

1996

Proletariat to Pauper: An Analysis of International Law and the Implications of Imperialism for Equality in Post-Communist Russia

Shannon Keniry

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/auilr>



Part of the [International Law Commons](#)

Recommended Citation

Keniry, Shannon. "Proletariat to Pauper: An Analysis of International Law and the Implications of Imperialism for Equality in Post-Communist Russia." American University International Law Review 11, no. 3 (1996): 475-510.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University International Law Review by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

PROLETARIAT TO PAUPER: AN ANALYSIS OF INTERNATIONAL LAW AND THE IMPLICATIONS OF IMPERIALISM FOR EQUALITY IN POST- COMMUNIST RUSSIA

Shannon Keniry*

"It is no longer acceptable to discuss women's rights as separate from human rights."

—Hillary Rodham Clinton

INTRODUCTION

The fall of communism in the former Soviet Union brought economic, political, and social change to Russia.¹ These changes particularly affected Russian women, who today face increasing violence in their homes and escalating discrimination on the job.² Unfortunately, these women are ill-equipped to combat the negative effects of capitalism because the feminist movement in Russia is weak.³ The Russian femi-

* J.D. Candidate, May 1997, Washington College of Law, American University; B.A., University of California, San Diego. Special thanks to JAC and KC for their tireless support and encouragement and to the *ILJ* staff for invaluable comments.

1. See Hon. Anatoly Alexandrovich Sobchak, *Problems of Economic and Political Stability and Development of Russia in the Post-Communist Period*, 48 CONSUMER FIN. L.Q. REP. 324 (1994) (discussing the stabilization of Russian economics and politics following the collapse of the Soviet Union).

2. HUMAN RIGHTS WATCH, WOMEN'S RIGHTS PROJECT, RUSSIA: NEITHER JOBS NOR JUSTICE, STATE DISCRIMINATION AGAINST WOMEN IN RUSSIA (March, 1995) [hereinafter HR WATCH].

3. See Elizabeth Waters, *The Emergence of a Women's Movement*, in GENDER POLITICS AND POST-COMMUNISM: REFLECTIONS FROM EASTERN EUROPE AND THE FORMER SOVIET UNION 287, 290 (Nanette Funk & Magda Mueller eds., 1993) [hereinafter GENDER POLITICS AND POST-COMMUNISM] (stating that in 1991, the feminist movement in Russia was in its nascent stages). Women, although frustrated by inequities, were rarely spurred to action. *Id.* Russian women demanded improved domestic

nist movement developed primarily as a Soviet state apparatus and never truly addressed the disparity between equality in theory and equality in practice.⁴ The ideals of Western feminists are, for the most part, not shared by Russian women⁵ and are rejected as part of the now defunct communist ideology.⁶ Russian women, thus, must develop their own movement and use it to protect themselves from the consequences of democracy and capitalism in Russia.

This Comment will address the feminist movement in post-communist Russia and how Western feminists may use international law and feminist theory to pressure Russia to implement true equality. Part I traces the feminist movement during the Soviet period and the changes in the movement since the fall of communism. Part II outlines the cultural relativism and universalism debate and explores the feminist response to accusations of cultural imperialism. Part III analyzes international law and leading feminist theories and discusses their application to feminism in Russia. Finally, Part IV recommends that Russian women lead the movement for equality in Russia, and that Western feminists be available to them as sources of information and assistance.

I. HISTORY OF FEMINISM IN RUSSIA

A. THE SOVIET PERIOD

The 1917 Bolshevik Revolution established a new government in Russia, devoted to the ideals of communism.⁷ The new Bolshevik lead-

conditions, rather than equality. *Id.*

4. Larissa Lissytina, *Soviet Women at the Crossroads of Perestroika*, in GENDER POLITICS AND POST-COMMUNISM, *supra* note 3, at 274 (discussing the divergent goals and values between the Soviet and American feminist movements). Much of the Western feminist movement focuses on obtaining the right to work and to be equal in the workplace. *Id.* In contrast, Soviet women equate liberty with the right not to work. *Id.* Thus, an understanding between the two movements is difficult to achieve. *Id.*

5. *Id.* For example, Russian women have the right to free abortion, unlike American women. *Id.* Russian women cannot understand the "pro-life" argument because they live in a country where human life was routinely disregarded for many years. *Id.* at 279.

