constraints have been slightly alleviated with the implementation of a pre-session work week.⁸⁴ In contrast, the other major treaties do not limit the meeting time of their respective committees.⁸⁵ The notion that a committee overseeing implementation of the Women's Convention would require considerably less time than the Racial Committee needed for its work is a reflection of the low priority assigned to women's rights.⁸⁶

The Convention authorizes the Committee to meet at "United Nations Headquarters or at any other convenient place."⁸⁷ Until recently, the "other convenient place" was Vienna, the location of the Division for the Advance-

⁸² See *supra* notes 26-32 and accompanying text.

⁸³ *Secretariat Report*, *supra* note 28, at 5. This lack of timeliness in considering reports has served as a disincentive for states to report. *Id.*

⁸⁴ The pre-session working group consists of five Committee members who prepare lists of questions for countries that will present reports in the upcoming session. See *CEDAW Report*, *supra* note 6.

⁸⁵ See Race Convention, *supra* note 33; Civil and Political Covenant, *supra* note 11; International Covenant on Economic, Social, and Cultural Rights, *supra* note 33; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984 [hereinafter Torture Convention].

⁸⁶ Byrnes, *supra* note 32, at 59. Byrnes asserts that there is a perception among Committee members that it is the "poor cousin" of human rights treaty bodies and is provided with technical and legal resources far below those provided to other treaty bodies. *Id.* at 46.

⁸⁷ Convention, art. 20(2).

ment of Women, which provides administrative support for the Committee. However, the other six major treaty bodies are serviced by the Centre for Human Rights, which is located in Geneva.⁸⁸ The Committee was thus separated from experts and technical resources located in Geneva. The Committee has suffered from inadequate professional support in terms of necessary legal expertise.⁸⁹ The Committee's geographic problem was corrected in 1993, when the Division for the Advancement of Women was transferred to United Nations Headquarters in New York, where the Centre for Human Rights also maintains an office.⁹⁰

The Committee relies on reports from States Parties to complete its work, but the accuracy of these reports is inherently suspect, since they are prepared by government officials.⁹¹ The Committee has failed to create uniform reporting standards,⁹² and states will often not include areas of controversy in their reports.⁹³ In addition, most states have not adhered to the reporting schedule.⁹⁴

While Committee members often make informal criticisms to state representatives, formal recommendations have not been forthcoming.⁹⁵ The Committee has been somewhat reluctant to adopt formal recommendations or suggestions directed at individual states, because, unlike the other major committees, the Women's Committee has no procedure for formulating

⁸⁸ *Secretariat Report*, *supra* note 28, at 8; Byrnes, *supra* note 32, at 57.

⁸⁹ *Report of the Chairperson*, Committee on the Elimination of Discrimination Against Women, 13th Sess., U.N. Doc. CEDAW/C/1994/L.1/Add. 5 (1994), at 5.

⁹⁰ *Secretariat Report*, *supra* note 28, at 8.

⁹¹ Byrnes, *supra* note 32, at 13. In addition to the obvious issue of government propaganda, another problem is that experts in women's affairs are not experts in human rights reporting, and experts in human rights reporting may lack knowledge of women's affairs. *Id.*

⁹² Among the reports considered in 1994, Japan submitted a lengthy report which included 50 pages of statistics on education, employment, and gender related crimes. *See Consideration of Reports Submitted by States Parties Under Article 18 of the Convention*, Committee on the Elimination of Discrimination Against Women, U.N. Doc. CEDAW/C/JPN/3 (1993). Libya submitted a seven-page report placing most of the blame for inequality on the U.N. embargo on that country. *See Consideration of Reports Submitted by States Parties Under Article 18 of the Convention*, Committee on the Elimination of Discrimination Against Women, U.N. Doc. CEDAW/C/LIB/1/Add.1 (1993).

⁹³ *Id.* at 14.

⁹⁴ *Secretariat Report*, *supra* note 28, at 6.

