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POINT/COUNTERPOINT

Treaty for the Rights of Women Deserves Full U.S. Support

by Nora O'Connell and Ritu Sharma*

America will always stand firm for the non-negotiable demands of human dignity: the rule of law; limits on the power of the state; and respect for women; private property; free speech; equal justice; and religious tolerance," stated President Bush in his 2002 State of the Union address.

A year later, the United States remains disturbingly absent from the list of 170 countries that support international standards for basic human rights for women. In an embarrassing irony, the United States stands alone as the only industrialized nation that has not ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Other countries in our rank include Iran, Sudan, Somalia, and Afghanistan.

Background on CEDAW: Procedural Aspects and the Effect of Ratification

CEDAW affirms basic human rights for women and girls and is a tool to end abuses against them — physical, sexual, and legal. It creates international standards for women's human rights and provides a blueprint for nations to improve women's lives by protecting them from violence and trafficking; increasing access to education and economic opportunity; and securing legal rights.

Ratifying nations are required to file reports on how they are complying with their treaty obligations, outlining both challenges they face as well as progress they make. The reports are reviewed by a committee of 23 experts nominated and elected by states party to the treaty. The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) provides recommendations to countries based on their specific situations. The enforcement mechanisms for this treaty are the same as for many others that the U.S. has ratified: political will and international pressure.

The treaty commits ratifying nations to overcoming barriers to discrimination against women in the areas of legal rights, education, employment,

In 1979, the United Nations adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) at the UN Decade for Women Mid-Decade Conference in Copenhagen, Denmark. According to this treaty, countries that ratify or accede to it must take all appropriate measures to ensure the full development and advancement of women in all aspects of life, including the political, educational, employment, health care, economic, social, legal, and marriage and family relations spheres. CEDAW was passed by the UN General Assembly in 1981, and as of June 18, 2002, has been signed by 97 countries, with 170 ratifications, accessions, or successions. The United States became a signatory on July 17, 1980. This past year marked the closest the United States Senate has ever come to ratifying CEDAW, when the treaty was voted favorably out of the Senate Foreign Relations Committee by a bipartisan vote of 12 to 7 on July 30, 2002. However, the full Senate was unable to consider the Treaty before the end of the 107th Congress, so the treaty will revert back to the committee for further action in the current Congress.

health care, politics, and finance. Like all human rights treaties, CEDAW sets benchmarks within traditional enforcement mechanisms that respect sovereignty and democracy. In many of the 170 countries that have ratified the treaty, it has guided the passage and enforcement of national law.

Advocates have used the treaty to urge their governments to take actions such as investing in education for girls or passing laws to curb trafficking of women. Further, some countries have incorporated provisions of the treaty directly into their national law, and courts have cited CEDAW in decisions ranging from requiring protection from domestic violence to enabling women to inherit property.

The Current Impact of CEDAW

CEDAW has made a tangible impact on women's lives in countries where it has been ratified. In Turkey, CEDAW was used to rescind a government policy that forced female students to undergo virginity exams. In Tanzania, the High Court cited CEDAW in striking down a law that prevented women from inheriting clan land from their fathers. In their decision the Court stated, "The principles enunciated in the above named documents [including CEDAW] are a standard below

which any civilized nation will be ashamed to fall." In Colombia, courts have cited CEDAW in their rulings to provide legal recourse to female victims of domestic violence. The state now ensures protection for all such women. India's ratification of CEDAW was followed by an increase in girls' education.

Yet, much remains to be done. A strong U.S. voice and influence are essential to help halt sexual trafficking of women, to bring women into the economic mainstream, and to ensure that all girls and women have access to education and health care. The United States has much to offer as new democracies look for guidance on how to bring women's rights into the 21st century. The United States can work with other countries through the CEDAW Committee to make women full economic and political contributors — if it is at the table.

Ratification of CEDAW in the United States

Last July, for the first time in eight years, the U.S. Senate took action on the treaty. The Senate Foreign Relations Committee voted the treaty favorably out of committee with bipartisan

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support. With a new Senate, it will go back to the committee for approval before consideration by the full Senate. Approval requires a two-thirds vote, or support from 67 senators. Ratification does not require consideration by the House of Representatives. It is long past time for the United States — as a world leader on human rights — to ratify this treaty.

CEDAW, like any treaty, is not a silver bullet. Just as the 1964 Civil Rights Act did not end racism in the United States of America, this treaty will not end human rights abuses against women and girls around the world. But like that landmark legislation, it will provide a roadmap for those countries that want to improve the status of women as well as legal recourse for victims when needed.