6. *Id.* The Communist Party used altruistic ideals, such as equality, to promote its own agenda, and therefore, women are no longer impressed with the equality rhetoric. *Id.* The result is a crisis of values and ideals in Russian society today. *Id.*

7. See DAVID MACKENZIE & MICHAEL W. CURRAN, A HISTORY OF RUSSIA AND THE SOVIET UNION 606-10 (1987) [hereinafter MACKENZIE] (describing the initial steps taken by the Bolsheviks after the Revolution). The Bolshevik Party abolished the

ers promised laws that would bring equality to women in the political and economic spheres.⁸ In the first months the Bolshevik Party was in power, it passed laws ensuring women's equality.⁹ Vladimir Lenin, the Bolshevik Party leader, sought to free women from domesticity and to integrate them into the workforce.¹⁰ To that end, the Soviet Constitution, created by the Bolshevik Party, guaranteed equal rights for men and women.¹¹ While the commitment of the Soviet Union to *de facto*

traditional family, the church, and the army in order to set the stage for a socialist society. *Id.* at 609; see Michael J. Bazyler, *The Rights of Women in the Soviet Union*, 9 WHITTIER L. REV. 423, 424 (1987) (describing the Bolshevik theory of equality for women). The Bolsheviks established the "postcard divorce," requiring no grounds and an application to the state through the mail. *Id.* They also established the requirement of mutual consent for marriage, and reformed family law. *Id.*

8. Gail Warshofsky Lapidus, *Sexual Equality in Soviet Policy: A Developmental Perspective*, in WOMEN IN RUSSIA 115 (Dorothy Atkinson et al. eds., 1977); see MACKENZIE, *supra* note 7, at 617 (describing the roles Soviet women played in the Civil War, following the equality established by the Bolsheviks). The Bolshevik Party granted women full legal equality in January, 1918. *Id.* Women provided medical services and fought in combat on every front. *Id.* Women also held positions in army political structures. *Id.*

9. See Rosalie B. Levinson, *The Meaning of Sexual Equality: A Comparison of the Soviet and American Definitions*, 10 N.Y.L. SCH. J. INT'L & COMP. L. 151 (1989) (tracing the historical background of feminism in pre-Soviet Russia and the Soviet Union). The Bolsheviks were the first to establish equality for women in the Soviet Union. *Id.* The primary goal of the Party was to give women full legal and practical participation in society. *Id.* See generally VLADIMIR I. LENIN, *THE EMANCIPATION OF WOMEN; FROM THE WRITINGS OF V.I. LENIN* 63 (New York, International Publishers 1969) (presenting various proposals on freeing women from traditional ties and entering the workforce).

10. See Levinson, *supra* note 9, at 154 (stating that the Bolsheviks sought to achieve equality by providing equal employment, freedom to divorce, and the establishment of state-sponsored child care centers).

11. KONST. SSSR (CONSTITUTION) art. 35 (U.S.S.R.). Article 35 states, "Women and men have equal rights in the USSR. The exercise of these rights is ensured by providing women with opportunities equal to those of men in receiving an education, . . . in labor, remuneration and promotion . . . ; by the creation of conditions enabling women to combine labor and motherhood" *Id.*; see Levinson, *supra* note 9, at 154 (stating that the Soviet government, in efforts to realize its goal of equality, socialized the burdens placed on women by creating kindergartens and by employing professionals to perform household tasks). The Bolsheviks urged equal opportunity in employment and freedom from women's domestic roles. *Id.*; see Bernice Madison, *Social Services for Women: Problems and Priorities*, in WOMEN IN RUSSIA, *supra* note 8, at 307, 308 (acknowledging that Soviet social services existed for women in the Bolshevik era, but arguing that the resources to support the services were insufficient to provide the assistance they promised). The new government, still evol-

equality cannot be doubted, the reality differed vastly from the ideals of Vladimir Lenin and the Bolshevik Party.¹² Women continued to carry the burdens of domesticity¹³ while also being forced to work outside the home.¹⁴

When Josef Stalin came to power, the already weak feminist movement¹⁵ disbanded.¹⁶ As the economy expanded and industrialization ac-

ing in its own right, was unable to enforce the new laws on equality. *Id.*

12. See MACKENZIE, *supra* note 7, at 814 (stating that under Leonid Brezhnev, leader of the Soviet Union 1964-82, 25% of the Communist Party members were women, but very few held influential offices and none were in top Communist agencies); see also Lapidus, *supra* note 8, at 117 (suggesting that Soviet efforts to improve the lives of women lacked centrality, coherence, and organization).

13. Madison, *supra* note 11, at 308; see Lapidus, *supra* note 8, at 116 (discussing the "double burden" placed on Soviet women resulting from the failure of socialized domesticity). Soviet women shouldered the burdens of traditional family responsibilities as well as new economic and political positions. *Id.*; see Bazyler, *supra* note 7, at 423 (stating that the majority of Soviet men did not assist with household chores, while most women worked outside the home in addition to performing household duties). Women comprised more than half the workforce in the Soviet Union, yet most were forced into inferior positions, regardless of their skills. *Id.* For example, female engineers were frequently forced to do work that in other countries is routinely assigned to technicians. *Id.*

14. KONST. SSSR (CONSTITUTION) art. 40 (U.S.S.R.). Article 40 states, "USSR citizens have the right to labor . . . to receive guaranteed work and remuneration for labor in accordance with its quantity and quality and not below the minimum amount established by the State . . . [t]his right is ensured by the socialist economic system" *Id.*; see KONST. RSFSR (CONSTITUTION) art. 37 (Russia) (stating in part that "each person shall have the right freely to dispose of his abilities to work and to choose an occupation"). The Russian Constitution also states that compulsory labor shall be prohibited. *Id.*; see Lissyutkina, *supra* note 4, at 275 (stating labor was compulsory in the Soviet Union). Women were forced into the workforce so the Soviet state could construct the new Communist society. *Id.* Women were a source of cheap labor for the state and were prohibited from objecting to the conditions. *Id.* at 276. Women who protested were fired and then charged with parasitism and risked losing their parental rights. *Id.* Compulsory labor also allowed the State to squelch dissident movements. *Id.*

