U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women

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U.S. RATIFICATION OF THE CONVENTION ON
THE ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST WOMEN

Julia Ernst*

INTRODUCTION · 300
I. SUMMARY OF THE TERMS OF CEAFDAW · 302
II. GENERAL DIFFICULTIES WITH RATIFICATION
   BY THE UNITED STATES · 308
   A. History of Ratification Procedures · 308
   B. The Slow Pace of Ratification · 311
   C. Complete Prior Compliance with the
      Terms of the Convention · 313
   D. Fear of the Encroachment of International
      Law upon Domestic Law · 315
   E. The Preservation of Federalism · 319
   F. Civil and Political Rights v. Economic,
      Social, and Cultural Rights · 322
III. CONCERNS REGARDING SPECIFIC CONVENTION
     PROVISIONS · 324
IV. PROBLEMS WITH INTERNATIONAL IMPLEMENTATION · 335
   A. The Legal Effect of the Convention
      under International Law · 335
   B. The Impact of Reservations · 337
   C. Lack of an Enforcement Mechanism · 340
   D. The Lack of a Provision Addressing
      Violence against Women · 343
   E. CEDAW’s Need for a Complaint and
      Communication Process · 345
   F. CEDAW’s Need for Increased Time
      and Resources and Special Rapporteurs · 346
   G. The Bifurcation of Women’s Rights
      from Other Human Rights · 348

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Nations Fourth World Conference on Women in China.
V. The Importance of Ratification by the United States - 355

A. Increased Credibility and Influence of U.S. Foreign Policy - 355

B. Opportunity to Influence the Development of International Human Rights Law and to Designate a U.S. Nominee to CEDAW - 357

C. Recognition of Women’s Rights as Human Rights and the Need for Greater International Promotion of Women’s Equality - 359

D. Continuity of U.S. Support for the International Equality of Women - 361

E. The Inspiration of Other Progressive U.S. Measures - 362

F. Grassroots Support for Ratification - 364

CONCLUSION - 366

INTRODUCTION

Notwithstanding recent social, legal, and economic advances in the status of women in many countries, invidious gender discrimination is still pervasive throughout the world.1 In consequence, women worldwide continue to suffer extensive hardship. Some aspects of gender discrimination are common to women in all parts of the world, whereas other forms are specific to particular regions or countries.2 In addition,
although women in the United States have made great advances toward
gender equality, various forms of gender-based discrimination stubbornly
persist in this nation as well.\(^3\)

The United Nations General Assembly recognized and condemned the
devastating consequences of gender discrimination for women when it

CEAFDAW went into effect in 1981, and by 1995 139 U.N. Member
States had ratified the Convention, pledging to actively promote the
equality of women and men in all areas of life and to end both \textit{de jure}
and \textit{de facto} discrimination against women.\(^5\) Unfortunately, the United
States has yet to ratify the Convention.

The purpose of this article is to highlight the need for ratification of the Convention by the United States, and to address arguments against ratification. Various concerns have been raised with respect to CEAFDAW, both specific to the United States and more international in scope. Some problems pertain to United States ratification generally,
other issues concern potential conflicts between specific articles of the Convention and U.S. law, and broader problems have been raised with respect to international implementation. Most of these issues are not uncommon in international agreements, and may therefore be remedied through conventional mechanisms, including implementing legislation, reservations, clarifying statements, participation in the monitoring body created by the Convention, and active involvement within the United Nations system and other international organizations involved in the creation of international laws and principles.

The first section of this article summarizes the terms of the Convention. The second section considers general difficulties with ratification of the Convention by the United States. The third section addresses concerns regarding specific provisions of CEAFDAW. The fourth section discusses more universal concerns about the Convention. In light of the serious global problem of gender discrimination, CEAFDAW's international guarantee of remedies to eradicate such discrimination, and the surmountability of CEAFDAW's shortcomings, the final section argues in favor of ratification by the United States.

I. SUMMARY OF THE TERMS OF CEAFDAW

CEAFDAW's declared purpose, as stated in its preamble, is to eliminate gender discrimination for the following reasons:

[D]iscrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity. 6

The body of the Convention consists of sixteen substantive articles specifying areas of particular national governmental focus to eliminate gender discrimination, and contains provisions establishing a committee to monitor progress within signatory States and providing for dispute resolution and reporting requirements.

Discrimination against women is defined in Article 1 as any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.\(^7\)

States Parties to the Convention condemn discrimination against women in Article 2, which enumerates ways in which Parties will undertake to eliminate gender discrimination through “all appropriate means and without delay.”\(^8\) These means include ensuring the principle of gender equality within the national constitution and legislation; adopting laws prohibiting discrimination against women; establishing public institutions to protect women against discrimination; ensuring that public agencies refrain from gender discrimination; mandating that discrimination by enterprises, organizations, and persons is eliminated; and abolishing laws, regulations, customs and practices perpetuating gender discrimination.

Article 3 embodies a progressive movement toward equality, requiring States Parties “to take, in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men.”\(^9\)

Temporary affirmative action measures, which must be terminated when gender equality is attained, are permitted under Article 4.\(^10\) Measures providing special or different treatment for the protection of maternity are deemed to be nondiscriminatory under the Convention.\(^11\)

Article 5 emphasizes that socially and culturally recognized gender roles are both harmful and prejudicial, and reinforce the stereotypical perception of inferiority or superiority between women and men, albeit couched in value-neutral terms.\(^12\) This Article also provides for adequate

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7.  CEAFDAW, supra note 4, Article 1.
8.  CEAFDAW, supra note 4, Article 2.
9.  CEAFDAW, supra note 4, Article 3.
10. CEAFDAW, supra note 4, Article 4.
11. CEAFDAW, supra note 4, Article 4.
12. CEAFDAW, supra note 4, Article 5.
family education which recognizes the social importance of maternity, the shared responsibilities of both parents in raising children, and the primacy of the interests of children within the family.

States Parties agree in Article 6 to work actively to eliminate the exploitation of women through prostitution and all other forms of trafficking in women. 13

Article 7 accords to women the right to participate equally in domestic politics. 14

Similarly, Article 8 grants women the right of full participation in international organizations, and to participate and represent their respective countries in such bodies. 15

Article 9 provides for equal rights for women to change or retain their own nationality, particularly when marrying a husband of different nationality or when a husband changes his nationality, and permits women to confer their own nationality upon their children on a parity with men. 16

Article 10 provides for equal rights to education for women. 17 Coeducation is encouraged but not required by CEAFDAW. 18

Article 11 discusses employment, and gives women free choice with respect to their training, employment, and career, and ensures equality between women and men of pay, benefits, promotion, job security, social security, occupational safety, health protection, and vocational training. 19 This Article also prohibits employment termination on grounds of marital status or pregnancy, provides for maternity leave, recommends the establishment of social services such as child care, and encourages protection during pregnancy from harmful work.

Article 12 requires equal access for both women and men to health care, and provides for family planning services and adequate health care during pregnancy. 20

Article 13 ensures nondiscrimination against women in both social and economic life. 21 Included are equal access to family benefits,
financial credit such as mortgages and bank loans, and cultural life, including sports and recreational activities.\textsuperscript{22}

Article 14 recognizes the particularly intransigent problems peculiar to women in rural societies, the value of their unremunerated labor, and their right to equal benefits from and participation in programs of rural planning and development.\textsuperscript{23}

Article 15 provides for equal legal capacities between men and women and equal treatment in the legal system.\textsuperscript{24}

Article 16 requires equality between women and men with respect to both the economic and parental aspects of marriage and family.\textsuperscript{25} The Article also acknowledges the important contributions that women make to the well-being of families.

Articles 17 through 22 provide for the establishment of a Committee on the Elimination of Discrimination Against Women (CEDAW).\textsuperscript{26} Ratifying countries agree, under the terms of the Convention, to report to the Committee within one year of ratification and every four years thereafter concerning progress in their efforts to implement the provisions of the Convention, including administrative, judicial, legislative, and other measures. The Committee is structured to comprise an expert body of twenty-three members from a broad geographical distribution of countries party to the Convention. It normally meets for two weeks annually, and it reports and may make recommendations to the General Assembly annually through the Economic and Social Commission (ECOSOC).\textsuperscript{27}

Articles 23 through 30 contain general clarifying and procedural clauses. Article 23 provides that “[n]othing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained . . . [i]n the legislation of a State Party; or [i]n any other international convention, treaty or agreement in force for that State.”\textsuperscript{28} It becomes the duty of States Parties, under Article 24, to adopt “all necessary measures at the national level aimed at achieving the full realization of the rights

\begin{footnotesize}
\begin{enumerate}
\item[22.] CEAFAW, supra note 4, Article 13.
\item[23.] CEAFAW, supra note 4, Article 14.
\item[24.] CEAFAW, supra note 4, Article 15.
\item[25.] CEAFAW, supra note 4, Article 16.
\item[26.] CEAFAW, supra note 4, Articles 17–22.
\item[27.] CEAFAW, supra note 4, Articles 17–22.
\item[28.] CEAFAW, supra note 4, Article 23.
\end{enumerate}
\end{footnotesize}
recognized in the present Convention. Article 28 prohibits any reservations that are inconsistent or incompatible with the object and purpose of the Convention. Article 29 allows States Parties to submit disputes regarding interpretation or application of the Convention to arbitration and to the International Court of Justice.

The swift ratification of CEAFDAW by a great number of nations reflects its significance, both domestically and internationally. It has become the fundamental legal basis for the de jure recognition of women’s rights in many countries. Through ratification, States Parties undertake the obligation to guarantee equally for women and men the rights enumerated in the Convention. Numerous States Parties have adopted legislation and other measures to abolish gender discrimination and to comply with the goals and objectives of the Convention.

The Convention on the Elimination of All Forms of Discrimination against Women provides for the creation of an international body to monitor its implementation: the Committee on the Elimination of Discrimination Against Women (CEDAW). As noted above, CEDAW consists of twenty-three persons having expertise in matters concerning

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29. CEAFDAW, supra note 4, Article 24.
30. CEAFDAW, supra note 4, Article 28.
31. CEAFDAW, supra note 4, Article 29.
32. As of 1995, the following nations had ratified the Convention: Albania, Angola, Antigua & Barbuda, Argentina, Armenia, Australia, Austria, The Bahamas, Bangladesh, Barbados, Belarus Republic, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia & Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chile, China, Colombia, Comoros, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Lao People’s Democratic Republic, Liberia, Latvia, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Mauritius, Mexico, Mongolia, Morocco, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Papua New Guinea, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Macedonia, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Kitts & Nevis, Saint Lucia, Saint Vincent & the Grenadines, Samoa, Senegal, Seychelles, Sierra Leone, Slovakia, Slovenia, Spain, Sri Lanka, Suriname, Sweden, Tajikistan, Thailand, Togo, Trinidad & Tobago, Tunisia, Turkey, Uganda, Ukrainian Republic, United Kingdom of Great Britain & Northern Ireland, United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.
33. Compendium, supra note 6, at 3.
34. CEAFDAW, supra note 4, Article 17.
the status of women. Its purpose is to promote implementation of CEAPDAW and cooperation among States Parties through the mutual exchange of information and experience. The Convention establishes a mandatory reporting procedure, which requires States Parties to submit periodic reports on the status of women and the implementation of the Convention to CEDAW every four years. The Committee's power lies in its ability to consider the reports, examine how the reporting States are implementing their obligations under the Convention, and subject the reporting government to international scrutiny. However, it is without power to make decisions which are binding on States Parties. The Committee also reports its deliberations to the Economic and Social Council and the General Assembly, and makes suggestions and general recommendations based upon the State reports to these bodies in order to assist States Parties in monitoring their progress and to indicate CEDAW's interpretation of Convention provisions. Particular aspects

35. See Lars Adam Rehof, Guide to the Travaux Preparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women 353 (1993) (noting that the membership of the Committee through 1994 consisted of experts from the following countries: Ghana, Japan, Tunisia, Turkey, Ecuador, Spain, New Zealand, Italy, Barbados, Venezuela, Argentina, Yugoslavia, Bangladesh, Finland, Colombia, Russian Federation, Burkina Faso, Philippines, Germany, China, Ethiopia, Egypt, and Nigeria).

36. Compendium, supra note 6, at 3, 22.

37. Compendium, supra note 6, at 3, 18.


39. Compendium, supra note 6, at 3.

40. Compendium, supra note 6, at 18.

These recommendations concern the information to be provided in their periodic reports, the adoption of education and public information programmes to help eliminate prejudices and current practices that hinder the full operation of the principle of social equality of women, and reservations that appeared to be incompatible with the object and purpose of the Convention... the use of temporary special measures under article 4 of the Convention, the establishment or strengthening of national machineries to ensure the effective elimination of discrimination against women, publicity of the Convention and the Committee's work, and women's equal opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Id. See also John Gibson, International Human Rights Law: Progression of Sources, Agencies, and Law, 14 Suffolk Transnat'l L.J. 41, 56–57 (1990). According to Gibson, the General Assembly, upon reviewing CEDAW's report, expresses appreciation; takes note of the extensive proceedings and treaty body recommendations for improvement of the entire reporting, monitor-
II. General Difficulties with Ratification by the United States

Obstacles to ratification by the United States include those inherent to ratification of any international human rights document and those specific to CEAFDAW. Discussion of the former most appropriately begins with a review of the Convention's ratification procedures that have occurred thus far in the United States. Endemic obstacles to ratification of any international treaty, and particularly those addressing human rights, include the deliberate pace of the ratification process itself; the desire to be in full compliance with conventions prior to ratification; an apprehension of encroachment of international law into domestic law; the preservation of the federalist system of governance; the nonrecognition of economic, social, and cultural rights; and a provincial distaste for international scrutiny of domestic politics and conditions of life.

A. History of Ratification Procedures

The United Nations General Assembly adopted CEAFDAW in Resolution 34/180 on December 18, 1979. The Convention entered into force on September 3, 1981, as an international treaty, upon ratification by the twentieth member nation. On July 17, 1980, the Carter Administration signed the Convention. In October, Secretary of State Edmund Muskie sent a letter of submittal to President Carter.
RATIFICATION OF CEAFDAW

supporting ratification of CEAFDAW, and indicating the "enthusiastic" support of the Convention by the Departments of Justice, Health and Human Services, Education, Labor, the Equal Employment Opportunity Commission, and the United States Commission on Civil Rights. In his message to the Senate upon transmitting the Convention on November 12, 1980, President Carter noted that most of the Convention’s substantive provisions are consistent with the U.S. Constitution and laws. He also noted that although certain provisions of the Convention raise questions of conformity to current United States law . . . the Departments of State and Justice and other interested agencies of the Federal Government concur in the judgement that, with the adoption of certain qualifications and, possibly, appropriate implementing legislation, there are no constitutional or other legal obstacles to United States ratification.