⁹⁵ Byrnes, *supra* note 32 at 44. *See Secretariat Report*, *supra* note 28. In 12 sessions the Committee has adopted 20 formal recommendations. *Id.*

written comments on reports.⁹⁶

The Committee can formulate general analyses of the Convention's substantive provisions but has no power to authoritatively interpret them.⁹⁷ In addition, it has no quasi-judicial power to pronounce a state in violation of the Convention. The Convention states that any disputes concerning interpretations or applications of the Convention may be submitted to the International Court of Justice for arbitration.⁹⁸ However, the Convention does not contain a procedure for state-to-state complaints. The Race Convention, the Civil and Political Covenant, and the Torture Convention all set out detailed procedures to deal with state-to-state complaints.⁹⁹

The Convention also lacks a right of petition which would enable individuals to make complaints for violations, a procedure allowed by the Race Convention, the Torture Convention, and the Civil and Political Covenant.¹⁰⁰ According to each of these conventions, the power for individuals to file complaints is conditioned upon states agreeing to optional protocols.¹⁰¹ The Committee has adopted a suggestion that a study should be prepared on the feasibility of drafting an optional protocol, in order to put the Convention on the same footing as other human rights conventions.¹⁰² The Committee might have some difficulty adjudicating complaints, however, since complaints would include situations where a state failed to act, as well as instances of affirmative discrimination.¹⁰³

⁹⁶ See *Secretariat Report*, *supra* note 28, at 10.

⁹⁷ Convention, art. 21. The Committee is only authorized to "make suggestions and general recommendations." *Id.* at art. 21(1).

⁹⁸ Convention, art. 29(1). Twenty-one states have made reservations to this article. See *CEDAW Report*, *supra* note 53.

⁹⁹ Race Convention, *supra* note 33, at art. 11-13; Civil and Political Covenant, *supra* note 11, at art. 41-42; Torture Convention, *supra* note 85, at art. 21.

¹⁰⁰ Race Convention, *supra* note 33, at art. 14; Torture Convention, *supra* note 85, at art. 22; Optional Protocol to the International Covenant on Civil and Political Rights, *adopted* Dec. 19, 1966, 999 U.N.T.S. 301.

¹⁰¹ *Id.*

¹⁰² *Secretariat Report*, *supra* note 28, at 7. This is only a suggestion for a study. The Women's Commission would have to make a recommendation to the United Nations before it would consider undertaking such a study, which the Commission has not done. The limitation on meeting time would have to be removed before an optional protocol could be implemented. *Id.*

¹⁰³ *Id.* Many of the Conventions provisions involve affirmative rights and obligate States to take action.

C. Societal Issues

The Convention and the Committee reflect the society that created them. Responsibility for the weaknesses of the Committee lies with the states that drafted the Convention, which are apparently not ready to embrace women's equality wholeheartedly.¹⁰⁴ Women's rights are still commonly regarded as secondary to general "human" rights.¹⁰⁵

Discrimination against women still receives inadequate legal attention, even in the United States. Abuse and discrimination take place all over the world on a daily basis in countries that have committed themselves to equality by ratifying the Convention.¹⁰⁶ Socioeconomic conditions frequently arise as an excuse for failing to comply with the Convention.¹⁰⁷ Even when equality is the law, the reality for many women around the world does not reflect legal equality.¹⁰⁸ Acts of violence and discrimination against women are frequently tolerated publicly, and often treated as the product of particular cultural or religious practice or the isolated actions of individuals, rather than as violations of international law.¹⁰⁹ Human rights activists pressure states to prevent racial discrimination, even when the perpetrators are "private entities," while often ignoring discrimination against women when it takes place in the private sphere.¹¹⁰ States are in complici-

¹⁰⁴ Byrnes, *supra* note 32, at 59.

¹⁰⁵ Bunch, *supra* note 12, at 486.

¹⁰⁶ See DEPT. OF STATE, 1993 HUMAN RIGHTS REPORT (1994) [hereinafter HUMAN RIGHTS REPORT]. This report, compiled from American officials, foreign officials, private citizens, victims of abuse, congressional studies, intelligence information, press reports, international organizations, and nongovernmental organizations, details human rights abuses in 193 countries. *Id.* at Appendix A.

¹⁰⁷ See, e.g., *Adoption of the Report of the Committee on the Elimination of Discrimination Against Women on Its Thirteenth Session*, U.N. Doc. CEDAW/C/1994/L.1 (1994). The representative from Guatemala states that socioeconomic context should be taken into account in determining whether its national policy should be considered discriminatory to women. *Id.* at Add. 6. Similarly, the representative from Zambia states that women's rights cannot be an issue until the national economy improves. *Id.* at Add. 7.

¹⁰⁸ *Id.* The State Department's report details numerous examples of countries where women are equal under domestic law, and yet continue to suffer due to their gender.