15. See Lapidus, *supra* note 8, at 120 (discussing the establishment, by the Communist Party, of the Zhenotdel, a Party apparatus designed to mobilize women in support of the Party). The Zhenotdel eventually collided with Party goals because it tended to encourage women to view themselves as people with distinct needs, as opposed to focusing on the needs of the masses. *Id.* at 123. Josef Stalin abolished the Zhenotdel, and effectively crushed the discussion of the special needs of women. *Id.* at 123-24.

16. *Id.*; see Bazyler, *supra* note 7, at 425-26 (stating that under Josef Stalin's rule, Soviet law closely resembled the realities of inequality for Soviet women). Stalin

celerated, however, so too did the need for women to enter the labor force;¹⁷ the role of women in Soviet society became an economic necessity rather than a political ideal.¹⁸ During this time, the Soviet state first established quotas for women in the workforce.¹⁹

After the death of Josef Stalin, women's rights again became a focal point,²⁰ but the movement was erratic.²¹ On the whole, equality for women in the Soviet Union focused primarily on their participation in the workforce.²² As a result, women worked in a variety of industries, but rarely in positions of authority.²³

began a "pro-family" campaign designed to strengthen the Soviet family. *Id.* at 426. It was an essentially pro-male policy that robbed women of independence by abolishing the right to abortion and paternity suits, and making divorce difficult to obtain. *Id.*

17. Lapidus, *supra* note 8, at 124-25.

18. *Id.* at 125.

19. *Id.* See Lissytukina, *supra* note 4, at 274 (stating that quotas existed in every political body under the Communist state). The fight for affirmative action in the United States by American feminists had no counterpart in the Soviet Union because women were already guaranteed representation in political offices. *Id.*; see Mark Trevelyan, *Russia: Russian Women Fight Stereotypes in Election Battle*, Reuter News Service - CIS and Eastern Europe, Oct. 22, 1993, available in LEXIS, World Library, East. Eur. File [hereinafter Trevelyan] (stating that Russian women were guaranteed, through quotas, representation in Soviet political bodies); Levinson, *supra* note 9, at 156 (stating that Josef Stalin placed women in traditional roles by emphasizing the role of women as mothers and wives). The primary duty of Soviet women was bearing and rearing children. *Id.*

20. See Bazylar, *supra* note 7, at 426 (explaining that during the post-Stalinist period, broader rights for women developed). The state reinstated the right to abortion, made divorce easier to obtain and the Constitution guaranteed special protection to women and children. *Id.*; see Waters, *supra* note 3, at 287 (stating that the Soviet state did not ignore the inequalities women experienced, but allowed discussion of them only within narrowly defined limits and in state-controlled publications).

21. See Levinson, *supra* note 9, at 157 (discussing the short-lived feminist debates and movements in the 1970s). Some Soviet feminist groups denounced Western feminism as divisive and sought to relieve the burden placed on women by removing their obligation to work outside the home. *Id.* Others believed radical change in the roles and attitudes of men and women had to occur. *Id.*

22. See Lapidus, *supra* note 8, at 137 (stating that while Soviet ideology was committed to equality, women never achieved equality in access to authority).

23. See Bazylar, *supra* note 7, at 428 (stating Soviet women never received social and economic equality from the State). For example, the elite members of the Communist Party were always male. *Id.* One woman served in the Soviet Politburo, but she had no power, reflecting the unwillingness of the State to give women positions of authority. *Id.*; see Janet G. Chapman, *Equal Pay for Equal Work?*, in *WOMEN IN RUSSIA*, *supra* note 3, at 225 (stating that Soviet women earn on average less than

B. THE POST-COMMUNIST PERIOD

The dissolution of the Soviet Union worsened the position of women²⁴ and the feminist movement in Russia.²⁵ Despite provisions in the Russian Constitution²⁶ and legislation ensuring equality of the sexes,²⁷ women in post-communist Russia are consistently paid less than men for equal work²⁸ and are the last hired for and the first fired from desir-

Soviet men). This earnings discrepancy can be attributed to the role of domesticity in women's lives. *Id.* at 235. A Soviet woman's first duty was always to the home and children, therefore, she was unable to pursue the same career objectives as Soviet men. *Id.*

24. See Victoria Pope, *To be Young and Pretty in Moscow—Careers Often Depend on Cooking Skills and Sex*, U.S. NEWS & WORLD REP., Mar. 28, 1994, at 56 (describing the increase in sexual harassment and exploitation of women in the Russian workforce). The Russian government declared that all new jobs created in the state sector by the democratic change in Russia are reserved for men. *Id.* Thus, many young women secure low paying secretarial jobs in the private sector. *Id.* Most of the time, these jobs require that the women be young, pretty, scantily dressed, and willing to engage in sexual intercourse with their bosses and business clients. *Id.* These job requirements are openly advertised in Russian newspapers. *Id.*; see Fiona Fleck, *Russia: Russian Women Pushed Out of Job Market into the Home*, Reuter News Service - CIS and Eastern Europe, Feb. 17, 1993, available in LEXIS, World Library, East. Eur. File [hereinafter Fleck] (stating that women's labor is no longer indispensable and women are now encouraged to stay home).