When the Carter Administration transmitted the Convention to the Senate, it noted that legislation or specific reservations may be necessary to bring the United States into full compliance prior to ratification. The Administration drew attention to possible conflicts between almost half of the Convention’s substantive articles and United States law, specifically articles 2, 7, 10, 11, 12, and 14. The transmittal noted several potential problem areas, including those concerning the federal/state division of powers; the Convention’s mandate to eliminate gender discrimination in health care, service benefits, public accommodation, and possibly the military and the draft; and matters concerning comparable worth. Regrettably, the Carter Administration did not recommend any specific declarations, understandings, or reservations which would eliminate such conflicts and enable immediate ratification.

45. Hearing 5, supra note 1, at 47 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).
46. Hearing 5, supra note 1, at 4 (statement of Senator Paul Simon).
47. Hearing 5, supra note 1, at 47 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).
Until 1988, the Senate took no action concerning CEAFDAW, ostensibly because the Reagan and Bush Administrations had the convention "under review." This "review" did not consist of a detailed analysis of the text of the treaty and its consistency with U.S. laws, but merely considered whether to support and move forward with the Convention. Without the support of the President, treaties have little likelihood of being approved by the Senate, and even if the Senate gave its advice and consent, a treaty would not be effective without formal ratification by the President.

In 1988, the Subcommittee on Terrorism, Narcotics and International Operations of the Committee on Foreign Relations of the U.S. Senate held a field hearing in Massachusetts on issues relating to CEAFDAW. By 1990, the Department of Justice had completed a preliminary review of the Convention to determine possible discrepancies between U.S. law and CEAFDAW. In March and July of that year, the Subcommittee on Human Rights and International Organizations of the Committee on Foreign Affairs of the U.S. House of Representatives held two hearings on "International Human Rights Abuses Against Women," where the need for U.S. ratification of the CEAFDAW was extensively discussed. In August of 1990, the Committee on Foreign Relations of the U.S. Senate held a hearing addressing United States ratification of the Convention.

The Clinton Administration has taken a more active role in seeking the passage of the Convention. This may, in part, be due to congressional pressure, as in the spring of 1993 sixty-eight Senators sent a letter to President Clinton requesting that he take appropriate measures to ratify CEAFDAW. During the 1993 World Conference on Human Rights,

48. Hearing i, supra note 1, at 1 (statement of Senator Claiborne Pell).
49. See Hearing i, supra note 1, at 57, 62 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State). See also, Hearing 3, supra note 5, at 1 (statement of Senator Claiborne Pell); Catherine E. Bocksor, Who’s Afraid of the Women’s Convention?, L.A. DAILY J., October 2, 1990.
50. Hearing i, supra note 1, at 1 (statement of Senator Claiborne Pell).
52. Hearing i, supra note 1, at 47 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).
53. Hearing 2, supra note 2.
54. Hearing i, supra note 1.
Secretary of State Warren Christopher stated that the Administration would ask the Senate to ratify CEAFDAW, along with the Convention on the Elimination of All Forms of Racial Discrimination,\textsuperscript{56} the American Convention on Human Rights,\textsuperscript{57} and the International Covenant on Economic, Social, and Cultural Rights.\textsuperscript{58} Due to this renewed congressional and administrative interest, the U.S. Senate Committee on Foreign Relations held yet another hearing addressing U.S. ratification of CEAFDAW on September 27, 1994.\textsuperscript{59} The Committee subsequently reported in favor of U.S. ratification of CEAFDAW to the Senate, approving four reservations, three understandings, and two declarations to be submitted simultaneously with ratification of the Convention.\textsuperscript{60} Although it was placed on the calendar for a vote by the full Senate, ratification of the Convention was stalled until the session ended.\textsuperscript{61} Since no action was taken on the Convention, it will return to the Senate Foreign Relations Committee, which must again report on it to the Senate as a whole. If too much time lapses before such report is made, new hearings will have to be held.

\textbf{B. The Slow Pace of Ratification}

This history demonstrates one of the obstacles to ratification of CEAFDAW: the slow pace at which the Department of State reviews each treaty that has been signed and is under consideration by the United States. For instance, the Genocide Convention,\textsuperscript{62} addressing what should be an uncontroversial issue, took the United States approximately

\begin{thebibliography}{9}
\bibitem{59} \textit{Hearing 3, supra} note 5, at 1.
\bibitem{60} \textit{Report on the Convention to Eliminate All Forms of Discrimination Against Women 1–3} (1994) \textit{[hereinafter State Department Report]}.
\end{thebibliography}
forty years to ratify. As of 1992, over forty international human rights treaties were pending in the Senate. Various reasons have been cited to explain the extreme lethargy within the administrative bureaucracy when dealing with international conventions.

One reason for the slow pace of ratification is the historical, yet largely obsolete, congressional mistrust of and hostility toward international treaties, particularly those concerning human rights issues. Another reason for the slow pace of ratification is the tradition within the State Department of considering and reviewing each convention dealing with human rights issues consecutively. All other proposed conventions are put on hold until the one chosen for immediate action has been completely reviewed and processed through the ratification system. As State Department Deputy Legal Advisor Alan Kreczko testified to the Senate, “there is a perception that by sending up four treaties at the same time, which is the tactic that President Carter chose in 1978, and asking to have all of them considered at the same time, any flaw identified in any convention then became associated with each of the conventions.” Moreover, the State Department has limited resources. The Department has asserted that if it attempted to review and make recommendations to the Senate on all pending treaties simultaneously, it would take much longer to have any one convention ready for consideration by the Senate.

Kreczko has also noted that “there has been a certain antipathy in the Senate to human rights conventions as a method of affecting domes-

67. Hearing 1, supra note 1, at 52 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).
68. Hearing 2, supra note 2, at 144 (statement of Paula Dobriansky, Deputy Assistant Secretary, Bilateral and Multilateral Affairs, Bureau of Human Rights and Humanitarian Affairs).
69. Hearing 1, supra note 1, at 55 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).
Therefore, the State Department often attempts to work on conventions that appear to have the least opposition in the Senate, and the fewest conflicts with the current U.S. legal system. Despite these impediments to ratification, to demonstrate a sincere commitment to the international protection of human rights the United States must devote adequate resources to the review of human rights treaties and ensure their swift acceptance and implementation.

C. Complete Prior Compliance with the Terms of the Convention

Another factor contributing to the delay of U.S. ratification of CEAFDAW is the desire of the United States to abide fully by the terms of any treaty to which it is a party. Although the Convention merely requires that the States Parties agree to actively work toward progress in implementing the terms of the treaty within their country, the State Department would like to see ratification of the Convention only when the U.S. can claim to be in conformance with the treaty, either through actual compliance or through the use of reservations.

The United States government may choose to make reservations to all provisions conflicting with current law, and then if the government eventually comes into compliance with a reserved provision, it could at that time withdraw the reservation. A potential problem could arise if the U.S. finds it necessary to make too many reservations and declarations, exempting it from a significant number of the substantive portions of the treaty. Kreczko has stated that a large number of reservations may signify “a lack of commitment on the issue, rather than a commitment to the issue. A decision might be made not to go forward on that basis.” Therefore, if the U.S. government ultimately determines the need to make a substantial number of reservations, the State Department has expressed the possibility of not ratifying the Convention at all.

According to some commentators, the approach requiring complete prior compliance, particularly through reservations, subverts the inherent

70. Hearing 1, supra note 1, at 54.
71. Hearing 2, supra note 2, at 144 (statement of Paula Dobriansky, Deputy Assistant Secretary, Bilateral and Multilateral Affairs, Bureau of Human Rights and Humanitarian Affairs).
72. See generally Hearing 1, supra note 1, at 56 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).
73. Hearing 1, supra note 1, at 59 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).
purpose of the Convention, which is to encourage progress and future action toward the elimination of discrimination against women.\textsuperscript{74} If a State no longer needs to do anything upon ratification to improve the status of women, the purpose of the Convention will have been defeated, or at best become moot. Catherine E. Bocskor, Vice Chair of the American Bar Association's Section on International Law and Practice, has noted that

[th]e Women's Convention, as an international human rights convention, does allow for a degree of progressive implementation by the ratifying countries. This means that it is not necessary for a country's laws to be in full, complete compliance with the terms of the convention at the time of ratification. The international committee that oversees implementation of this convention in the United Nations does allow for a country to show progress in fulfilling the terms of the convention. And, of course, a ratifying country can always submit a reservation with respect to its laws.\textsuperscript{75}

Considering the progressive nature of the Convention, the United States cannot justify its failure to ratify it with the excuse that U.S. laws are not in complete accord with the Convention's terms, nor should the U.S. feel that it must make reservations to every provision with which it may not be in full compliance. Instead, the United States should ratify CEAFDAW with as few reservations as possible, and should pass implementing legislation to bring U.S. laws into compliance with the Convention's prohibition of discrimination against women.\textsuperscript{76}

\textsuperscript{74} Hearing 3, \textit{supra} note 5, at 77 (letter from Lawyers Committee for Human Rights). This letter noted that the principle

that the United States will undertake to do only what it is already doing . . . is incompatible with the object and purpose of the treaty. The purpose of treaties generally is to undertake new obligations or to make a commitment to the international community to adhere to existing obligations. The mere fact that a treaty establishes standards to which the U.S. does not currently adhere is not a sufficient reason for a reservation.

\textit{Id.}

\textsuperscript{75} Hearing 1, \textit{supra} note 1, at 68 (statement of Catherine E. Bocskor, Vice Chair, Section on International Law and Practice, American Bar Association).

\textsuperscript{76} The American Bar Association in its report on CEAFDAW suggested that the United States only submit reservations with respect to the U.S. federal system of government: "It is important that the United States reservations to the Convention be limited to the areas of lack of Federal jurisdiction with state and local governments. Implement-
Other commentators have expressed a related concern that the Convention’s provisions and requirements may be insufficiently clear, making U.S. obligations and compliance uncertain. Part of this concern stems from the fact that, if the United States ratified the Convention, it would have to report to CEDAW, which would inquire about U.S. implementation and compliance with the terms of the Convention. Various interpretations could be made with respect to several of the Articles, some of which might suggest that the United States would not be in compliance with the terms of the Convention. The suggestion of noncompliance would be an international embarrassment to the United States. However, the U.S. could explain its interpretation of the provision at issue to the Committee, along with its opinion as to why it is in conformance with the Convention. Moreover, the United States could submit clarifications explaining its interpretation of the CEAFTDAW’s provisions when it ratifies the Convention to prevent such conflicts of interpretation.

D. Fear of the Encroachment of International Law upon Domestic Law

The Convention establishes internationally recognized human rights standards for the achievement of full equality between women and men. Some commentators have expressed concern that CEAFTDAW would change domestic law upon ratification, and object on principle to this form of creating law within the United States. However, since the U.S. would most likely include a declaration that the treaty is not self-executing along with its ratification, the terms of the Convention would not automatically become a part of the domestic law of the U.S., nor would they be enforceable in any U.S. court of law by an individual.

77. See Hearing 1, supra note 1, at 95 (statement of U.S. Representative Barbara Vucanovich).
78. Hearing 1, supra note 1, at 96 (statement of U.S. Representative Barbara Vucanovich).
79. See Hearing 2, supra note 2, at 190 (statement entitled Written Testimony).
80. See, e.g., Hearing 1, supra note 1, at 96 (statement of U.S. Representative Barbara Vucanovich).
81. SENATE REPORT, supra note 3, at 7–8. A declaration of non-self-execution has been proposed by the Clinton Administration and the Senate Foreign Relations Committee as a condition of ratification of CEAFTDAW. The declaration states: “The United
In order for the Convention to have effect, Congress would have to enact implementing legislation. A declaration that the Convention is non-self-executing would not modify or limit the international obligations of the United States under CEAFDAW, but would signify that the Convention does not create individual, private rights enforceable in U.S. courts.

Still others have expressed concern that ratification of CEAFDAW would require dramatic changes in United States constitutional law, creating tremendous upheaval of state and federal legislation. This argument posits that the United States should not ratify the Convention because the instrument is too invasive, and because the amount of

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82. See Bayefsky & Fitzpatrick, supra note 81, at 43.
83. Stewart, supra note 65, at 1202-03. See also Ann Fagan Ginger, The Energizing Effect of Enforcing a Human Rights Treaty, 42 DePaul L. Rev. 1341, 1355 (1993): [T]he U.S. government and its people are not free to violate the terms of a treaty that has been signed by the president and consented to by the Senate merely because the Senate or the Supreme Court announce that the treaty, or some part of the treaty, is not "self-executing" and cannot be enforced in court until the House and Senate pass legislation to execute it.

For arguments opposing this declaration, see Hearing 3, supra note 5, at 50-51 (statement of Gay J. McDougall, Executive Director, Internation Human Rights Law Group) and Hearing 3, supra note 5, at 69 (statement of Kenneth Roth, Executive Director, Human Rights Watch).
84. Hearing 1, supra note 1, at 79 (statement of Bruce Fein, Attorney and Syndicated Columnist). Fein testified that

[r]atification of the convention by the Senate would oblige the Nation under international law to engineer radical, legal innovations. At present, the Constitution condemns distinctions by government based upon gender unless substantially related to furthering an important goal. . . . The convention would require amending the Constitution both to reach the private sector and to prohibit gender distinctions that are noninvidious, but with an adverse impact on women. The consequences would be breathtaking.

Id.
govermental action that the Convention may be interpreted to mandate is too demanding.\(^8\) Jamison S. Borek, current Deputy Legal Advisor of the Department of State, addressed this argument in her statements to the Senate Foreign Relations Committee:

In the past, some characterized the Convention as a vehicle for radical social engineering and legal innovation which would somehow impinge upon the “timeless legal and moral values” on which our nation was founded. This is not at all the case. The Convention is consistent with firmly rooted principles of equal treatment and opportunity which are already part of our heritage and tradition. As our legal analysis makes abundantly clear, for the most part our law is already in compliance.\(^8\)

Moreover, the U.S. Senate Committee on Foreign Relations states in its report on the Convention that “no new implementing legislation is necessary for the United States to assume obligations under the Convention.”\(^8\) The Clinton Administration and the Foreign Relations Committee have also suggested reservations to certain provisions that may conflict with current domestic law, and declarations clarifying the manner in which the U.S. interprets the treaty so that later problems in interpretation will be precluded.\(^8\)

A general fear of expanding international law contributes to U.S. hesitation over ratification of the Convention.\(^9\) The United States, like other national governments, would maintain certain advantages in retaining sovereignty over all areas of law, especially with respect to areas within the traditionally domestic province of law. Although nations have gradually come to accept a general body of international law regulating actions between them to promote an orderly and functioning community of nations, governments historically have jealously guarded national sovereignty within their borders, especially regarding issues concerning their respective citizens.\(^9\) National governments do not want domestic action and authority questioned by foreign governments or international

\(^8\) See Hearing 1, supra note 1, at 59 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).
\(^8\) Hearing 3, supra note 5, at 13.
\(^8\) Senate Report, supra note 3, at 5.
\(^8\) See generally Senate Report, supra note 3.
\(^9\) See Hearing 1, supra note 1, at 95 (statement of U.S. Representative Barbara Vucanovich).
organizations, nor do they want allegations of transgressions of civil, political, or human rights to be inspected or judged by the international community. Therefore, until recent decades, domestic violations of such rights were not considered to be within the province of international law.