¹⁰⁹ Pamela Goldberg and Nancy Kelly, *International Human Rights and Violence Against Women*, 6 HARV. HUM. RTS. J. 195, 196 (1993); Riane Eisler, *Human Rights: Toward an Integrated Theory for Action*, 9 HUM. RTS. Q. 287 (1987); Bunch, *supra* note 12, at 490.

¹¹⁰ Bunch, *supra* note 12, at 491.

ty for failing to provide adequate legal redress.¹¹¹

The situation in Brazil provides a typical example. In Brazil, at least 400 women were murdered by their husbands or paramours between 1987 and 1989.¹¹² Most of these men were acquitted or given reduced sentences, based on the honor defense, whereby perceived adulterous conduct provides the grounds for acquittal or mitigated sentences.¹¹³ Mistaken belief or other circumstances do not necessarily defeat the honor defense.¹¹⁴ While Brazilian law does not condone murder, acquittals continue due to societal attitudes reflected in Brazilian juries, which persist in setting wife-killers free.¹¹⁵ When viewed in the context of the Brazilian situation, the Convention becomes little more than United Nations rhetoric that does not help the people it is intended to protect. As a party to the Convention, Brazil could technically be held in violation for this situation.¹¹⁶ However, the Committee has no power to pronounce a violation, and even if it did, there are no consequences for such a violation. This situation illustrates the most important weakness of the Convention: women in discriminatory and abusive situations, in Brazil and elsewhere, cannot rely on this Convention to help them.

The Convention has had a somewhat positive impact in raising awareness about women's issues, according to some representatives who have presented reports to the Committee.¹¹⁷ The importance of awareness cannot be understated, since cultural norms remain one of the greatest obstacles for women in achieving equality. The Committee played a role in drawing attention to women's rights at the 1993 World Human Rights Conference. The Conference set the goal of universal ratification of the Convention by

¹¹¹ Celina Romany, *Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, 6 HARV. HUM. RTS. J. 87 (1993). Romany asserts that the public/private distinction is a fallacy because negative conceptions of freedom (*i.e.*, the right to be left alone without interference from other persons) reinforces subordination of women. *Id.* at 100.

¹¹² AMERICAS WATCH REPORT, CRIMINAL INJUSTICE: VIOLENCE AGAINST WOMEN IN BRAZIL 20-24 (1992).

¹¹³ Romany, *supra* note 111, at 116.

¹¹⁴ *Id.*

¹¹⁵ *Id.* HUMAN RIGHTS REPORT, *supra* note 106. Although the honor defense was overturned in a 1991 case, acquittals continue, and courts are still reluctant to convict men who attack their wives. In Porto Alegre, Brazil, an average of 1500 domestic violence complaints per month were filed in 1993. Police were not aware of any convictions. *Id.*

¹¹⁶ Romany, *supra* note 111, at 119.

¹¹⁷ *Secretariat Report*, *supra* note 28.

the year 2000.¹¹⁸ At the Committee's most recent session, Committee members seemed acutely aware of their limitations and made an encouraging effort to deal with some of these problems. Closer cooperation between the Committee and other human rights treaty bodies appears to be forthcoming, and will perhaps allow the Committee to overcome its secondary status and join the general human rights agenda.¹¹⁹

IV. CONCLUSION

As a leader in the field of women's rights, the United States should take prompt action in ratifying the Convention. Federalism and current attitudes towards international human rights instruments found in the U.S. courts, combined with likely reservations, may render the legal effect of the Convention in the United States less than significant. However, by ratifying the Convention, the United States would be able to participate in the work of the Committee and take an active leadership role in its activities.

The Committee, while still a relatively weak treaty body, has progressed in its thirteen years of existence. Committee members seem acutely aware of the Convention's shortcomings and are attempting to overcome their problems, but progress remains slow. The Convention has not drastically changed the status of women in countries that are already parties to it. Reservations have weakened the Convention's overall effect and will continue to do so until the Committee takes steps to rectify this problem. The results in the United States would probably not be much different.

Until the Committee can formulate a procedure to deal with complaints from states or from individuals, a procedure other major treaty bodies allow, the Convention cannot provide legal redress and can do little more than attempt to raise awareness of women's issues. Awareness and understanding are key factors in overcoming archaic cultural norms that persist around the world.

The United States should view the Convention's weaknesses and failures as a challenge for the future. By ratifying the Convention, the United States affords itself the opportunity to utilize its position as a leader in women's rights to influence international standards.

Julie A. Minor

¹¹⁸ *Report of the Chairperson, supra* note 89, at 3.

¹¹⁹ *See Secretariat Report, supra* note 28.