25. See MIKHAIL GORBACHEV, PERESTROIKA: NEW THINKING FOR OUR COUNTRY AND THE WORLD 117 (1987) (claiming that women no longer have time to raise their families and attend to housework because of the demands work outside the home places on them); see also William J. Eaton, *Soviet Women: More Rights—and Toil*, L.A. TIMES, June 24, 1987, § 1, at 5 (quoting part of Gorbachev's speech before the 1987 International Women's Conference in Moscow, in which Gorbachev referred to the inherent function of women as that of mothers and wives); Lissyutkina, *supra* note 4, at 286 (stating that feminism has never truly flourished in Russia).

26. KONST. RSFSR (CONSTITUTION) art. 19 (Russia). Article 19 states, "The state shall guarantee equal human and civil rights and freedoms without regard to sex Men and women shall have equal rights and freedoms and equal opportunities to exercise them." *Id.*

27. Vedomosti RSFSR, Declaration of Human Rights and Civil Liberties, art. 3 (3), available in WESTLAW, 1991 Rusline, Rus. Legis. Article 3 states that equality shall be guaranteed by the state and men and women shall both have equal rights and freedoms. *Id.*

28. See Olga Minayeva, *How Difficult it is to be a Woman. A Russian One*, RUSSIAN PRESS DIGEST, Mar. 8, 1995, available in WESTLAW, RPD, AM 1 [hereinafter Minayeva] (stating that the Russian female's average wage is 30% less than the average Russian male's average wage); see also Diane Otto, *Challenging the "New*

able professions.²⁹ The fall of communism resulted in a dramatic decline in the number of women elected to political posts.³⁰ In addition, employment, once guaranteed and required by the state,³¹ is scarce.³² When women do find employment, they face widespread discrimination³³ and harassment,³⁴ with few opportunities to remedy the problems.³⁵

World Order": *International Law, Global Democracy and the Possibilities for Women*, 3 TRANSNAT'L L. & CONTEMP. PROBS. 371, 389 (1993) (stating that despite the efforts of the Communist state to achieve equality for women, gender inequality persists in Russia today). For example, Russian women's wages are lower than men's, more women hold part-time jobs, and domestic tasks remain the responsibility of women. *Id.*; Waters, *supra* note 3, at 288 (arguing that Russian women, burdened by labor obligations, were unable to exploit the economic and political opportunities created by *perestroika*); Chapman, *supra* note 23, at 225 (discussing the disparity in the average wages of Soviet men and women).

29. See Marina Pankova, *Discrimination of Russia's Women*, RUSSIAN PRESS DIGEST, Dec. 20, 1992, available in WESTLAW, RPD, PM 7 (stating that women face employment discrimination regardless of their educational level). Many female engineers now receive offers only for jobs at low paying factories. *Id.*; see Minayeva, *supra* note 28 (explaining that unemployment hits women first and almost 30% of managers prefer to hire men despite laws forbidding this practice).

30. See *Russia: Women's Bloc Fears Exclusion From Russian Politics*, Reuter New Service - CIS and Eastern Europe, Nov. 9, 1993, available in LEXIS, World Library, East. Eur. File (stating that the percentage of women in parliament has declined to only 5.6% as compared to 30% under Communist rule).

31. See KONST. SSSR (CONSTITUTION) art. 40 (U.S.S.R.) (stating, in part, that every Soviet citizen has the right to labor).

32. See Emily MacFarquhar et al., *The War Against Women*, U.S. NEWS & WORLD REP., Mar. 28, 1994, at 42 (1994) (citing the effects on women of the collapse of communism and discussing the loss of guaranteed employment). The Soviet social safety net has disappeared, and women can no longer depend on state-sponsored kindergartens to assist them with the burdens of working and childcare. *Id.*; see also HR WATCH, *supra* note 2, at 7 (stating that official statistics in 1993 indicated 67% of Russia's registered unemployed were women). It is suspected, however, that the percentage is much higher because of "hidden unemployment" which includes people either not registered as unemployed or who remain employed but for little or no pay. *Id.* In some parts of Russia, the female unemployment rate exceeds 80%. *Id.*

33. See HR WATCH, *supra* note 2, at 2 (documenting pervasive employment discrimination against female employees in Russia, largely sanctioned by the government despite equal employment laws). Women are forced to work fewer hours, often at minimum wage, while men remain in their jobs at full pay. *Id.* at 7. Increasingly, government agencies advertise job openings for men only and refuse to hire women based solely on their gender. *Id.* at 8.