The United States, like all nations, may resist being placed under the scrutiny of an international committee designed to investigate human rights violations within the U.S., and to suggest how it should be implementing the terms of the Convention. However, the United States has already obligated itself to review human rights protections and violations within its borders and submit its record to international scrutiny by ratifying the International Covenant on Civil and Political Rights in 1992. The U.S. submitted its first report required by the Covenant to the United Nations Human Rights Committee in September of 1994. Joining CEAFDAW would entail a similar assessment process and would be consistent with other international responsibilities the U.S. has previously accepted. Reporting to CEDAW should not be regarded as an obligation but as "an opportunity to publicize our accomplishments as a nation." Arvonne S. Fraser, Co-Director of the International Women's Rights Action Watch, testified that the United States "need not fear the quadrennial reporting and review process required under the provisions of the Convention. Rather we should look at that process as an opportunity to show that the U.S. is a leader among nations in women's human rights."

In recent decades, human rights have become increasingly recognized as an accepted area for the development of international legal standards. After the globally condemned horrors perpetrated during

91. Gibson, supra note 40, at 57. As Gibson states, "Member states are also quite sensitive to allegations of non-compliance from both the treaty body and states and individuals which may complain to the treaty body about specific states' non-protection of human rights." Unfortunately, CEAFDAW does not currently have a mechanism in place to permit individual complaints to be submitted to CEDAW, but it may in the near future. See Donna J. Sullivan, Women's Rights and the 1993 World Conference on Human Rights, 88 AM. J. INT'L L. 152, 160 (1994).


93. Hearing 2, supra note 2, at 14 (statement of Arvonne S. Fraser, Co-Director of International Women's Rights Action Watch).

94. Hearing 2, supra note 2, at 19.

95. Reisman, supra note 90, at 869. "Although the venerable term 'sovereignty' continues to be used in international legal practice, its referent in modern international law is
World War II, the rights of a nation's own citizens have gradually become subject to international scrutiny, eventually evolving into an integral component of the international legal framework. Commentators are calling upon the United States judiciary to utilize international law as a guide to interpreting the U.S. Constitution, and domestic courts are increasingly taking international human rights law into account in their decisions. The United States should not deprive itself of the opportunity to participate in the formulation of these international legal principles. One of these opportunities entails participation in human rights conventions and their monitoring bodies, such as CEAFDAW and CEDAW.

E. The Preservation of Federalism

Another concern is that CEAFDAW would mandate that the United States federal government encroach upon areas of law reserved to quite different. International law still protects sovereignty, but—not surprisingly—it is the people's sovereignty rather than the sovereign's sovereignty. See also Gibson, supra note 40, at 42 ("We still live in a world of states that are sovereign by legal definition. The rule of international law, however, is rapidly penetrating the anachronism of states' sovereign 'domestic jurisdiction.'"); Rebecca J. Cook, International Protection of Women's Reproductive Rights, 24 N.Y.U. J. Int'l L. & Pol'y 645, 672 (1992) ("Modern international human rights law has emerged to limit the power that states may lawfully exercise over individuals, including their own citizens. . . . States have committed themselves to the observance of at least minimum standards of protection of individual rights through adherence to international human rights treaties.").

96. See, e.g., Auman, supra note 64, at 1:

International human rights law is today an extensive body of agreed-upon norms and international obligations codified in over 50 international treaties and declarations of both a general and fairly specialized nature. United States lawyers and judges are turning with an increasing frequency to these laws as a basis for rules of decision and as interpretive guides in domestic cases involving refugees, detainees, undocumented aliens, and government activities. The time is ripe for enhanced development and application of a variety of human rights issues through ratification of several treaties currently pending before the U.S. Senate Foreign Committee including . . . the Convention on the Elimination of All Forms of Discrimination against Women.

the states. Various Convention articles provide for the elimination of discrimination against women in areas of government that have historically been considered political functions of the several states, such as regulation of family relations and education. For example, Article 6 concerns the exploitation of women in prostitution; Article 10 addresses discrimination in education; Article 13 provides for the equal right of women to family benefits; Article 15 concerns contract and property rights; and Article 16 addresses areas of family law including property, divorce, child custody, age of marriage, and family planning. Article 24 of the Convention requires States Parties "to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention," which some interpret to mandate that all provisions be implemented at the national level. Opponents of the Convention warn that it may "bring federal and even international regulation into areas which are constitutionally reserved to state, local or private discretion." However, the United States could submit, along with its ratification of CEAFDARW, an understanding clarifying the distinction between federal and state powers, and indeed the Clinton Administration and Foreign Relations Committee have suggested such an understanding.

97. Hearing 1, supra note 1, at 47 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).
98. CEAFDARW, supra note 4, Article 24.
99. Hearing 1, supra note 1, at 96 (statement of U.S. Representative Barbara Vucanovich).
100. Hearing 1, supra note 1, at 85 (statement of Phyllis Schlafly).
101. Senate Report, supra note 3, at 3. The text of the reservation reads:

The United States understands that this Convention shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the state and local governments. To the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of this Convention.

State Department Report, supra note 60, at 2. Moreover, Missouri v. Holland, 252 U.S. 416 (1920), suggests that Congress is not constitutionally barred from ratifying treaties that concern areas normally beyond congressional legislative power under the Tenth Amendment. But see Laurel Fletcher et al., Human Rights Violations Against Women, 15 Whittier L. Rev. 319, 338-39 (1994) (panel discussion). A panel participant argues that such an understanding is unnecessary, as the Convention simply mandates that "the state party must 'ensure' that public authorities conform to the treaty, without specifying that federal states must accomplish this by direct national legislation." She warns that an understanding may "create the false impression that state and local governments are not bound or that U.S. ratification was intended to be an empty or hypocritical gesture." For another argument opposing this
As precedent, the U.S. submitted such an understanding with its ratification of the International Covenant on Civil and Political Rights. This understanding is not a reservation and is not intended to limit or modify the international obligations of the United States under the Covenant; instead, it clarifies the domestic measures to be taken by state and federal governments in implementing the instrument. Similarly, Australia has entered a declaration addressing conflicts between CEAFDAW and its federal constitutional system of government, stating that implementation of the treaty, instead of being undertaken solely by the national government, will be distributed among the Territory, State, and Commonwealth Authorities according to their respective constitutional powers. This declaration has not been opposed by any other State Party. A similar declaration or understanding by the United States would resolve the question of federalism. Both Canada and Australia have also consulted with state and provincial officials in order to clarify what objections their respective provinces or states may have to international conventions, and how those problems may be surmounted. The United States could take similar measures.

understanding, see Hearing 3, supra note 5, at 48-50 (statement of Gay J. McDougall, Executive Director, International Human Rights Law Group).

102. International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171. See Stewart, supra note 65, at 1201-1202. According to Stewart, the understanding states that the Covenant 'shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the State and local governments.' As to matters within the jurisdiction of state and local governments, 'the Federal Government shall take measures appropriate to the Federal system' to ensure that the state and local governments fulfill their obligations.

Id.

103. Stewart, supra note 65, at 1202. Zearfoss, supra note 81, at 929-30. Zearfoss is concerned that the U.S. might submit a reservation instead of an understanding to address the issue of federalism, which she argues would absolve the federal government of any responsibility under the Convention for discriminatory actions by the states.

104. Hearing 1, supra note 1, at 50 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).

105. Hearing 1, supra note 1, at 50 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).

F. Civil and Political Rights v. Economic, Social, and Cultural Rights

The fact that the Convention intersperses anti-discrimination clauses concerning civil and political rights with a prohibition of discrimination in the economic, social, and cultural spheres of life also raises problems for some commentators. For example, Article 5 of the Convention addresses gender discrimination in the context of social and cultural customs, and encourages governmental attempts to change those practices when they are discriminatory or prejudicial towards women. Although civil and political rights are guaranteed in the U.S. Constitution and are well defined principles in both federal and state government, the concepts of economic, social, and cultural rights and equities remain less firmly established in the United States.107

In general, the Western approach to human rights issues has traditionally concentrated on the civil and political dimensions, at the expense of attention to the economic, social, and cultural dimensions.108 Because male-dominated national governments may not be as responsive to women’s issues as women in those positions would be, the primary focus of women’s groups in many of such countries has been to obtain legal and political power equal to that of men through the attainment of political and civil rights. Therefore, usually in Western countries, women’s achievement of political and civil rights has taken precedence over the achievement of economic, social, and cultural equality.109 In other


108. See generally Theodor Meron, On a Hierarchy of International Human Rights, 80 AM. J. INT’L L. 1 (1986) (examining the implications of the trend towards a graduated normativity in international human rights); Stark, supra note 107.

109. Hilary Charlesworth et al., Feminist Approaches to International Law, 85 AM. J. INT’L L. 613, 618–21 (1991). See also Hearing 1, supra note 1, at 77 (statement of International Women’s Rights Action Watch). For example, many people in the United States believe that Article 15, addressing civil and political rights, is the most important article of the Convention because it “demands a revision in thinking about human rights. To deny women full legal capacity goes to the heart of the rule of law and human rights concepts. Legal capacity is the recognition of personhood: that one is a human being with a full claim to human dignity.” Hearing 1, supra note 1, at 77. Article 15 confronts the second class citizen status that has traditionally been imposed upon women, particularly married women, in almost all societies. The male of the household, either the husband or father, has been considered the legal representative
areas of the world, particularly in Third World countries, women’s organizations have priorities unlike those in the West. Before they can confront political and civil inequities, they feel that women must first have basic life necessities and the means to attain economic security, which are often denied them because they are female.  

The tendency in the West to focus almost exclusively upon civil and political rights has diverted attention and effort from alleviation of many other human rights issues affecting women. Recently, however, there has been a growing call for the recognition of economic, social, and cultural rights within the United States legal system. The U.S., acting for its own national self-interest and the individual interests of its citizens, should broaden its definition of human rights to include these rights and help to define them within the international legal system, instead of attempting to insulate itself from this emerging aspect of international law.  

A related criticism of CEAFDAW made by its opponents in the United States is that the U.S. should not “impose Western ideals on all of the world.” However, as is suggested by the U.S. debate about the Convention’s recognition of economic, social, and cultural rights, which are supported primarily by women in developing countries, the Convention is not a “Western” document; it is an international document created with input from countries all over the world, adopted by the United Nations General Assembly, and signed and ratified by 139 nations.  

Both in the United States and internationally, there is a growing recognition that “[t]he question of human rights abuses against women is complex because it extends beyond political and civil abuses. There is

of the entire family; women in many countries have been considered little more than property and have been accorded the legal status of minors throughout their entire lives.

110. Charlesworth et al., supra note 109, at 618–21.
111. See generally Stark, supra note 107.
113. See Charlesworth et al., supra note 109.

Despite differences in history and culture, feminists from all worlds share a central concern: their domination by men. . . . [T]he constant theme in both western and Third World feminism is the challenge to structures that permit male domination, although the form of the challenge and the male structures may differ from society to society.

Id.
a strong link between economic development and human rights, but there is the added dimension of social rights for women.\textsuperscript{4} The availability of the CEAFDAW is an important resource for all women, irrespective of their priorities, to use in lobbying their governments and garnering societal support for progressive changes.\textsuperscript{5}

III. Concerns Regarding Specific Convention Provisions

Certain concerns have been raised regarding individual provisions of CEAFDAW, particularly those raised in President Carter's transmittal of the Convention to the Senate (Articles 2, 7, 10, 11, 12, and 14). These matters can be remedied through the adoption of implementing legislation, reservations to certain provisions of the Convention, and declarations and understandings clarifying U.S. interpretations of others. Although United States law currently may not be in full compliance with all aspects of the treaty, many proponents are still very much in favor of U.S. ratification, acknowledging that certain reservations, declarations, and implementing legislation may be necessary.\textsuperscript{6} The problems with extensive use of reservations are discussed elsewhere in this article; however, notwithstanding attendant shortcomings, use of such qualification is not unusual and many States Parties to CEAFDAW have qualified their acceptance by reservations.\textsuperscript{7} Furthermore, the United States government should, in principle, be willing to enact implementing legislation to remedy areas of U.S. law that perpetuate discrimination against its female citizens. Such legislation would permit the eventual withdrawal of reservations.

Article 2 describes means through which States Parties will undertake to eliminate discrimination against women. Article 2(f) contains a general requirement of nondiscrimination which may present questions regarding the U.S. policy of discrimination against women in the military, specifically with respect to certain combat positions and the draft.\textsuperscript{8} In order to preserve this policy, the Clinton Administration and

\textsuperscript{114} Hearing 2, supra note 2, at 1 (statement of U.S. Representative Gus Yatron).
\textsuperscript{115} See generally Charlesworth et al., supra note 109.
\textsuperscript{116} However, some commentators assert that no reservations, declarations or understandings are necessary for U.S. ratification of CEAFDAW, and argue for unqualified ratification. See, e.g., Fletcher et al., supra note 101, at 336.
\textsuperscript{117} Hearing 1, supra note 1, at 50 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).
\textsuperscript{118} Hearing 1, supra note 1, at 47 (statement of Alan Kreczko, Deputy Legal Advisor,
Senate Foreign Relations Committee have proposed a reservation specifically exempting the military—with respect to combat assignments—from the Convention's nondiscrimination directives. The Convention makes no mention of women in the military, and this reservation follows the precedent of other ratifying nations which have submitted reservations to exempt their discriminatory policies against women in the military.

Article 2(e) mandates nondiscriminatory policies in private organizations, which may be interpreted to require the federal government to prohibit the all-male membership requirements of some private associations, such as male-only clubs and all-male private schools. Similar concerns regarding private conduct have been raised with respect to other Articles of the Convention. The Convention does not require coeducation, though it is encouraged. In the United States, women generally cannot be excluded from organizations or institutions which receive financial support, sponsorship, or tax exemptions from the federal government. Furthermore, despite constitutional protection for


119. Senate Report, supra note 3, at 10. The text of the reservation reads:

Under Current U.S. law and practice, women are permitted to volunteer for military service without restriction, and women in fact serve in all U.S. armed services, including in combat positions. However, the United States does not accept an obligation under the Convention to assign women to all military units and positions which may require engagement in direct combat.

The State Department stated that the exemption of females from the draft does not fall within the Convention's definition of discrimination. State Department Report, supra note 60, at 16. For arguments opposing this reservation, see Hearing 3, supra note 5, at 42–43 (statement of Gay J. McDougall, Executive Director, International Human Rights Law Group); and Hearing 3, supra note 5, at 68 (statement of Kenneth Roth, Executive Director, Human Rights Watch).

120. Hearing 1, supra note 1, at 50 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).

121. Hearing 1, supra note 1, at 96 (statement of U.S. Representative Barbara Vucanovich).

122. Hearing 1, supra note 1, at 79 (statement of Bruce Fein).

123. Senate Report, supra note 3, at 10. Specifically, provisions affecting private conduct are found in Articles 2, 3, 5, 7, and 13. See State Department Report, supra note 60, at 16.