By setting an international standard that countries have voluntarily agreed to, CEDAW serves as a powerful self-help tool for supporters of women's human rights to urge their governments to do better. We have seen this work with other treaties. The U.S. ratification of the UN Convention to Eliminate All Forms of Racial Discrimination in 1994, for example, amplified the U.S. voice in the successful international drive to end racial apartheid in South Africa.

A Cost-Benefit Analysis: The Effects of U.S. Failure to Ratify CEDAW

The failure of the United States to ratify CEDAW allows other countries to continue their neglect of women and undermines the powerful principle that human rights of women are universal across all cultures and religions. Until the United States ratifies, our country cannot credibly demand that others live up to their obligations under this treaty.

Ratification would cost the United States little. Because the United States is a world leader in securing women's human rights in our own country, we are already largely in compliance with the treaty. Also, countries may express "reservations, understandings, and declarations" (RUDs) where domestic laws diverge from the treaty. Reservations note exceptions to specific provisions of the treaty; understandings clarify interpretations where language may be ambiguous; and declarations set the terms for ratification. U.S. federal and state laws generally comply with the treaty, except where noted in the

11 RUDs included by the Senate Foreign Relations Committee.

Specifically, the United States went the extra step of adding an understanding to clarify that the treaty does not create or promote a right to abortion and that in no case should abortion be promoted as a method of family planning, despite the fact that the State Department determined that the treaty is "abortion neutral," and CEDAW makes no mention of abortion.

Concerns about the impact of CEDAW on U.S. sovereignty are equally well addressed in the RUDs. Those include a reservation that preserves individual freedom in private conduct; an understanding on the supremacy of the U.S. Constitution; and a declaration that the treaty is non-self-executing, which means that any changes in U.S. law resulting from CEDAW must go through our normal lawmaking process. The list of RUDs also includes an understanding that the recommendations of the CEDAW Committee, which reviews country reports on their progress implementing the treaty, are purely advisory and cannot compel state parties to take action. Additional RUDs address other potentially difficult issues by clarifying that the United States is not obligated to assign women to combat, conduct comparable work adjustments, or provide paid maternity leave.

Despite the use of language such as "mandates," "requires," and "obligates," the treaty grants no enforcement authority to the United Nations or any other body. It requires only a periodic report and review process. Thus, U.S. ratification of CEDAW would not threaten U.S. sovereignty, but it would provide a universal tool for U.S. diplomats to use with other countries to urge their governments to support women's equality.

U.S. ambassadors serving both Democratic and Republican administrations have cited the negative impact that the lack of U.S. ratification has had on their work. In a letter to Secretary of State Colin Powell from Republican and Democratic members of Congress, ambassadors and diplomats, they state, "we strongly believe that our failure to ratify this treaty has compromised our diplomatic relations. Most troubling, it permits regimes committing violations to distract attention from their own conduct."

Furthermore, U.S. support for CEDAW would significantly strengthen its power as a tool for women worldwide

to help themselves. Dr. Sima Samar, who served as vice chair and minister of women's affairs in Afghanistan after the overthrow of the Taliban and is the current chair of the Human Rights Commission, wrote a letter to Senator Barbara Boxer (D-CA) describing how U.S. ratification will help women in Afghanistan secure human rights as they rebuild their country. She stated that if the United States ratifies CEDAW, "This treaty will then truly be the international measure of rights that any country should guarantee to its women. We will be able to refer to its terms and guidelines in public debates over what laws should say. Your advisors to many of our leaders here will be able to cite its provisions in their recommendations. And perhaps we women will achieve full human rights. . . ."

Ratification of this treaty has been road-blocked by U.S. religious extremists who oppose giving women full partnership with men, and seek to "protect" them in a second-class citizenship status. These ideologues are distorting both the intent and the impact of CEDAW. Opponents claim that putting the treaty into effect here will require gender-neutral textbooks; eliminate same-sex schools; send women soldiers into ground combat; legalize same-sex marriage; replace parental oversight with government rules; and generate an avalanche of lawsuits. None of this scare-mongering is true—contrary to opponents' claims, CEDAW cannot impose any new laws on a country that ratifies it. Further, these specious arguments detract attention from the fundamental ways the treaty actually can and does make a difference, such as improving women's and girls' access to education and health care, and increasing their ability to exercise basic rights such as holding a job, inheriting land, or ending a violent relationship.

The Bush Administration's Approach to CEDAW

CEDAW has historically enjoyed bipartisan support. In fact, in 1993, 68 senators including Republican Senators Orrin Hatch, John McCain, Strom Thurmond, and many others sent a letter to President Bill Clinton urging him to take whatever steps necessary to ratify CEDAW.