34. See Pope, *supra* note 24, at 56 (documenting sexual harassment in the Russian workplace). The blame, however, is not necessarily solely with the male employ-

Russian women face huge obstacles in the home as well as in the office.³⁶ Domestic violence is increasing in Russia³⁷ and the government is doing little to protect women.³⁸ Sexual assault of Russian

ers. *Id.* It is prestigious in Russia today for young women to sell their bodies under the guise of working as a secretary. *Id.* In this manner, these women make tremendous amounts of money without selling their bodies on the streets as prostitutes. *Id.*; Sergei Strokan, *Russia: NGOs Condemn Sexual Discrimination in the Moscow Workplace*, Inter Press Service, Nov. 3, 1995, available in WESTLAW, 1995 Magsplus, Inter Press Serv. [hereinafter Strokan] (quoting a recent survey completed by the Moscow Gender Studies Center that found one in every four women is the victim of sexual harassment at the workplace). The punishment when an employer rapes an employee in Russia is less than the punishment for rape between strangers. *Id.* Russian women are often the only breadwinners in their families and are forced to choose between poverty and sexual abuse. *Id.*

35. See Strokan, *supra* note 34 (stating that only a few sexual harassment cases are brought to court each year because Russian law requires two witnesses to testify to the assault or harassment); see also HR WATCH, *supra* note 2, at 19 (explaining that the first known sexual harassment case in Russia was filed, and later dismissed, in 1994 and prosecutors were unable to find any precedent on which to base the case).

36. See HR WATCH, *supra* note 2, at 19 (stating that spousal abuse is widespread and largely accepted in Russian society); see also Strokan, *supra* note 34 (quoting a survey conducted by the Russian Association of Crisis Centers for Women, indicating 81% of women polled said that domestic violence is common).

37. HR WATCH, *supra* note 2, at 20; see Helen Womack, *15,000 Women Killed by Husbands, Russian Wives Fight Back Against Domestic Violence*, THE INDEPENDENT, July 16, 1995, at 18 (stating that 15,000 Russian women were beaten to death by their husbands in 1994). Russian culture is accepting of low levels of violence inflicted on women by their boyfriends or husbands. *Id.* This cultural characteristic makes it difficult for women to secure assistance from the state unless the attack is so severe that the woman is put in the hospital. *Id.*

38. HR WATCH, *supra* note 2, at 20. Police in Russia rarely arrest an abusive spouse and often fail to even respond to reports of domestic violence. *Id.* Ludmila Bezlepkina, Acting Minister of Social Security, stated that domestic violence should be a priority in Russia, but that the police should not be called on to remedy the problem because Russian traditions call for different means of dealing with violence within the family. *Id.* To exacerbate the problem, the housing shortage in Russia forces abused wives to continue to live with their husbands, even following divorce. *Id.* at 23. Russian law grants people the right, even after divorcing, to live in the home shared during marriage. *Id.* A spouse may not deny the other access to the home. *Id.*; see *Woman News: First Law on Domestic Violence*, MONTREAL GAZETTE, June 19, 1995, at F1 (stating that the Russian parliament was considering its first law on domestic violence, proposed by a member of the Women of Russia party). Under current law, men convicted of killing their wives receive a lesser sentence than if they killed someone other than their spouse. *Id.*

women is also ignored by the Russian government³⁹ and the police often harass women who report such assaults.⁴⁰

Russian women, however, have made some strides in furthering women's rights. In the political arena,⁴¹ the success of the Women of Russia Party in capturing enough votes to win a few seats in the Russian Duma⁴² is a sign of progress.⁴³ Russian women also established crisis lines for victims of abuse.⁴⁴ Nonetheless, the commitment of the younger generation of women to change the system is questionable,⁴⁵ which is indicative of the battle ahead to achieve *de jure* equality for Russian women. The majority of Russian women still shun Western notions of feminism,⁴⁶ associating these notions with the rejected ideals

39. HR WATCH, *supra* note 2, at 24. Interviews conducted by the Human Rights Watch indicate that the police fail to investigate incidents of rape and consider the victim at fault. *Id.* In one particularly horrifying case, a victim called the police to report a rape, only to have the police give her phone number to the accused rapist. *Id.* at 25.

40. *See id.* at 26 (documenting cases of sexual assault where the police refuse to even allow a complaint to be filed). The police routinely offer to investigate alleged cases of sexual assault only if the victim offers a bribe along with her complaint. *Id.*

41. *See* Trevelyan, *supra* note 19 (discussing the formation of Russia's first feminist bloc, the Women of Russia). Women of Russia reject militant feminism but advocate integrating women into Russian political and economic structures. *Id.* They also support the reinstitution of quotas to ensure female participation in Russian political offices. *Id.*

42. Pope, *supra* note 24, at 56 (stating that Women of Russia won 8.1% of the vote in the 1993 parliamentary elections, shocking the Russian Democratic Party who considered the group ineffectual and a remnant of the Communist women's committee).