124. See CEAFDAW, supra note 4, at Article 10.

125. See State Department Report, supra note 60, at 11. See, e.g., 42 U.S.C. § 3123 (1991). See also Hearing 1, supra note 1, at 51 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State). However, Title VII of the 1964 Civil Rights Act does not apply to tax-exempt private clubs, religious institutions, or private employers with fewer than fifteen employees.
freedom of association, the U.S. Supreme Court has upheld state and local laws that prohibit private clubs from discriminating against women.\textsuperscript{126} Nonetheless, in order to preclude potential legal conflicts, for example with respect to smaller private social organizations that discriminate against women, the Clinton Administration and Senate Foreign Relations Committee have recommended a reservation with respect to private organizations.\textsuperscript{127}

Because Article 2 makes no exemptions for religious organizations, the Convention's impact upon the constitutional separation of church and state\textsuperscript{128} and its enforcement against gender discrimination within religious institutions have been questioned.\textsuperscript{129} Commentators in favor of ratification have acknowledged that States are constrained by the right of freedom of religion from interfering in religious matters, including where religious institutions "discriminate against women and reflect sexist bigotry."\textsuperscript{130} However, exercise of religion does not include a right to financial and other privileges from the government, and States Parties may be required to revoke such privileges from institutions that continue to discriminate against women.\textsuperscript{131} Nonetheless, irrespective of this

\begin{enumerate}
\item \textsuperscript{127} The reservation reads as follows:
\begin{quote}
The Constitution and laws of the United States establish extensive protections against discrimination, reaching all forms of governmental activity as well as significant areas of non-governmental activity. However, individual privacy and freedom from governmental influence in private conduct are also recognized as among the fundamental values of our free and democratic society. The United States understands that by its terms the Convention requires broad regulation of private conduct, in particular under Articles 2, 3 and 5. The United States does not accept any obligation under the Convention to enact legislation or to take any other action with respect to private conduct except as mandated by the Constitution and laws of the United States.
\end{quote}
\item \textsuperscript{128} U.S. Const. amend. I, "Congress shall make no law respecting an establishment of religion, or prohibiting free exercise thereof. . . ."
\item \textsuperscript{129} Hearing 3, supra note 5, at 38–42 (statement of Gay J. McDougall, Executive Director, International Human Rights Law Group); and Hearing 3, supra note 5, at 68 (statement of Kenneth Roth, Executive Director, Human Rights Watch).
\item \textsuperscript{130} Hearing 3, supra note 1, at 96 (statement of U.S. Representative Barbara Vucanovich).
\end{enumerate}
interpretation of the provision on religion in Article 2 as compatible with U.S. law, the Clinton Administration and U.S. Foreign Relations Committee have made clear that the reservation to private organizations extends to religious institutions.  

Under Article 7, States Parties agree to ensure equal opportunity of participation by both women and men in nongovernmental organizations and other associations dealing with public and political life in the nation. The United States would unquestionably comply with the Article in legally condemning discrimination against women in commercial activities; employment; commercial associations and accommodations; and any activities receiving sponsorship, funding, or tax exemptions from the government. Of concern, however, is that this provision may be interpreted to obligate the United States to interfere with the internal rules and organization of political parties and interest groups. Such a requirement may pose an obstacle for U.S. ratification because of possible constitutional limitations on governmental intrusion into organizations engaged in political speech, and into private organizations generally.

The privilege of charitable immunity . . . of tax privileges, or . . . of accreditation to religiously affiliated medical schools that refuse to train students in procedures essential to women's health does not inhibit these institutions' freedom of conscience any more that it limits the freedom of conscience of other noncharitable, or nonaccredited, institutions.

The same arguments could be made with respect to all private organizations discriminating against women, as in the preceding paragraph. Note, however, potential conflicts with the First Amendment "establishment of religion" clause, if applied to a purely religious institution.

132. See Senate Report, supra note 3, at 23.
133. See, e.g., Hearing, supra note 1, at 47, 51 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).
134. Hearing, supra note 1, at 47, 51 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).
135. See New York State Club Ass'n v. City of New York, 487 U.S. 1 (1988); Board of Directors v. Rotary Club, 481 U.S. 537 (1987); Roberts v. Jaycees, 468 U.S. 609 (1984). See also, Fletcher et al., supra note 101, at 343. The authors noted that the above cases provide support for an argument that U.S. adherence to Article 7 would not present a constitutional problem, since the Supreme Court found that the public policy of promoting non-discrimination outweighed any associational rights of the formerly all-male members in those cases. However, the Supreme Court also emphasized that the Jaycees, Rotarians, and members of New York business clubs were not engaged in any type of political speech that would be diluted or altered by the admission of female members.

Id.
Although many of the activities of political parties would be considered "state action" under the Fourteenth Amendment, as with previous provisions, the reservation concerning privacy has been interpreted to cover these concerns.

Article 10, dealing with discrimination against women in education, may raise federalism concerns because educational issues, such as the content of educational textbooks and other materials, have been traditionally regulated primarily by state governments. These matters can be remedied through the reservation addressing federalism discussed above. The United States has met many of the objectives of this Article through federal legislation designed to eliminate discrimination in education by providing that educational institutions receiving federal funds may not discriminate in school activities, including physical and sports activities, on the basis of gender. Federal legislation also requires non-discrimination in any program that receives federal financial assistance. Additionally, as noted above, the Convention does not mandate coeducation, although it is encouraged. Therefore, U.S. federal legislation is not incompatible with the mandates of this Article.

Particular concern has been raised regarding Article 11, which addresses various aspects of employment discrimination. Conflicts may arise if Article 11(1)(d) is interpreted to require federal legislation enacting comparable worth into law, thus upsetting the market labor pricing

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137. Senate Report, supra note 3, at 29.


140. 42 U.S.C. § 3123 (1991). See also Hearing 2, supra note 2, at 190 (statement entitled Written Testimony); Hearing 1, supra note 1, at 70 (statement of Catherine E. Bocskor, Vice Chair, Section of International Law and Practice, American Bar Association).
Although federal laws do not include comparable worth protections, the U.S. has made some progress toward the goal of equalizing pay rates between females and males. In the last decade more than 1,700 states, counties, and municipalities have corrected disparities between wage rates of female and male workers in categories of work determined to be of equal value. Title VII of the 1964 Civil Rights Act prohibits gender discrimination with respect to compensation. The federal government is required to pay federal employees equal compensation for work of equal value under the Civil Service Act. The United States Equal Pay Act of 1963 mandates equal pay for equal work in positions with similar working conditions and requiring equal responsibility, efforts, and skill.

In addition, one legal scholar has noted that a State Party's agreement to take "all appropriate measures to eliminate discrimination" under this Article "does not suggest that an immediate comparable worth norm is mandated by the Convention." However, the Clinton Administration and Senate Foreign Relations Committee have recommended a reservation to the comparable worth provisions of this article to clearly preserve the issue for future domestic resolution.

141. *Hearing 1*, supra note 1, at 96 (statement of U.S. Representative Barbara Vucanovich).
142. E.g., UAW v. Michigan, 886 F.2d 766, 769 (6th Cir. 1989); American Nurses' Ass'n v. Illinois, 783 F.2d 716, 722-23 (7th Cir. 1986); AFSCME v. Washington, 770 F.2d 1401, 1407 (9th Cir. 1985); *Senate Report*, supra note 3, at 37.
143. *Hearing 2*, supra note 3, at 191 (statement entitled Written Testimony).
145. See *State Department Report*, supra note 60, at 33 ("Courts have interpreted the [Equal Pay] Act to mandate equal pay for 'substantially similar' jobs; claims of unequal pay for comparable but unequal work are inapplicable under the statute."). See, e.g., Spaulding v. University of Washington, 740 F.2d 686, 697 (9th Cir.), cert. denied, 469 U.S. 1036 (1984); Thompson v. Sawyer, 678 F.2d 257, 271-72 (D.C. Cir. 1982).
146. Fletcher et al., supra note 101, at 345.
147. *Senate Report*, supra note 3, at 37. This reservation reads as follows:

> U.S. law provides strong protections against gender discrimination in the area of remuneration, including the right to equal pay for equal work in jobs that are substantially similar. However, the United States does not accept any obligation under this Convention to enact legislation establishing the doctrine of comparable worth as that term is understood in U.S. practice.

Id. For an argument opposing this reservation, see *Hearing 3*, supra note 5, at 43-45 (statement of Gay J. McDougall, Executive Director, International Human Rights Law Group).
Article 11(1)(f) mandates that the government guarantee to women the right to safe and healthy working conditions, focusing specifically on conditions that might affect reproduction. Some have raised the concern that this provision may call for fetal protection policies that discriminate against women in employment. A similar provision is found in Article 4(2), permitting, but not mandating, measures to protect maternity. However, CEDAW has expressed reservations about protective employment policies, preferring instead the provision of full disclosure of risks to individual employees to allow each to make her own informed decision. Moreover, the U.S. Supreme Court has interpreted Title VII to prohibit discrimination against female employees on the basis of reproductive capacity in UAW v. Johnson Controls, where the Court held that women may not be excluded from occupations that might have detrimental effects upon their reproductive systems unless risks unique to females can be proven. Article 23 states that nothing in the Convention will affect State law that is "more conducive to the achievement of equality between men and women;" therefore, the U.S. prohibition of discriminatory work policies would not be affected under CEDAW. As neither Article 11(1)(f) nor Article 4(2) requires the establishment of fetal protection policies, U.S. law is not inconsistent with their mandates.

Article 11 also prohibits discrimination based on pregnancy or marital status. The federal Pregnancy Discrimination Act proscribes discriminatory practices based upon maternity leave or pregnancy. Federal employment regulations require that employment restrictions applying to married women must equally apply to married men, and federal legislation mandates that the federal government cannot discriminate against employees based on marital status. Many State laws also

148. Zearfoss, supra note 81, at 914-915.
149. See generally Mai Chen, Protective Laws and the Convention on the Elimination of All Forms of Discrimination against Women, 15 WOMEN'S RTS. L. REP. 1, at 14-25 (1993), for a discussion of the concerns raised by the provisions in the Convention ensuring the protection of maternity, and an interpretation consistent with the advancement of women's equality.
150. SMITH RPT, supra note 3, at 40.
152. CEDAW, supra note 4, Article 23.
153. Fletcher et al., supra note 101, at 345.
155. See 29 C.F.R. § 1604.4(a) (1995); State Department Report, supra note 60, at 36.
prohibit discrimination based on marital status. Under Article 11(2)(b) States Parties agree to undertake to establish maternity leave with pay and benefits. The United States has enacted the Family and Medical Leave Act of 1993, providing the right of up to twelve weeks of unpaid leave to certain public and private sector employees for the birth or adoption of a child.

As the provision requiring paid maternity leave goes beyond U.S. legislation in this area, the Clinton Administration and Foreign Relations Committee have recommended a reservation on this issue. Article 11(2)(c) encourages States to promote the creation of a network of child care facilities, which some people feel should best be left to national or state governments and not be required by an international agreement. However, this provision does not mandate a federal child care system or the right to child care. Moreover, the federal government presently has programs providing day care for federal employees, providing tax deductions to assist working parents in attaining child care, and making funds available to states to encourage the establishment of day care centers.

Questions have been raised about the interpretation of Article 12's prohibition of gender discrimination in the provision of health care services and family planning. Opponents to the Convention have expressed concern that this provision may prohibit private or government restrictions on abortions, including the ability to not offer or provide funding for abortion services if other medical services are offered or subsidized. This interpretation is based on the Pregnancy Discrimination

157. *Hearing 5*, supra note 1, at 70 (statement of Catherine E. Bocskor, Vice Chair, Section on International Law and Practice, American Bar Association).
159. *Senate Report*, supra note 3, at 2. The text of the reservation reads:

Current U.S. law contains substantial provisions for maternity leave in many employment situations but does not require paid maternity leave. Therefore, the United States does not accept an obligation under Article 11(2)(b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.

162. *Hearing 5*, supra note 1, at 79–80 (statement of Bruce Fein, Attorney and Syndicated Columnist). *See also Hearing 5*, supra note 1, at 84 (statement of Ellen Smith, Field
Act, in which Congress equates pregnancy discrimination with gender discrimination.

However, one commentator has noted that "[t]he travaux préparatoires do not indicate that this [provision] was intended to include legal abortion, and CEDAW has not so construed it." The Clinton Administration has also stated that "[n]othing in Article 12 requires States Parties to guarantee access to abortion." However, the Administration also expressed that if a State Party considered abortion to be an appropriate medical service related to pregnancy, the Article could be interpreted to require the inclusion of access to abortion among other services provided, which would be contrary to current U.S. law.

Conversely, pro-choice U.S. citizens would view protection of the right to abortion as one of the Convention's virtues. One scholar has argued in favor of the international protection of women's reproductive rights, including the right to safe abortions, as a composite right founded upon separate rights granted under CEDAW and other international instruments. Additionally, the U.S. Supreme Court has ruled that the right to abortion may not be denied to women in the United States, as it is encompassed in the constitutional right to privacy derived from the Fourteenth Amendment.

However, the Senate Foreign Relations Committee accepted a proposal by Senator Jesse Helms to submit upon ratification an understanding "[t]hat nothing in this Convention shall be construed to reflect

Legislative Counsel, Concerned Women for America). The abortion issue also concerns Article 16(1)(c), which mandates that Parties must permit women "to decide freely and responsibly on the number and spacing of their children." CEDAW, supra note 1, Article 16. Representative Barbara Vucanovich expressed her concern that the section may be interpreted to require the legalization of abortions throughout the full term of pregnancy. Hearing 1, supra note 1, at 96 (statement of U.S. Representative Barbara Vucanovich).

164. Fletcher et al., supra note 101, at 345.
165. Senate Report, supra note 3, at 41. See also State Department Report, supra note 101, at 40.
166. Senate Report, supra note 3, at 41; State Department Report, supra note 60, at 40. See also Harris v. McRae, 448 U.S. 297 (1980) (allowing federal restrictions of Medicaid funding for abortions); Maher v. Roe, 432 U.S. 464 (1977) (allowing state restrictions of Medicaid funding for abortions).
167. See Zearfoss, supra note 81, at 913–14 (regretting that CEDAW does not specifically protect abortion rights).
168. See generally Cook, supra note 95.
or create any right to abortion and in no case "should abortion be promoted as a method of family planning." This understanding is not only unnecessary, as neither the Convention, the *travaux préparatoires*, nor CEDAW requires States Parties to guarantee abortion services; it is also directly contrary to U.S. law, as it does not reflect the constitutional guarantee to women of the right to choose an abortion. Furthermore, it is redundant in light of an understanding the Clinton Administration proposed to the same Article, which was also accepted by the Foreign Relations Committee, clarifying the U.S.'s interpretation that the Article allows States Parties to determine domestically the appropriateness of different family planning methods, and does not require States to provide free access to particular pregnancy-related services.