Since the Senate Foreign Relations Committee notified the administration of its intention to ratify CEDAW,

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seems unworkable. Some of the uncertainty could be reduced by clearer statements on what principles of the law of war apply to all UN military operations despite their characterization.

Conclusion

The 1994 Convention on the Safety of UN and Associated Personnel is an important step forward in advancing the protection and safety of UN peacekeepers. It creates a regime for the prosecution or extradition of persons accused of attacking UN peacekeepers and other persons associated with operations under UN mandates, which may help counter the impression that UN forces can be attacked with impunity. Due to the relatively short timeframe in which the convention was drafted, many essential criteria are left vague and undefined, resulting in a lack of clarity in its application. Hence, it provides only a preliminary and partial solution to averting and redressing the dangers facing UN personnel in the field.

Protection of UN peacekeeping forces is a priority for both humane and pragmatic reasons. Troop contributing states are unlikely to be willing to send forces to keep the peace in a foreign conflict if they are likely to be attacked. The special protection afforded peacekeeping forces reflects their status as non-combatants, but many peace support missions involve "robust" measures to enforce peace in which it may be difficult to determine at what point UN forces cease to be non-combatants. While the Safety Convention does not expressly mention "peace enforcement" operations, it is in precisely these types of operations that UN personnel are at greatest risk. Further, for political and constitutional reasons no troops have ever served under the full command and control of the UN, and it is unlikely that they will do so in the foreseeable future. From the point of view of the states or ethnic groups that are the targets of the mission, "coalitions of the willing" on coercive peace enforcement operations may seem indistinguishable from combatants.

The responsibility for working out whether a situation is governed by the Safety Convention regime or humanitarian law will lie with the commanders and soldiers in the field, and the criteria on which they must rely are ill defined and probably unworkable in practice. It is difficult to know what regime is applicable to a situation such as Somalia, in which the Geneva Conventions were stated not to apply, yet the UN forces viewed "everyone on the ground in that vicinity [as] a combatant."

The crucial questions of UN liability for violations of humanitarian law and the extent to which UN forces deployed in an area are responsible for preventing imminent violations are also left vague. Respect for UN forces is likely to be undermined if they make no effort to prevent violations of humanitarian law, and it will certainly be undermined if they actively participate in such violations. Most lightly armed peacekeepers will not be in a position to prevent large-scale abuses, but it does not seem right to allow UN forces to stand idly by in circumstances where breaches of humanitarian law are taking place in their area of operations. The Security Convention provides that nothing shall affect the applicability of humanitarian law and universally recognized standards of human rights to UN operations. This does not, however, clarify when humanitarian law applies, or the extent of UN obligations to uphold the relevant norms and principles.

As a compromise document, troop contributors may take some solace from the fact that the troops serving with missions are protected by the terms of the Safety Convention. Although the convention represents an important step forward and accession by all states party to it should be encouraged, it will be ineffective as a means of prosecuting criminals if the criteria by which such crimes are defined remains unclear. ☹

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the Bush administration has sent mixed messages about its support. The administration has twice notified the Senate Foreign Relations Committee that it supports ratification of CEDAW, but a small minority on the far right has been pressuring the administration to change its position, citing objections to elements of the treaty that have already been addressed in the RUDs, or taking the non-binding recommendations of the CEDAW Committee out of context. The administration is now showing signs of yielding to that pressure. In July, the administration cited the need for the Department of Justice to conduct another review of the treaty. It has not been forthcoming with results of that review, or even a timeline.

While U.S. Senate action has been stalled, support for ratification has continued to come from the states. To

date, legislatures in nine states have endorsed U.S. ratification: California, Hawaii, Iowa, Maine, Massachusetts, New Hampshire, New York, North Carolina, and Vermont. The Connecticut State Senate and the House of Representatives in Florida, South Dakota, and Illinois also have endorsed U.S. ratification.

Secretary of State Colin Powell observed, "In today's world, any American secretary of state, male or female, must pay attention to the issues affecting the rights and well-being of women—over half the world's population. Women's issues affect not only women; they have profound implications for all humankind. Women's issues are human rights issues. . . . We, as a world community, cannot even begin to tackle the array of problems and challenges confronting us without the full and equal participation of

women in all aspects of life."

Strong rhetoric on women's human rights is important, but action is more important. With Republican control of Congress, the president's leadership will hold more sway than ever. As a treaty that establishes a badly needed human rights standard for the treatment of women and girls, CEDAW deserves strong U.S. backing. U.S. ratification of CEDAW will give action to President Bush's statement: "A thriving nation will respect the rights of women because no society can prosper while denying opportunity for half its citizens." ☹

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