43. *Id.*

44. *See* Womack, *supra* note 37, at 18 (stating that a group of women in Moscow recently set up a crisis help line to give legal advice and support to victims of domestic violence). The pervasive problems with alcohol abuse, as well as the stress of economic upheaval, have contributed to the escalation of domestic violence in Russia. *Id.*; *see* Waters, *supra* note 3, at 289 (describing the establishment, in 1990, of the first Center for Gender Studies). The Center posits that the "woman question" was never resolved in Russia and women continue to suffer gender inequality. *Id.* at 290. It also encourages women to reject domesticity as their only option and to challenge the government to recognize the female perspective in policy decisions. *Id.*

45. Pope, *supra* note 24, at 56 (stating the consciousness of the younger generation remains to be raised and they continue to accept jobs based on the expectation of the use of good looks or sex to keep their jobs).

46. Lissyutkina, *supra* note 4, at 274. In fact, Russian women largely reject feminism of any kind. *Id.* For example, Russian women's deprivation of access to consumer goods under the Soviet state created a type of consumerism in Russia that is

of communism.⁴⁷ Russian women instead prefer more traditional models of femininity.⁴⁸

The feminist movement in Soviet and post-communist Russia developed slowly by American standards.⁴⁹ The Western perception of Russian feminism may arise from cultural differences between Russia and the United States and the tendency of Western feminists to view feminism as universal.⁵⁰

II. IMPERIALISM, CULTURAL RELATIVISM, AND UNIVERSALISM

A. THE RELATIVIST CLAIM OF IMPERIALISM

Cultural relativists⁵¹ assert that different cultures interpret human rights differently.⁵² They argue that, in many countries, individual rights

sharply criticized by Western women. *Id.* Further, Russian women welcome the traditional behavior between men and women that Western feminists insist reinforces the perception of women as weak. *Id.*

47. *Id.* at 281. The political groups in favor of modernization of Russia reject the Western feminist notion of emancipation, associating it with communist rhetoric and therefore in conflict with their goals of rebuilding Russia. *Id.*

48. See Fleck, *supra* note 24 (stating Russian women, if given the choice, would elect to be housewives rather than work outside the home); see also Lissyutkina, *supra* note 4, at 278 (arguing that Russian women reject unfeminine behavior and dress as a part of rejecting communism as a whole). Russian women associate feminism with hostility toward men, a dangerous proposition in a period of violent transformation in Russia. *Id.*

49. See Lissyutkina, *supra* note 4, at 275 (stating that authors who address the feminist movement refer to Russian women as backward and lacking a women's consciousness); see Pope, *supra* note 24, at 56 (asserting that foreign feminists compare Russia to the West in the 1950s, when women were stereotyped as caretakers).

50. See Helen Wilkinson, *A First Lady Should Respect the Veil*; Hillary Clinton *Take Note: To Third World Women, Western Feminism Carries the Whiff of Imperialism*, THE INDEPENDENT, Sept. 8, 1995, at 15 (stating that Western feminism too often imposes a universal notion of feminism and misinterprets different countries' cultures).

51. See Nancy Kim, *Toward a Feminist Theory of Human Rights: Straddling the Fence Between Western Imperialism and Uncritical Absolutism*, 25 COLUM. HUM. RTS. L. REV. 49, 56 (1993) (describing cultural relativism as a theory based on the beliefs that cultural upbringing limits the ability of an observer to understand outside cultures and that all cultures are equally valid). Cultural relativism is rooted in anthropology and takes two forms, "hard" and "soft". *Id.* "Hard" cultural relativists believe the validity of practices and morals is derived solely from culture. *Id.* "Soft" cultural relativists claim culture is an important factor in the validity, but not the sole determinant. *Id.*

52. *Id.* at 59. Relativists claim that international human rights law is meaningless

are less important than community rights⁵³ because the individual is part of a group and is not autonomous.⁵⁴ Relativists claim the interpretation of human rights law that values individual rights is inherently Western and without meaning in non-Western countries that interpret human rights differently.⁵⁵ Cultural relativists view human rights law as a means to impose Western values on non-Western societies and to destroy their cultural identity by forcing them to conform to laws with a Western bias.⁵⁶

Cultural relativists accuse Western feminists of imposing their culture on developing nations.⁵⁷ The accusation of cultural imperialism labels feminism as oppressive,⁵⁸ and for that reason is especially difficult for feminists to accept.⁵⁹ As a result, Western feminists may be more cautious about condemning practices in non-Western societies that may be defended on cultural grounds.⁶⁰ Relativists support certain practices or conditions which Western feminists view as oppressive because relativists claim the practice is integral to the culture.⁶¹ Thus, the chal-

because the interpretation of human rights varies by culture. *Id.*

53. *Id.* at 58. The good of society as a whole consumes the rights of individual citizens in some cultures. *Id.*; see KONST. SSSR (CONSTITUTION) art. 17 (U.S.S.R.) (stating, in part, that the state-regulated individual labor by Soviet citizens ensure that the work was in the best interests of society as a whole).