One concern raised in conjunction with Article 14(2) is that it may require additional spending by the U.S. government and the expansion of federal benefit programs. Specifically, this provision requires States Parties to guarantee to rural women access to sufficient facilities providing health care, which may be interpreted to obligate the government to alter budget allocations and increase financing of these programs. However, the object of this Article is to eliminate discrimination against women in rural areas, and in the United States all federal health care programs, whether administered in urban or rural areas, cannot be administered in an intentionally discriminatory manner under the Fourteenth and Fifth Amendments and the Civil Rights Act. Discrimination against rural women in the provision of federally supported health care services is specifically prohibited in the Public Health Service Act. The Clinton

171. *Senate Report*, *supra* note 3, at 42. The reservation reads as follows:

> The United States understands that Article 12 permits States Parties to determine which health care services are appropriate in connection with family planning, pregnancy, confinement and the post-natal period, as well as when the provision of free services is necessary, and does not mandate the provision of particular services on a cost-free basis.


172. *State Department Report*, *supra* note 60, at 44.

Administration has expressed its belief that "[a]s a general matter, federal law neither authorizes or [sic] permits unequal treatment of, or discrimination against, women in rural areas."\(^{175}\)

As demonstrated in this section, the concerns raised by the Carter Administration and others with respect to particular articles of CEAFDAW can be satisfied. The Clinton Administration has recommended one additional understanding and two additional declarations to the Convention. The understanding provides that nothing in the Convention will constrict the right to freedom of speech under the First Amendment to the Constitution.\(^{176}\) The two declarations state that the Convention will be non-self-executing, as addressed above, and that the United States retains the right to decline participation in cases brought before the International Court of Justice under Article 29.\(^{177}\)

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175. **SENATE REPORT**, *supra* note 3, at 44. *See also State Department Report, supra note 118*, at 43.

176. **SENATE REPORT, supra note 3**, at 27. The text of the understanding reads:

The Constitution and laws of the United States contain extensive protections of individual freedom of speech, expression and association. Accordingly, the United States does not accept any obligation under this Convention, in particular under Articles 5, 7, 8, and 13, to restrict those rights, through the adoption of legislation or any other measures, to the extent that they are protected by the Constitution and laws of the United States.

*Id.*

177. **SENATE REPORT, supra note 3**, at 49–50. The text of the declarations reads as follows: 1) "The United States declares that the provisions of the Convention are not self-executing;" **SENATE REPORT, supra note 3**, at 49; and 2) With reference to Article 29(2), the United States declares that it does not consider itself bound by the provisions of Article 29(1). The specific consent of the United States to the jurisdiction of the International Court of Justice concerning disputes over the interpretation or application of this Convention is required on a case-by-case basis.

**SENATE REPORT, supra note 3**, at 50. For arguments opposing the reservation concerning the International Court of Justice, *see Hearing 3, supra note 5*, 21, 29-32 (statement of Robert F. Drinan, American Bar Association); **SENATE REPORT, supra note 3**, at 51–52 (statement of Gay J. McDougall, Executive Director, International Human Rights Law Group); and **SENATE REPORT, supra note 3**, at 69–70 (statement of Kenneth Roth, Executive Director, Human Rights Watch).
IV. Problems with International Implementation

A. The Legal Effect of the Convention under International Law

One concern with all international human rights treaties is determining their legal effect under international law. Some scholars have concluded that the Convention is merely a statement of goals to be attained at some unspecified future date and through unspecified means, and therefore that the Convention has no power to effectively bind States Parties. Professor Brenda Cossman writes that "[f]rom its beginnings, international human rights law has been limited by problems of enforcement . . . . It has relied primarily on international cooperation, moral suasion and condemnation to ensure compliance." However, she continues, "despite the weakness of the enforcement machinery and the history of non-cooperation, there remains a strong commitment to the discourse of human rights principles."\(^{178}\)

Others believe that the Convention is a codification of already existing customary law, and as such is binding upon all States, whether or not they have signed or ratified the Convention. For example, Paula Dobriansky, Deputy Assistant Secretary of Bilateral and Multilateral Affairs of the Bureau of Human Rights and Humanitarian Affairs in the U.S. State Department, testified that "we believe that, under existing international standards, all governments already have an obligation not only to abstain from practicing institutionalized discrimination, but also to take affirmative steps to protect women against abuses rooted in cultural and societal norms."\(^{179}\)

Still others assert, and this author believes, that international human rights conventions, along with their monitoring bodies, contribute to the progressive evolution of international law.\(^{180}\) They are not simply a list of aspirations with no meaningful consequences if they are not imple-


\(^{179}\) Hearing 2, supra note 2, at 116 (statement of Paula Dobriansky, Deputy Assistant Secretary, Bilateral and Multilateral Affairs, Bureau of Human Rights and Humanitarian Affairs).

\(^{180}\) Hearing 1, supra note 1, at 99 (statement of U.S. Representative Patricia Saiki). Her description of the Convention states that "[t]his treaty establishes legal standards for the treatment of women worldwide and can be best described as an international bill of rights for women." Id. See also Gibson, supra note 40, at 41-42.
mented, nor are they a stagnant codification of previously existing international law. As Professor John Gibson writes of CEAFDAW and the other international human rights conventions:

Each treaty is grounded in the sources of international law set forth in article thirty-eight of the Statute of the International Court of Justice. Each has a moral foundation based on custom, fundamental principles, judicial decisions of varying and historic authority, as well as the writings of eminent publicists, scholars and jurists. Each is rooted in a “right” found in the 1948 Universal Declaration of Rights, therefore making each treaty a legal amplification of the basic rights and thus developing the “progressive measures” called for in the Preamble of the Declaration.181

These international human rights agreements are legally binding; all Member States agree to be accountable and to hold the other Member States accountable for their implementation. They also contribute to the evolution of general norms of customary international law, as the principles therein receive greater international acceptance and approval.

A related issue is the fact that CEAFDAW, like other human rights conventions, is of a “progressive nature,” which poses problems in determining whether or not a State is in compliance with its terms. This latitude was considered necessary by the drafters of the Convention, because many nations may not have sufficient resources, both material and political, to immediately effectuate all of the treaty’s provisions. Therefore, both the time frame and the means of implementation have been largely left up to the States Parties themselves.

Critics of the progressive nature of international conventions assert that to take steps

for the realization of rights was not equivalent to guaranteeing these rights; that a state criticized for doing nothing could always plead lack of resources; and that to allow states to achieve “progressively” the realization of the economic, social, and cultural rights would permit indefinite delays. Because the obligations under the [convention] thus could easily be evaded, the value of the document was arguably greatly diminished.182

181. Gibson, supra note 40, at 49.
However, if CEAFDAW were not of a progressive nature, the drafters would run the risk that no nation would ratify the treaty, or if they did ratify, that they would withdraw when they could not come into compliance with the Convention, or that they would ratify the Convention without being able to fulfill its terms, which would undermine the rule of international law. Additionally, the progressive nature of international treaties is not a new idea, as “the concept of progress and progressive development is both implicit and explicit in so much of the [U.N.] Charter and the International law it has generated.”

That the international legal system is not fully developed, however, is no reason for the United States to refrain from ratifying CEAFDAW and other international human rights treaties, and has not prevented it from ratifying the International Covenant on Civil and Political Rights of 1966. As one of the most powerful and internationally important nations in the world, the United States cannot remain aloof from the increasingly significant development of international principles of human rights, but should actively participate in their creation and implementation.

B. The Impact of Reservations

A particular problem that has arisen with CEAFDAW is that many countries, in conjunction with ratification, have submitted extensive reservations to various provisions of the Convention. Over fifty countries have submitted reservations, often more than one, upon ratification of the Convention. As of the spring of 1990, 113 reservations had been made to CEAFDAW, and ninety-five objections had been made to these reservations. Some of these reservations are technical or address the Article concerning dispute settlement, and have received no opposition from other States Parties. However, several of the reservations to
The substantive provisions of the Convention have incited opposition by other States Parties, which claim that the reservations are contrary to the "object and purpose" of CEAFD and, therefore, are impermissible and unacceptable.\footnote{Clark, supra note 186, at 282–89.}

The question then becomes how to determine whether a particular reservation is impermissible, and how to treat such reservations and objections. The reservations issue has sparked considerable debate both within and outside of the United Nations. Different interpretations of the Vienna Convention on the Law of Treaties (Vienna Convention) have expanded the debate.\footnote{Clark, supra note 186, at 320–21.} The interpretation of the effect of reservations to international agreements is addressed in this Convention.\footnote{Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, 1155 U.N.T.S. 331, 333 (entered into force Jan. 27, 1980) [hereinafter Vienna Convention], quoted in Jenefsky, supra note 190, at 208.} It defines a reservation as "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State."\footnote{Id. at 320.} States are not allowed to make a reservation if the treaty expressly prohibits the reservation, if the treaty permits only specified reservations (which do not include the reservation in question), or if the reservation contravenes the...
object and purpose of the treaty.192 The last qualification on reservations often poses interpretive problems because no mechanism exists to determine whether a specific reservation is incompatible with the object and purpose of a treaty. Therefore, the State making the reservation is the sole judge of whether the reservation is consistent with the object and purpose of the treaty, and although other States Parties may object to the reservation, these objections are usually of minimal practical consequence.193 The reservations and objections do, however, alter the effect of the treaty between the reserving and objecting States, thus creating a network of different treaty relationships among the States Parties to the Convention.194

Many governments, international organizations, and commentators have called upon States Parties to CEAFDAW to withdraw reservations to the substantive portions of the Convention.195 For example, the Programme of Action developed at the 1993 World Conference on Human Rights “urges states to withdraw reservations ‘that are contrary to the object and purpose of the Convention or which are otherwise incompatible with international treaty law;’ [and] it encourages CEDAW to continue its review of the reservations to the Convention.”196 Commentators have also called for the creation of mechanisms to regulate the submission of reservations to the Convention, similar to those embodied in other human rights treaties. For example, the Convention on the Elimination of All Forms of Racial Discrimination,197 upon which CEAFDAW is modeled, provides that a reservation will be considered incompatible with the Racial Convention if at least two-thirds of the States Parties object to it.198 This mechanism has been very successful in minimizing the number of reservations modifying the treaty.199

194. Clark, supra note 186, at 297.
195. See Clark, supra note 186, for a recitation of the history of U.N. Member States’ and U.N. agencies’ objections to the number and kind of reservations that have been made to CEAFDAW.
196. Sullivan, supra note 91, at 160.
198. Donner, supra note 193, at 252.
199. Donner, supra note 193, at 252. “With 128 State Parties, there are only four reservations that are purported modifications or exclusions of the obligations assumed under the treaty.” Id.
C. Lack of an Enforcement Mechanism

A major shortcoming of CEAFDAW concerns the means of ensuring the implementation of the treaty. As with the other major international human rights treaties, CEAFDAW does not have an enforcement mechanism. Therefore, although some have interpreted CEAFDAW and other international human rights treaties to be legally binding, the legal effectiveness of the Convention is open to question because there are no means of international enforcement. Professor Louis Sohn notes that “[o]n the international scene, it is difficult to persuade governments, which as a group are the international lawmakers, to agree on enforcement against themselves in the event that they violate international law. It is not the law that is soft, but the governments.”

Under CEAFDAW, the States Parties agree to implement changes within their borders and in their domestic legal systems to give effect to the treaty’s provisions. However, often it is the government itself, with the power and duty of enforcement of the Convention, which is perpetrating the human rights violations. All national governments worldwide are predominantly male; therefore, not only are the rights of women likely to be given low priority and viewed from a distorted perspective, but those in power (usually men) often have a stake in perpetuating the system of male dominance and in continuing discrimination against women. In the words of Arvonne S. Fraser, “in this day of burgeoning democracies all over the world we ought to recognize discrimination against women as the last bastion of human rights abrogation that is tolerated, even sometimes extolled in the name of custom.” Males derive distinct benefits through the enjoyment of a position of power over women, and from the exclusion of women from certain areas in which the female would be in competition with the male, including education, politics, and employment. As U.S. Representative Patricia Saiki aptly stated, “[a]s we know from our own experiences in the United States, equality mandated does not always translate into equality practiced.” These are powerful obstacles to effective implementation of the Convention and enforcement of its provisions.

200. Hearing 1, supra note 1, at 2 (statement of Senator Alan Cranston).
201. Sohn, supra note 182, at 13.
202. See Charlesworth et al., supra note 109, at 625.
203. Hearing 2, supra note 2, at 13 (statement of Arvonne S. Fraser, Co-Director, International Women’s Rights Action Watch).
204. Charlesworth et al., supra note 109, at 626.
205. Hearing 1, supra note 1, at 99 (statement of U.S. Representative Patricia Saiki).
Although the Convention does not specifically provide for means of enforcement or implementation, it does exert a significant political influence and force of moral suasion within the community of nations. The Convention does contain a procedural mechanism to internationally monitor the progress of nations in effecting their implementation schemes domestically. As noted above, the treaty calls for the formation of the Committee on the Elimination of Discrimination Against Women (CEDAW) to review reports from States Parties concerning the domestic status of women. CEDAW also reviews the measures each State has undertaken to eradicate discrimination and improve the economic, legal, and social status of women. These reports are to be submitted to CEDAW within one year of ratification of the Convention, and every four years thereafter, or upon the specific request of the Committee.

During the Committee's review, the representatives who submit reports may be (and frequently are) questioned as to specific portions of the report, deficiencies, discrepancies between the report and outside information, and other areas in which the Committee has questions or comments. The reporting ensures that the State Party will review its domestic law to identify areas of discrimination against women; require a thorough review of current developments in those areas; monitor progress in securing women's rights under the Convention; motivate the establishment of long-term programs in order to remedy culturally ingrained discrimination; encourage coordination among various sectors of the government and society to advance women's rights; acknowledge difficult problems that may be hard to remedy; and facilitate the exchange of information, both domestically and internationally.²⁰⁶

Although the quality of the reports varies, those countries under scrutiny usually are sensitive to any criticisms of the Committee. Consequently, each State is inclined to project the status of its women, and the measures taken to eliminate gender discrimination, in the best possible light. In order to offset this distortion, the Committee has "consistently asked reporting countries to include information on both the de jure and de facto situation of women. This is because women sometimes have equal legal standing in law but the laws are interpreted or enforced in a discriminatory manner."²⁰⁷ In addition, CEDAW and other human rights bodies should be encouraged to develop international standards for collecting and compiling data and information, in order to inhibit States from suppressing negative reports.²⁰⁸

²⁰⁷. Hearing 2, supra note 2, at 16 (statement of Arvonne S. Fraser, Co-Director, International Women's Rights Action Watch).
²⁰⁸. Cook, supra note 130, at 162.
An ancillary problem concerns the amount of freedom (or lack thereof) that the representatives presenting the reports to the Committee have in portraying a true account of the situation in their countries. Some of the representatives are chosen and are permitted to give the reports only on the condition that they will present the official view propounded by the government. Such representatives are not allowed to give their independent assessment of the status of women in their countries or to testify to incidents of discrimination they may have witnessed or encountered. Therefore, the reports that the Committee and the international community of nations receive may present, at best, a very distorted portrait of the situation of women in the reporting States.

Although the reporting requirement is imperfect and by no means an "enforcement mechanism," the process of reporting, international monitoring, and scrutiny can have a significant and salubrious effect upon States involved in the system. This is particularly true when citizens of a country take note of the proceedings, monitor how their State is perceived internationally, and apply pressure to their government to improve its international image by taking action to enforce the Convention. Some States Parties, however, maintain their reports as classified documents and do not inform their citizens of the existence of State obligations under the Convention, thereby thwarting the ability of a grassroots movement to consolidate around the mandates of CEAFDAW. In light of this fact, the Committee and concerned States Parties should

209. *Hearing 2, supra* note 2, at 9–10 (statement of U.S. Representative Patricia Schroeder). According to Schroeder,

> one of the problems we have found with U.N. conferences on women's issues, to be perfectly honest, is that many of the women attending the U.N. conferences are not free agents. They are sent by their government with their government's portfolio, and if you speak with them quietly in the cloakroom they tell you one thing, but when they get to the microphone they have to carry the government's portfolio. That is why it is very frustrating in breaking through these issues. It is like, "We will send you if you will go there and say that everything is terrific, and wonderful," and so forth. But I think you find that in all sorts of international conferences and it is why it is hard to make progress on that.

*Id.*

210. *Hearing 2, supra* note 2, at 72 (statement of Arvonne S. Fraser, Co-Director, International Women's Rights Action Watch). According to Fraser, in contrast to most people in the United States, citizens of other countries "are much more aware of what the world thinks of them."

urge that all reports be open to the public and widely distributed, and should attempt to attain as much international publicity about the Convention and the proceedings of the Committee as possible.

D. The Lack of a Provision Addressing Violence against Women

A significant deficiency of the Convention is the lack of any provision concerning violence against women. In partial remedy of this problem, CEDAW stated that discrimination against women as defined in Article 1 of the Convention addresses gender-based violence. CEDAW also addressed this issue through recommendations that all States Parties include within their reports not only the legislation they have implemented to eliminate violence against women, but also the types of social services they have established to assist women who have been victims of violence based on gender. The Committee also recommended specific measures to be taken by States Parties to eliminate violence against women, such as providing civil remedies and criminal penalties for such acts.

212. See Zearfoss, supra note 81, at 916. Zearfoss also comments that the issues of abortion, pornography, rape, and the special concerns of lesbians and unmarried heterosexual women are not addressed in the Convention. These issues could be addressed in a manner similar to that of violence against women, as described in this section.


   Traditional attitudes under which women are regarded as subordinate... or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks, female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence to the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms... [T]he underlying [structural] consequences of these forms of gender-based violence help to maintain women in subordinate roles, contribute to their low level of political participation and to their lower level of education, skills and work opportunities.


214. Hearing 1, supra note 1, at 78 (statement by International Women's Rights Action Watch). Over fifty percent of the States Parties that have reported to the Committee
The U.N. Commission on the Status of Women passed a resolution entitled "Physical Violence Against Detained Women That Is Specific to Their Sex" during its 34th Session in 1990, which was subsequently adopted by ECOSOC. This resolution requests that all Member States of the U.N. submit a report to the Secretary-General on legislative measures taken in their respective countries to protect women in state custody from such violence.\(^{215}\) In addition, the Commission developed a "Draft Declaration on the Elimination of Violence Against Women" in 1992,\(^{216}\) which was adopted by ECOSOC in 1993\(^{217}\) and was adopted by the General Assembly as the United Nations Declaration on the Elimination of Violence Against Women in 1993.\(^{218}\)

Thus, although the issue of violence is still not addressed within the document of the Convention, it has been addressed by the Commission and the Committee. Furthermore, the 1993 World Conference on Human Rights focused attention on the need to eradicate the problem of widespread gender-based violence.\(^{219}\) As a result, the Commission on Human Rights subsequently appointed a special rapporteur to investigate violence against women within U.N. Member States.\(^{220}\) Nevertheless, the neglect of the issue of violence against women in CEAFDAW is a distinct shortcoming and should be remedied through an amendment to the Convention. Such an amendment would serve to draw more extensive international attention to the problem of violence against women, and would officially require reporting on gender-related violence within the periodic country reports.

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219. Sullivan, supra note 91, at 164.

220. America's Fundamental Dedication to Human Rights, Dispatch (U.S. Department of State) Feb. 6, 1995 at 10 [hereinafter Dispatch].
E. CEDAW's Need for a Complaint and Communication Process

CEDAW does not have a complaint and communication process designed to allow other States Parties, nongovernmental organizations (NGOs), or individuals to bring complaints against States Parties for violations of the Convention.221 Other human rights conventions, such as the Convention on the Elimination of All Forms of Racial Discrimination, contain such mechanisms through an Optional Protocol.222 The United States has acceded to such a provision in the Covenant in Civil and Political Rights223 allowing State Parties to bring complaints before the Human Rights Committee against other States who are not fulfilling their obligations under that treaty.224

Adding this process to CEDAW would allow information in addition to the officially sanctioned reports of State Parties to be presented to the Committee. The communication process should also provide for the formal submission of information to CEDAW from NGOs, which currently are permitted to attend and observe public meetings, but do not share any formal role with CEDAW in monitoring violations against women.225 A communications process would serve to motivate States to actually change disparate domestic practice and to affirmatively act

224. Stewart, supra note 65, at 1204–05. Stewart notes that “[t]he United States intends to participate actively in the work of the Committee, in part because of the hope that the Committee can contribute even more to the development of a generally accepted international law of human rights.” Id. at 1205.

It seems clear that the early involvement of groups outside the government in the reporting process offers an opportunity for critical discussion between the government and its citizens, thereby enabling the political leadership to identify more easily situations that constitute violations of human rights, or that represent a factor or difficulty in implementing rights contained in a treaty.

Id.
towards eliminating discrimination against women. At present, States Parties may only subject another Party to arbitration or raise issue with it before the International Court of Justice to obtain an opinion concerning interpretation of the terms of the Convention or its implementation. The Programme of Action resulting from the 1993 World Conference on Human Rights directed CEDAW and the Commission on the Status of Women to investigate the possibility of adding an optional protocol to the Convention establishing a complaints mechanism.

The U.N. Commission on the Status of Women does have a communications process, and individuals or NGOs may bring allegations of discrimination against women to the attention of the Commission. However, complaints to the Commission do not encompass all of the terms provided for in the Convention, and are addressed only through recommendations to ECOSOC when the Commission perceives a distinct pattern or practice of gender discrimination. Both the Commission and the Committee should have the authority to receive such communications officially. This would expand the available avenues through which individual women and other State and non-State actors could draw international attention to specific incidents, practices, and policies of discrimination against and abuse of women throughout the world.

F. CEDAW’s Need for Increased Time and Resources and Special Rapporteurs

According to Article 20 of the Convention, CEDAW may “normally meet for a period of not more than two weeks annually in order to consider the reports submitted,” a period of time insufficient even for its limited mandate of reviewing reports. No other international human rights conventions place such strict temporal constraints upon their monitoring bodies. The word “normally,” which may be interpreted

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226. CEAFDAW, supra note 4, Article 29.
227. Sullivan, supra note 91, at 160.
229. Donner notes that “[w]ith 111 state parties and consideration of an average of 6 reports per session, it would take about 19 years to review just one report from each party.” Donner, supra note 193, at 250 (footnote omitted). She also comments that the only thing preventing the overworked committee from breaking down is, ironically, the noncompliance of States Parties with the reporting requirement.
230. Meron, supra note 221, at 214. Meron notes that
to enable the Committee to extend the duration of its meeting period, provides some amount of flexibility to the Committee.\(^{231}\) For example, the Committee's 1993 session was extended to a month, the longest period of time the Committee has convened thus far.\(^{232}\) The General Assembly should ensure that the Committee is allowed sufficient time in order to successfully fulfill its tasks under the Convention.

In order to properly function, CEDAW must also be supported by an adequate and competent staff. Article 17 states that "[t]he Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the Committee under the present Convention." States Parties should ensure that the Secretary-General fulfills this obligation. Of course, any addition to the workload of CEDAW, such as an optional protocol establishing a communication process, would also have to be taken into account with an appropriate revision of the time period within which the Committee is allowed to convene.

The appointment of special rapporteurs to investigate violations of CEDAW could also encourage implementation of the Convention.\(^{233}\) For example, the Commission on Human Rights established such a rapporteur in 1989 to investigate the health consequences for women and children resulting from traditional practices such as female circumcision and to report to a sub-committee created to investigate such practices.\(^{234}\)

Most recently, the Commission on Human Rights appointed a special rapporteur to investigate violence against women.\(^{235}\) The Commission on the Status of Women, in conjunction with the Commission on Human Rights, could appoint additional thematic rapporteurs with mandates to investigate and report violations of gender equality, to receive

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\(^{231}\) Id. See also Donner, *supra* note 193, at 250.

\(^{232}\) Meron, *supra* note 221, at 214.


\(^{234}\) Meron, *supra* note 221, at 215–16. The rapporteurs' mandates could cover both the implementation efforts in specific countries and individual provisions or articles in the Convention in particular geographic regions or worldwide.

information from U.N. Member States and intergovernmental and nongovernmental organizations, to respond to allegations of serious violations, and to recommend actions to prevent continuing and future violations. The possibility of falling under the investigation of special rapporteurs may very likely encourage States Parties to increase their efforts to implement the Convention and improve the status of women, rather than implementing the terms of the Convention only on paper.

**G. The Bifurcation of Women's Rights from Other Human Rights**

Another concern with CEAFDAW is that it further segregates women's rights from the more mainstream, gender-neutral human rights instruments and structures in the U.N. system. Many human rights issues specific to women have been neglected in such international human rights documents and U.N. organizations, and this argument holds that efforts should be directed toward including the concerns of women in these pre-existing instruments and the mainstream U.N. structure, instead of creating an entirely separate system to address women's rights.

Bifurcation is the result of several convergent factors, including the historic practice of gender discrimination within the several U.N. Member States, the traditional distinction between public and private spheres delimiting governmental responsibility, the focus of NGOs on issues affecting primarily males, and the geographical separation of the U.N. agencies concerning women's rights from those concerning mainstream human rights. The primary historical reason for the bifurcation of women's human rights issues is predicated upon the fact that the international conventions, and the United Nations system itself, have been created by the collective will of the States. The State governments have been dominated by males, who benefit from the subordination of women and "are largely bound by custom and have a tendency to perpetuate usual practices," such as the traditional practices of gender discrimination. However, custom and tradition should not be accepted

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236. Meron, supra note 221, at 215–16.
238. See Hearing 2, supra note 2, at 82 (statement of Felice Gaer, Executive Director, International League for Human Rights).
as a justification enabling Member States to neglect the human rights of women.\textsuperscript{240}

Another reason for bifurcation is that gender discrimination issues are often perceived by national governments as private matters outside the scope of state responsibility, consequently resulting in the neglect of gender discrimination issues by both the international structure and national governments.\textsuperscript{241} In the words of one commentator, "modern international law rests on and reproduces various dichotomies between the public and private spheres, and the 'public' sphere is regarded as the province of international law."\textsuperscript{242} However, this public/private distinction in both domestic and international law has been increasingly criticized, and is gradually disintegrating. John Gibson notes that "[t]he rule of international law . . . is rapidly penetrating the anachronism of states'.

\textsuperscript{240} Hearing 2, \textit{supra} note 2, at 2 (statement of Senator Jan Meyers). \textit{See also} Hearing 2, \textit{supra} note 2, at 3 (statement by U.S. Representative Patricia Schroeder); Hearing 2, \textit{supra} note 2, at 17 (statement of Arvonne S. Fraser, Co-Director, International Women's Rights Watch).


\textsuperscript{242} Charlesworth et al., \textit{supra} note 109, at 625. Within countries, a social dichotomy exists between the public spheres of life which are usually dominated by men: the legal, economic, political, employment and intellectual realms, and the private sphere of life which is delegated to women: the home, children, and domestic life. The government and legal system draw a distinction between these spheres in determining the appropriateness of state interference; the state may regulate relations between men in the public realm, but stays out of the private relations, particularly between men and women. Similarly, the public/private distinction is carried over into international law, so that relations between states are regulated, but anything that happens in the "domestic sphere" has traditionally not been an appropriate area for international law. \textit{Id. See also} Chinkin, \textit{supra} note 2, at 350–51.

In the major human rights treaties, rights are defined according to what men fear will happen to them, what harms they seek guarantees against. The primacy traditionally given to civil and political rights is directed toward protection for men within public and civil life, that is, their actions with respect to government. This amounts to providing protection to men against the actions of other men. The same importance has not been generally accorded to economic and social rights which are often located in the private sphere, the world of women.

\textit{Id.}
sovereign 'domestic jurisdiction.' The legal basis for mandating such a public/private dichotomy must be reanalyzed and may necessarily be abolished if the goal of gender-neutral human rights for all is to be attained. CEAFAW brings into focus the consequences of this public/private distinction, thereby compelling a reevaluation of this widely observed practice which has contributed to the perpetuation of gender discrimination in both international and domestic spheres of law.

Yet another reason for bifurcation is that

the preeminent trend in international human rights bodies and among the private human rights NGOs has been to work on ending violations against the physical integrity of the person perpetrated by state actors—torture, extrajudicial killings, disappearances. Comparatively little has been done regarding enforcement of prohibitions on discrimination, and especially little has been done on gender discrimination. Put simply, the human rights organizations do not rank the problem very high on a hierarchical list of human rights violations.

As most delegates to international human rights organizations and members of NGOs are male, they may tend to overlook or fail to fully appreciate the significance of issues mainly concerning women. Civil and political issues are of primary concern, often focusing on infractions against male victims. Nonetheless, women's rights are human rights,

243. Gibson, supra note 40, at 42.
244. Hearing 2, supra note 2, at 37 (statement of Felice Gaer, Executive Director, International League for Human Rights). See also Marsha A. Freeman, "When Will 'Human' Rights Expand to Include Women?" STAR TRIBUNE, Feb. 18, 1990, at 35A ("For 40 years women have been invisible in international human-rights movements and experiments in international governance. Indeed, for much longer than 40 years, women have been invisible, except as presumably docile clients, in most global enterprises, from economic development to population policy to political change.

245. See Charlesworth et al., supra note 109, at 621–25.
246. See Freedman, supra note 244. See also Kim supra note 241, at 83. Kim paraphrases Charlotte Bunch's summary of the excuses given by NGOs for not addressing gender-based violations as follows:

1) sex discrimination is too trivial, or not as important, or will come after larger issues of survival that require more serious attention; 2) the abuse of women, while regrettable, is a cultural, private, or individual issue and not a political matter requiring state action; 3) women's rights are not human rights per se; or 4) the abuse of women is inevitable or so pervasive that the consideration of it is futile or will overwhelm other human rights questions.
and should be addressed in mainstream human rights organizations as such.\textsuperscript{247} One commentator predicts that in the near future a "period in which issues of gender discrimination and violations of human rights directed against women will emerge from the cloak of invisibility that has been wrapped around them by mainstream human rights bodies."\textsuperscript{248}

Finally, a fundamental structural reason for bifurcation is the physical separation of CEDAW and the U.N. Commission on the Status of Women, which are located in Vienna, from the other United Nations human rights bodies and secretariat, which are located in Geneva. This separation presents a distinct disadvantage, as CEDAW and the Commission "are the only treaty bodies not serviced by the United Nations Human Rights Center in Geneva."\textsuperscript{249} Their isolation prevents them from working closely with the other human rights organs, and impairs their ability to obtain current information on developments in international human rights and to utilize the expertise of specialists within the other U.N. human rights organs.\textsuperscript{250}

The problems with continued bifurcation of women’s rights from mainstream human rights within the U.N. structure, such as the treatment of women’s rights as secondary to other human rights and less funding, staff, facilities and resources allocated to agencies addressing women’s rights, are valid concerns. Concerted action must be taken to ensure that women’s rights are effectively incorporated into the mainstream instruments and system and that violations are treated as seriously as other human rights violations.