54. Kim, *supra* note 51, at 58. Relativists, thus, assert that human rights are preserved, in some cultures, through membership in a community. *Id.*

55. *Id.* at 57-59.

56. See *Id.* (arguing that to the extent that Western cultures try to impose their individualistic interpretations of human rights on other, non-Western cultures, the West is imperialistic and robs these cultures of their own identities).

57. *Id.* at 60. Relativists attack feminism, labeling it as a form of cultural imperialism. *Id.* Cultural relativists contend that feminist ideals are Western notions and have little relevance in societies that do not base their cultures on the Western model. *Id.*

58. Kim, *supra* note 51, at 62.

59. *Id.* at 62 (stating that feminists consider feminism a method by which oppression can be analyzed and defeated).

60. See MacFarquhar et al., *supra* note 32, at 45 (asserting that Western feminists are cautious in assisting endangered women where cultural or religious sanctions exist). Western feminists learned this lesson most recently in their attempts to condemn the traditional practice of female genital mutilation in Africa. *Id.*; see Hope Lewis, *Between Irua and 'Female Genital Mutilation': Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. J. 1, 8 (1995) (stating that female genital mutilation is hotly debated by feminists and cultural relativists). Attempts by Western feminists to eradicate the practice as a violation of international human rights law is met with cultural resistance and charges of imperialism. *Id.* at 10.

61. See Kim, *supra* note 51, at 61 (using the example of feminist opposition to

lenge for Western feminists in assisting Russian women is to help without offending Russian traditions and culture.⁶²

B. THE UNIVERSALIST ARGUMENT

Contrary to the viewpoint of the cultural relativists, human rights universalists claim that human rights transcend cultural boundaries and apply equally to all persons.⁶³ Some human rights scholars rely on natural law theories to support the universality of human rights,⁶⁴ while other scholars justify universalism through the predominant theory of positivism.⁶⁵ Regardless of the basis of universality, all universalist human rights scholars assert, in contrast to relativists, that human rights exist and apply on some level regardless of culture.⁶⁶ Unfortunately, the

the traditional practice of female genital mutilation to show that Western feminists attack practices that cultural relativists claim are essential to the preservation of the culture). Cultural relativists defend female genital mutilation, asserting it is a female right of passage, traditional in the cultures in which it is practiced. *Id.*

62. Arguably, the differences between Russian and Western culture are not as pronounced as between Africa and the West, but caution is prudent. *See* Strokan, *supra* note 34, at 3 (quoting Andrei Akopyan, Director of the Human Reproduction Center in Moscow, as saying Russia does not need feminism but instead an agreement between men and women on understanding and non-aggression). Akopyan suggests Russian women are less aggressive than Western women and are oriented toward traditional Russian family values. *Id.*

63. *See* Lewis, *supra* note 60, at 19 (stating that universalists argue that fundamental human rights standards must apply cross-culturally in order to be effectual and have meaning). The international human rights system is based on the belief that the international community must protest human rights violations regardless of the country in which they occur. *Id.*; *see* Kim, *supra* note 51, at 63 (stating that the human rights community has rejected the relativists' claims that there are no human rights). The community argues that international human rights law cannot vary from one country to another. *Id.* International human rights law is a "collective response" of the community to the "unity of the human race." *Id.*

64. Kim, *supra* note 51, at 63. Natural law assumes a limited number of rights exist that are fundamental to all cultures and are so basic to the human condition that they are recognized in all communities. *Id.* at 64.

65. *Id.* at 64. Positivists assert that non-Western countries accept human rights by signing international human rights agreements and implicitly accede to these rights by recognizing practices that become part of customary international law. *Id.*

66. Lewis, *supra* note 60, at 19 (stating universalists believe human rights standards must cross cultural and national lines in order to be effectual). Universalists claim that the international community must object to human rights violations, regardless of where the violations are committed. *Id.*; *see supra* note 63 and accompanying text (describing universalist claims and asserting that the human rights community is

conflict between relativists and universalists may divert attention from violations of women's human rights and may hinder the possibility of countries learning from one another about the protection of women's human rights.⁶⁷ Even more importantly, the debate between relativists and universalists acts as a disincentive for collaboration between countries to hold states responsible for violations of women's fundamental human rights.⁶⁸

C. THE FEMINIST RESPONSE

Feminists are not satisfied by either natural law or positivism as a theory to support human rights.⁶⁹ Feminists argue that relativist attacks on feminism as a form of cultural imperialism are inaccurate⁷⁰ and that the movement is a cross-cultural response to gender oppression, a global condition that affects women of all cultures.⁷¹ Feminism claims to enable women of both Western and non-Western cultures to explore ways to become participants in, rather than victims of, their cultures.⁷² Feminism attacks culture as a male construction⁷³ to expose the relativist

in favor of a globally integrated notion of human rights law).

67. Rebecca J. Cook, *State Responsibility for Violations of Women's Human Rights*, 7 HARV. HUM. RTS. J. 125, 173 (1994).