Several suggestions for achieving such integration are made in the following paragraphs. However, this author suggests that the problem of violations of rights primarily affecting women optimally should be addressed through a broad range of mechanisms. Such a broad-ranging approach advocates both the use of mainstream mechanisms and instruments to address women’s rights as an integral part of the whole body of human rights, and the use of discrete instruments which enable the focus of attention upon the specific problems of women due to


\textsuperscript{247} Hearing 2, supra note 2, at 42 (statement of Amnesty International USA).

\textsuperscript{248} Hearing 2, supra note 2, at 26 (statement of Felice D. Gaer, Executive Director, International League for Human Rights).

\textsuperscript{249} Donner, supra note 193, at 251.

\textsuperscript{250} See also Meron, supra note 221, at 215; Donner supra note 193, at 251.
gender discrimination, such as CEAFDAW, CEDAW, and the Commission on the Status of Women.

The Convention highlights those issues affecting women that have been neglected for decades in other human rights instruments and focuses international attention directly upon these issues in a manner that simply melding them together with other human rights instruments would not achieve. It ensures that States Parties act affirmatively to redress the unequal status of women within their countries, that they will be accountable to the international community for their action or inaction, and that inaction concerning women's rights cannot be justified with the excuse that other issues are more important or pressing and need be addressed first. The Convention provides a comprehensive instrument around which NGOs can organize their strategies to improve the status of women both domestically and internationally. Finally, it speaks to women resoundingly and unequivocally of their internationally recognized rights to equality with men and full status as human beings.

Accordingly, the United Nations and its Member States must actively seek to encourage the ratification of CEAFDAW by all nations to ensure that the Convention becomes a truly universal standard of nondiscrimination against women. It is now widely accepted that “[t]he ratification of international human rights treaties is critical to the worldwide observance of human rights and fundamental freedoms. The United Nations General Assembly and Commission on Human Rights have repeatedly emphasized the importance of ratification and have frequently encouraged states to ratify the relevant international instruments.” With this in mind, the Commission on Human Rights formed a subcommission whose purpose is to develop means of encouraging ratification of international human rights treaties. The United Nations should utilize such a mechanism to promote the ratification of CEAFDAW and should actively explore new methods by which Member States might be encouraged to ratify.

In addition to utilizing CEAFDAW and other instruments and agencies specifically addressing women's rights, improvements must be made in the mainstream U.N. system to incorporate issues more specific to women. One method of bringing women's issues into the mainstream human rights arena is to focus the attention of other United Nations bodies on violations against women's rights. Illustratively, the World Health Organization (WHO) long ignored the issue of female circumci-

251. Weissbrodt, supra note 106, at 418.
sion in eastern Africa, a process which causes the death of thousands of young girls and the mutilation of hundreds upon thousands more every year. Finally, however, in 1987 WHO undertook a study of female circumcision and its terrible health consequences, thereby drawing international attention to this systematic mutilation of women and girls.

More recently, the Commission on Human Rights adopted a resolution directing the U.N. human rights agencies to integrate women's rights into their work, suggesting the appointment of a special rapporteur to investigate gender-based violence, requesting all other special rapporteurs to include human rights violations against women in their reports, and inviting states to include gender-disaggregated data in the information they provide. If all bodies of the United Nations become resolved to consider gender discrimination a serious human rights violation and to call for appropriate remedial action to be taken, other mainstream human rights organizations, both official and private, will be encouraged to address gender discrimination as well.

252. Hearing 2, supra note 2, at 148 (statement of Paula Dobriansky, Deputy Assistant Secretary, Bilateral and Multilateral Affairs, Bureau of Human Rights and Humanitarian Affairs).

253. Hearing 2, supra note 2, at 148 (statement of Paula Dobriansky, Deputy Assistant Secretary, Bilateral and Multilateral Affairs, Bureau of Human Rights and Humanitarian Affairs).

254. Sullivan, supra note 91, at 154, 159. The 1993 World Conference on Human Rights also recommended the integration of women's rights into the mainstream U.N. human rights system.

To this end, it recommended increased cooperation among the [Commission on Human Rights], the Committee on the Status of Women, the Committee on the Elimination of Discrimination against Women, the U.N. Development Fund for Women and the U.N. Development Programme, and improved coordination between the Center for Human Rights and the Division for the Advancement of Women. In addition to these general directives, the conference called on the treaty-monitoring bodies to disseminate information that women need to be able to use the existing implementation procedures, and to incorporate gender-specific information into their deliberations and findings. It encouraged training for U.N. human rights and humanitarian relief personnel to "assist them to recognize and deal with human rights abuses particular to women and to carry out their work without gender bias," an implicit recognition of the Organization's failure to meet these objectives in the past.

Id.

255. Hearing 2, supra note 2, at 149 (statement of Juliette Clagett McLennan, U.S. Representative to the U.N. Commission on the Status of Women). For instance, in 1989, the Human Rights Commission formed a subcommittee and delegated a
In addition, more women should be appointed as representatives and professionals throughout the entire U.N. structure, and particularly within those bodies drafting the international human rights instruments. Upon the insistence of the Committee of Women's Organizations at the 1945 San Francisco Conference, Article 8 of the United Nations Charter was included "to ensure the legitimacy of women as permanent staff members of international organizations." However, currently "[m]ore than two thirds of women at the U.N. are at the bottom of the organization's bureaucracy . . . in large part due to lack of support for change coming from the member states—whose delegations and missions are also male controlled." The appointment of more women to top level positions within the United Nations would serve both to ensure that women's issues are adequately represented and to demonstrate that women are recognized as fully capable of working successfully within the public sphere of life.

Another strategy for bringing women's rights to the forefront of the international arena include grassroots education of women within individual countries to heighten women's awareness both of their rights and of the moral and legal prohibitions against the varied abuses systematically perpetuated against them. Women's organizations exist in nearly every nation, and many provide information and educational activities designed to raise the awareness of women in their respective countries. The educational aspects of international human rights conventions such as CEDAW are an important reason for ratification, as they inform citizens of their rights to protection from human rights violations and of the means to enforce those rights. Expanded international networking of women's groups provides both increased domestic credibility for these organizations and a greater awareness of the efforts that women in other nations are making to improve their status and to

Special Rapporteur to investigate the health consequences of traditional practices such as female circumcision on women and girls.

256. Charlesworth et al., supra note 109, at 622. Article 8 reads: "The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs." U.N. Charter, art. 8.


258. Hearing s, supra note 1, at 106 (statement of the American Association of University Women).

259. Cook, supra note 130, at 174.
RATIFICATION OF CEAFDAW

attain equal rights. Women's organizations help to create the political will within nations to compel governments to address gender discrimination and to take active measures, both domestically and internationally, to remediate such injustice.

V. The Importance of Ratification by the United States

A. Increased Credibility and Influence of U.S. Foreign Policy

The United States should be leading the international fight against gender discrimination, but unfortunately it remains one of the small number of Members of the United Nations which have not yet ratified CEAFDAW. All other nations in the Western Hemisphere have ratified the Convention. This lack of ratification by the U.S. poses problems for United States credibility and influence in international relations and creates a sentiment that "Washington is guilty of hypocrisy" when it calls attention to the human rights violations of other

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260. Hearing 2, supra note 2; at 72 (statement of Arvonne S. Fraser, Co-Director, International Women's Rights Action Watch).

261. Hearing 2, supra note 2, at 73 (statement of Arvonne S. Fraser, Co-Director, International Women's Rights Action Watch). For example, women have formed an international organization in Africa called the Inter-African Commission, to pressure their countries to abolish the practice of female circumcision and other acts of violence against women. Hearing 2, supra note 2, at 149 (statement of Juliette Clagett McLennan, U.S. Representative to the U.N. Commission on the Status of Women).

In addition, as religion is often used as an excuse to perpetuate abuse of women and gender discrimination, individual scholars and women's organizations are undertaking studies of religious doctrines in order to modernize and update traditional practices. Most of these traditions did not originate in religious doctrine, but were combined with religious precepts through outdated cultural practices of discrimination which are no longer justifiable. See Hearing 2, supra note 2, at 73 (statement of Felice D. Gaer, Executive Director, International League for Human Rights).

262. Hearing 1, supra note 1, at 3 (statement of Senator Paul Simon).

263. Letter from Warren Christopher, Secretary of State, to Senator Claiborne Pell, Chairman of the Senate Committee on Foreign Relations 2 (Sept. 13, 1994).

264. Uli Schmetzer, China: Washington Guilty of Hypocrisy on Human Rights, Cm. Thm., June 8, 1994, at 2. Schmetzer cited the lack of ratification of CEAFDAW by the United States and ratification by China as one of several areas where China's human rights record supersedes that of the United States. See also Hearing 3, supra note 5, at 14 (statement of Jamison S. Borek, Deputy Legal Advisor, Department of State). Ms. Borek noted that

[n]ot ratifying the Convention hampers our ability to work specifically in the area of women's rights, and also, more generally, in human rights.
nations. U.S. reticence to ratify CEAFDAW also jeopardizes its power to influence future international developments and mechanisms concerning the status and rights of women. For example, the United States was one of the few nonratifying countries to attend the Fourth World Conference on Women in September 1995 in Beijing, China. Failure to ratify CEAFDAW impacts the credibility afforded United States diplomats, who frequently have difficulty representing the U.S. in international forums because their country has proven so reluctant to support a major international human rights convention. Ratification of the treaty could provide U.S. "diplomatic negotiators a more solid, more formal, and more visible backing when broaching this subject with their counterparts in foreign capitals, at the United Nations, and in other international settings."

The foreign service and State Department recently have begun to focus greater attention on issues of gender discrimination and abuse. In 1989 the State Department added a section specifically concerning violence against women in its annual Country Reports on Human Rights. Paula Dobriansky of the State Department Bureau of Human Rights and Humanitarian Affairs notes that the Department is concerned primarily with specific discriminatory actions directed against women, whether committed or tolerated by governments, including discriminatory legislation. Generally, these governmental abuses may take two principal forms—physical abuse and torture or denial of equal protection under the law, where-

We are often accused of being hypocritical, of having a double standard because we do not join these conventions. Because we do not join them, we cannot really invoke their provisions as an international norm because it is too easy then to criticize us for not having joined them.

Id.

265. Lois A. West, Improve the Lot of Women Worldwide, MIAMI HERALD, July 25, 1994, at 13A. West comments that "[i]t is an embarrassment that such a powerful country has yet to demonstrate its commitment to women in the international arena." See also Ratify Women's Rights, CHRISTIAN SCI. MONITOR, Oct. 3, 1994, at 18:

Ratifying the treaty will strengthen the position of the US as an international champion of human rights. It will also place the US on an equal footing with other nations at next year's UN Fourth World Conference on Women, to be held in Beijing, signaling to the world that the US takes the "moral imperative" of women's rights seriously.

266. Hearing 1, supra note 1, at 40 (statement of Senator Rudy Boschwitz).
by the state treats men and women differently solely because of their respective gender. Both of these activities, in our view, are impermissible.267

These actions taken by the United States to promote worldwide equality for women are commendable and should be encouraged and expanded. However, officials representing the United States in the international arena who remonstrate against gender discrimination in other countries appear hypocritical, because the U.S. continues to refuse ratification of the most important and widely supported international agreement addressing the rights of women. The U.S. Department of State and its foreign officers would appear much more credible in their expressions of concern for women's rights if the United States demonstrated its unqualified support for the elimination of gender discrimination by becoming a member of CEAFDAW.

The concluding documents of the Commission on Security and Cooperation in Europe (CSCE) Vienna/Helsinki agreements recommended ratification of the Convention, and as a signatory, the United States should uphold this commitment.268 As President Carter stated in his message to the Senate, United States ratification of the Convention "would make clear at home and abroad the commitment of the United States to eliminate discrimination against women."269 Arvonne S. Fraser, Co-Director of International Women's Rights Action Watch, testified to Congress that U.S. ratification of the treaty "will be a strong signal that this country does pay attention to the female half of its citizenry and to the women of the world."270

B. Opportunity to Influence the Development of International Human Rights Law and to Designate a U.S. Nominee to CEDAW

Ratification of the Convention would give the United States an opportunity to nominate an expert to sit on CEDAW, the body

267. Hearing 2, supra note 2, at 116 (statement of Paula Dobriansky, Deputy Assistant Secretary, Bilateral and Multilateral Affairs, Bureau of Human Rights and Humanitarian Affairs).
268. Hearing 1, supra note 1, at 94 (statement of U.S. Representative John Edward Porter).
269. Message from the President, supra note 44.
270. Hearing 1, supra note 1, at 74 (statement of Arvonne S. Fraser, Co-Director, International Women's Rights Action Watch).
monitoring State compliance with the Convention. Although the members of the Committee are independent of their respective nations, nominating an expert to CEDAW would allow the U.S. to have some influence over the views represented on the Committee. This is important if the United States desires to participate in shaping the international legal standards to which it may be held responsible in the future, for it has been established that not only nations, but also international agencies established by international human rights instruments, contribute to the development of international human rights law.

Professor John Gibson writes that treaty bodies established by human rights conventions, such as CEDAW, "are legal authorities with considerable autonomy which also generate progressive international human rights law," and that each "provides for its own procedural law, which is essentially consistent among the treaty bodies but also illustrative of the progressive nature of international human rights law." Participation on the Committee is crucial for the United States to be able to influence the development of both international legal principles pertaining to the

271. See Christopher, supra note 263. Secretary of State Christopher writes:

Ratification of the Convention at this time would serve both to underscore our commitment to women's rights and to enhance our ability to protect and promote those rights internationally. . . . In particular, participation by the United States in the work of the Committee on the Elimination of Discrimination Against Women, which oversees implementation of the treaty by States Parties, would provide an opportunity for the United States to play an even more active and effective role in the articulation and advancement of the principles of non-discrimination and equality for women around the world.

Id.

272. Gibson, supra note 40, at 51. See also Stewart, supra note 65, at 1183–84. Stewart writes of the virtues of U.S. ratification in 1992 of the Covenant on Civil and Political Rights, which equally pertain to future U.S. ratification of CEDAW:

Not only does U.S. adherence reflect and reinforce a long-standing national commitment to those values, it will also enhance the U.S. role in protecting and promoting the rule of law and democratic ideals internationally. . . . [R]atification strengthens the ability of the United States to influence the development of appropriate human rights principles in the international community and provides an additional and effective tool for efforts to improve respect for fundamental freedoms in many problem countries.

Id.

273. Gibson, supra note 40, at 51.

274. Gibson, supra note 40, at 52.
rights of women and procedures to review the actions of States Parties for the effective implementation of CEAFDAW. 275

U.S. ratification of the Convention would also allow the United States to assist in improving the effectiveness of CEAFDAW. For example, the United States might urge the expansion of time during which CEDAW annually convenes, lobby for a more adequate and effective secretariat and other resources for CEDAW, encourage the appointment of special rapporteurs to investigate violations of specific Convention provisions, push for the addition of an optional protocol to allow CEDAW to consider individual complaints and communications against States Parties that have agreed to it, and improve coordination between CEDAW and other U.N. human rights bodies.

C. Recognition of Women's Rights as Human Rights and the Need for Greater International Promotion of Women's Equality

United States ratification and support of CEAFDAW would be a powerful step toward the universal recognition of women's rights as human rights and would provide increased momentum to the international movement for women's equality. 276 Aside from the limited progressive measures noted in this article, women's rights have historically been neglected in international human rights discussions, documents, and implementation mechanisms, both in the United States and around the world. 277

275. *Hearing* supra note 1, at 105 (statement of Amnesty International USA).
276. U.S. ratification of CEAFDAW and the other international human rights conventions would also greatly contribute to the achievement of universal human rights principles and international human rights law. Gibson notes that "the United States' non-ratification of most of the covenants is a major drawback in the global enhancement of [international human rights] law." Gibson, supra note 40, at 58.
277. Rhoodie, supra note 2, at ix. Up until the 1970s, women's issues were not discussed outside of the Commission on the Status of Women and the Economic and Social Committee. Linda Hossie, *Groups Pressure U.N. on Women's Rights*, *Plain Dealer*, Nov. 26, 1992, at 7G. This neglect of women's rights as human rights persists. Hossie notes that hundreds of women's organizations mobilized to correct what they saw as "a glaring omission by organizers" of the U.N. conference on human rights in 1992. *See also* Freeman, supra note 244; Beverley Earle & Gerald Madek, *An International Perspective on Sexual Harassment Law*, 12 *Law & Ineq.* J. 43, 71 (1993) ("The United Nations, though a leader in many areas, has never been a leader in women's rights. Concerns over international boundaries, war, and peace have consumed the young organization and left to the periphery concerns of women.").
This failure to take into account women's perspectives still persists in current negotiation, formulation, and interpretation of mainstream international human rights law.278 U.S. Representative Gus Yatron has testified that, although human rights concerns have been institutionalized as an important component of U.S. foreign policy,

U.S. policy-makers and non-governmental human rights organizations focus most of their efforts on regimes which use repression as an instrument to maintain total control of the countries they govern. Our efforts, however, have fallen short on concentrating much needed attention on the extent to which governments have institutionalized repression against women.279

CEAFDAW helps to address that deficiency, highlights the pervasive worldwide discrimination against women and its deleterious effects, and provides a first step toward eradicating gender discrimination and its effects. The United States should, therefore, ratify and actively support CEAFDAW, thereby embracing the redress of wrongs specific to women, as well as gaining a forum from which to raise issues concerning women in mainstream international human rights organizations.

U.S. ratification of CEAFDAW would also provide a powerful force behind the international movement to improve the status of women. The United Nations General Assembly has recognized the importance of widespread ratification of international human rights documents to ensure that human rights are observed and respected:

It is of paramount importance for the promotion of human rights and fundamental freedoms that member States undertake specific obligations through accession to or ratification of international instruments in this field; consequently the standard setting work within the United Nations system in the field of human rights and the universal acceptance and implementation of the relevant international instruments should be encouraged.280

278. See Cook, supra note 95, at 672.
279. Hearing 2, supra note 2, at 1 (statement of U.S. Representative Gus Yatron).
United States ratification of CEAFDAW would lend weight to the acceptance of the prohibition of gender discrimination as an international legal norm, contributing to the development of international law in this area.281

D. Continuity of U.S. Support for the International Equality of Women

The United States should ratify CEAFDAW in order to demonstrate its continued and unqualified support for improving the status and equality of women throughout the world.282 Such support would be consistent with previous U.S. efforts in the international political arena to promote women’s rights and end discrimination against women. As noted above, the United States signed and ratified the Convention on the Political Rights of Women nearly two decades ago.283 The United States has successfully introduced several important initiatives in the United Nations Commission on the Status of Women. The U.S. was active in drafting CEAFDAW, and voted for its adoption in the U.N. General Assembly in 1979.284 By the end of 1989, forty-three percent of the American professionals in the Secretariat of the United Nations were female.285

The United States has worked to promote “the systematic integration of women’s issues into UN programs, the training of UN personnel to ensure sensitivity and competence in addressing gender-based abuses, and the appointment of more women to positions of responsibility in the UN.”286 The U.S. Agency for International Development.

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281. Zearfoss, supra note 81, at 942 n.199.
282. See, e.g., Earle & Madek, supra note 277, at 90. These authors state that U.S. ratification of CEAFDAW would be “an important symbolic step” in providing leadership on the issue of sexual harassment at the international level. Id. See also Hearing 3, supra note 5, at 64-65 (statement of Bernard Hamilton, Director, Minority Rights Group). Mr. Bernard states that “[t]he United States must ratify the Women’s Convention in order to play an effective role in the international protection of women’s rights and to maintain its moral and political authority on these issues in the international community.” Id.
284. Hearing 1, supra note 1, at 76 (statement of International Women’s Rights Action Watch).
286. Christopher, supra note 263.
(USAID) gives assistance to developing nations for programs to promote women's rights in development.\(^{287}\) The United States also promotes women's organizations and advances women's rights throughout the world by funding various programs, such as literacy and health care projects and programs to assist refugee women.\(^{288}\) The annual reports of the State Department on the human rights situations in countries around the world contain a section devoted particularly to gender discrimination, from which a publication has arisen entitled Human Rights Abuses Against Women: A Worldwide Survey.\(^ {289}\) The ratification of CEAFDAW would be a clear demonstration of the United States' continued support of the international rights and equality of women.

**E. The Inspiration of Other Progressive U.S. Measures**

United States ratification of CEAFDAW would inspire further action within the U.S. for the promotion of women's equality both domestically and abroad, and the U.S. government could take measures in light of the Convention to lend support to the international movement for women's rights. For example, Congress and the administration would be encouraged to reform legislation in order to come into compliance with CEAFDAW provisions. The United States would then be able to remove reservations or restrictive interpretations of those provisions.\(^{290}\) Other States Parties have reformed their domestic laws to come into compliance with the Convention, and the U.S. should not be seen to do less.\(^{291}\) United States ratification of CEAFDAW would also provide

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\(^{287}\) *Hearing 1, supra* note 1, at 48 (statement of Alan Kreczko, Deputy Legal Advisor, Department of State).

\(^{288}\) Christopher, *supra* note 263.

\(^{289}\) *Hearing x, supra* note 1, at 75 (statement of Arvonne S. Fraser, Director, International Women's Rights Action Watch).

\(^{290}\) Some commentators have suggested that implementing legislation be submitted to the Senate simultaneously with human rights treaties, in order to prevent delay in passing implementing legislation, and to permit the U.S. to make as few reservations, understandings and declarations to the treaties as possible. See, e.g., Stewart, *supra* note 65, at 1206–7. These are unquestionably desirable goals; however, under the current system of ratification with reservations, such a step could prolong debate and delay ratification of human rights treaties to an even greater extent than enactment of implementing legislation.

\(^{291}\) For example, Japan passed the Equal Employment Opportunity Act of 1985 in part to bring its laws in line with the Convention. Michael S. Bennett, *Gender-Based Employment Discrimination in Japan and the United States*, 15 LOY. INT'L & COMP. L.J. 149, 160 n.69 (1992). Finland also drafted a new law providing for gender equality after it ratified the Convention:
assurance that domestic laws prohibiting sex discrimination could not deteriorate in contravention of the Convention. The U.S. could also establish a domestic agency which, in cooperation with various NGOs, would monitor human rights violations in the U.S. under CEAFDAW and other human rights treaties, review progress toward remedying specific problems, and prepare requisite periodic reports to CEDAW and the other human rights committees.

As another example of the potential influence of CEAFDAW, the State Department has recognized the need to heighten public awareness of abuses against women and the concomitant need for information documenting these abuses, and could utilize the Convention as a vehicle to achieve these goals. As one such measure, the section on gender discrimination of the annual U.S. Department of State human rights reports could be based on the Convention, in order to encourage the Convention's implementation in other countries and its recognition as an international standard. The U.S. Foreign Service Institute, which gives a course on human rights to foreign service officers, might expand the course to provide more focus on issues concerning human rights abuses specifically against women, using the Convention as a standard.

Furthermore, the United States could provide greater assistance to foreign governments in terms of addressing domestic institutional reforms, implementing more effective means of enforcing domestic law, and studying the domestic legal system to reevaluate which features promote or inhibit gender equality. The U.S. could also enact trade

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Thanks to the Convention there was pressure on the Government from two sides: the Finnish people, organizations and groups and the National Equality Council from inside, and UN expectations from outside. Finnish pressure groups did not hesitate to argue that the international image of the Finnish Government would be tarnished if the necessary changes in the law were not enacted and the Convention ratified soon . . .

Pietilä & Vickers, supra note 38, at 128.
292. Zearfoss, supra note 81, at 941.
293. See, e.g., Ginger, supra note 83, 1388–89. Both Norway and Italy have established similar agencies.
294. Hearing 2, supra note 2, at 147 (statement of Paula Dobriansky, Deputy Assistant Secretary, Bilateral and Multilateral Affairs, Bureau of Human Rights and Humanitarian Affairs).
295. Hearing 2, supra note 2, at 17–18 (statement of Arvonne S. Fraser, Co-Director, International Women's Rights Watch).
296. Hearing 2, supra note 2, at 116 (statement of Paula Dobriansky, Deputy Assistant Secretary, Bilateral and Multilateral Affairs, Bureau of Human Rights and Humanitarian Affairs).
297. Hearing 2, supra note 2, at 147 (statement of Paula Dobriansky, Deputy Assistant Secretary, Bilateral and Multilateral Affairs, Bureau of Human Rights and Humanitarian Affairs).
boycotts and economic sanctions and withhold financial assistance and other types of aid, in protest of egregious human rights violations against women, just as it has done in protest of other human rights violations. Finally, the United States can continue to promote women’s rights by promoting the growth of democracy around the world. The ratification of CEAFDAW would provide a model for United States action in these and other areas in which it confronts gender discrimination.

F. Grassroots Support for Ratification

The United States government should recognize the widespread support of its citizens for ratification of CEAFDAW. There is broad-based support for U.S. ratification from civic, religious, legal, human rights, and women’s organizations. Associations such as B’nai B’rith


299. Hearing 2, supra note 2, at 118 (statement of Paula Dobriansky, Deputy Assistant Secretary, Bilateral and Multilateral Affairs, Bureau of Human Rights and Humanitarian Affairs). This commentator states that the U.S. should continue to foster the development of full-fledged democracies, with a system of ‘checks and balances’ to protect the civil and political rights of citizens. In such countries, in addition to the structural limitations on governmental power, impartial and independent judiciaries provide another safeguard of individual liberties and stand ready to strike down abuses of governmental authority, whether they be of an executive or legislative variety. This democratic institution-building and the “rule of law” is one of our best hopes for guaranteeing the rights of everybody—women, men and children.


300. Such organizations include: American Association of Retired Persons; American Association of University Women; American Baptist Churches; American Bar Association; Americans for Democratic Action; American Federation of Teachers; American Jewish Committee; American Jewish Congress; American Medical Women's Association; American Nurses Association; American Psychiatric Association; American Society for International Law; American Veterans Committee; Amit Women; Amnesty International; Anti-Defamation League of B'nai B'rith; Association for Women in Psychology; Association for Women in Science; Black Women's Agenda; B'nai B'rith International; B'nai B'rith Women; Center for Policy Alternatives (Women's Economic Justice Center); Church Women United; Committee for International Human Rights Inquiry; Episcopal Church, USA; Evangelical Lutheran Church in America; Emunah Women; Federally Employed Women; Grey Panthers;
Women have established widespread educational and promotional campaigns to encourage public support for U.S. ratification of the Convention. A conference on the status of women which convened in Iowa in 1990 attracted over 800 participants, demonstrating widespread recognition of the need to address gender discrimination in the United States. The American Bar Association (ABA) has also given strong support to U.S. ratification of the Convention. The House of Delegates of the ABA adopted a resolution in 1984 to this effect, and has undertaken various initiatives to promote the Convention.
extensive studies which conclude that no significant legal impediments exist which would bar U.S. ratification.\textsuperscript{302}

**Conclusion**

The Convention on the Elimination of All Forms of Discrimination Against Women "is the first international human rights convention that specifically focuses on the rights of women as human rights. This aspect of human rights has been missing from the human rights agenda."\textsuperscript{303} CEAFDAW provides much needed international support for the growing movement for women’s rights around the world. Concededly, several issues remain to be resolved concerning U.S. ratification of CEAFDAW, its international implementation, and its significance within the U.N. structure as a whole. Some difficulties are to be expected with an international human rights convention that aspires to universality and at the same time seeks to transform society to eliminate the inequitable environment that presently persists for half of the population. As noted in this article, such shortcomings with the Convention, its implementation, and the U.N. system can be remedied and should not be permitted to stand as excuses for nonratification of the Convention.

The United States could lend its weight to CEAFDAW through ratification and by significant and substantive efforts to implement the treaty. Juliette Clagett McLennan, U.S. Representative to the U.N. Commission on the Status of Women, testified that

\begin{quote}

an international body such as the United Nations is not an implementing body. The only way that we and other member states can see progress made through a U.N. body is for each one of us to take a consensus resolution and make sure that it is translated into action in each of our countries.\textsuperscript{304}
\end{quote}

The United States must provide international leadership in the movement for women’s equality through ratification of CEAFDAW and ensuring its effective implementation within the United States. Greater pressure from the United States for global implementation of CEAFDAW would also have significant effects for women’s rights

\begin{footnotes}
\item[302] Hearing 1, supra note 1, at 68 (statement of Catherine E. Bocskor, Vice Chair, Section on International Law and Practice, American Bar Association).
\item[303] Hearing 1, supra note 1, at 107 (statement of American Association of University Women).
\item[304] Hearing 2, supra note 2, at 146 (statement of Juliette Clagett McLennan, U.S. Representative to the U.N. Commission on the Status of Women).
\end{footnotes}
internationally. The United States should ratify the Convention in order to help improve the status of women throughout the world, to ensure that the U.S. is included in the process of developing emerging international human rights legal principles, and to maintain the credibility of U.S. foreign policy when addressing human rights issues in the international arena. At the present time, equality between women and men is still but a distant vision. However, through the persistent efforts of concerned people around the world working in concert to improve the lot of women, the dream of gender equality shall indeed one day be realized. §