68. *Id.* at 174. The conflict between universalists and relativists is bitter. *Id.* at 173. Universalists accuse relativists of perpetuating human rights violations, while relativists accuse universalists of imperialism. *Id.*

69. Kim, *supra* note 51, at 65. Feminists assert that positivism does not promote change, but instead reinforces the existing practices because states are not required to change what they have not signed an agreement to change. *Id.* Women are often excluded from the political process and therefore, positivism fails to address women's problems. *Id.* Natural law is unacceptable to feminists because it recognizes only a limited number of rights. *Id.*

70. *Id.* at 62-63 (arguing that feminism is multi-perspective and is a means to overcome oppression not to foster it).

71. *Id.* at 95 (describing feminist responses to gender oppression in different cultures and arguing increased communications among countries has enabled different cultures to discover feminist ideas). Non-Western women are free to embrace or to reject feminist ideas that they receive from Western women. *Id.*

72. *See id.* at 49 (arguing that feminism does not impose Western ideas on non-Western cultures but instead empowers women and creates the opportunity for them to participate actively in their own cultures).

73. *See* Lewis, *supra* note 60, at 20 (stating that feminists attack female genital mutilation by asserting that culture is patriarchal). Western feminists argue that relativism allows men to continue to dominate women under the guise of preserving culture. *Id.* at 23.

argument as fallacy.⁷⁴ In doing so, however, Western feminists risk replacing patriarchy with Western imperialism⁷⁵ and may suggest strategies which succeed in the West but will fail in non-Western countries.⁷⁶

Feminists also attack the separation in international law between the public and the private sphere.⁷⁷ The allocation of some practices to the private sphere, making them immune to state intervention, and others to the public sphere, is not predetermined.⁷⁸ In part because only a small percentage of women participate in political structures worldwide, these allocation decisions do not take women's problems into account.⁷⁹ The

74. *Id.* at 23.

75. *See id.* (using female genital mutilation as an example to show the danger of replacing patriarchy with imperialism). To avoid this problem, Western feminists analogize objectionable practices in non-Western countries to previously objectionable Western practices and traditions. *Id.*; *see* Trudy Rubin, *Women's Rights: Beijing Conference Sets New Norms*, DALLAS MORNING NEWS, Sept. 14, 1995, at 19A (claiming charges that universal women's rights are products of Western cultural imperialism fail when the rights being denied women are examined). The struggle to recognize women's rights as an integral part of human rights is a fight for survival, not for abstract feminist ideals. *Id.*

76. *See* Wilkinson, *supra* note 50, at 15 (arguing that the majority of women's problems are best solved at the local level). Problem solving at the local level allows women to help themselves while also allowing the incorporation of local culture and values. *Id.* Further, Western feminist policies are likely to fail because the distance between the Western source of policy and the non-Western site of implementation is not conducive to smooth integration. *Id.*

77. *See* Kim, *supra* note 51, at 67 (relating that feminists attack the relationship between public and private spheres as patriarchy). Practices that occur within the private sphere are called culture, while those within the public sphere are political and therefore addressed by international law. *Id.* The designations result in a justification for the continued abuse of women because practices that affect women generally fall within the category deemed private, and states therefore refuse to intervene. *Id.*

78. *See id.* at 69 (arguing that states seem to make an allocation of a behavior into the public or private sphere after the state has acted or refused to act). States make the allocation after the fact in order to justify that act. *Id.*; *see* Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613, 626 (1991) (stating the public/private distinction attaches more significance to the male, public sphere than the female, private one). A universal construction of valuing that which is identified with men is evident despite some differences between countries in categorizing activities as female or male. *Id.*

79. *See* Kim, *supra* note 51, at 65 (stating positivism, the predominant basis for the assertion of universal human rights does not consider the particular problems of women, in part because women do not participate in the political process); *see also* Cook, *supra* note 67, at 130 (stating that international organizations are insensitive to women's human rights). Historically, men and organizations with a male bias defined

practices which affect women are therefore categorized as private, and not subject to human rights laws.⁸⁰ The effects of this state non-intervention into the unique problems that face women worldwide are devastating.⁸¹ Many times, states do not even enforce laws designed to protect women from violence.⁸² In Russia, for example, domestic violence and sexual harassment are rarely prosecuted.⁸³ Often, states claim the private nature of violence against women precludes intervention.⁸⁴ This claim is used to conceal the reality of the perpetuation of gender inequality and maintenance of the status quo.⁸⁵

Feminism is not a form of cultural imperialism in so far as it offers options to women worldwide to change their position within their own cultures. Western feminism, however, risks becoming imperialistic when it attempts to implement change from outside the culture rather than offer tools and information to non-Western women to use within their own societies.⁸⁶ An examination of the options available to Western feminists to assist Russian women, including international law and feminist theory, is essential in determining how to improve the plight of Russian women while avoiding the specter of Western imperialism.

women's needs. *Id.* Further, women's needs are often ignored because women are not given the opportunity to discuss their problems with those who are capable of making substantive change in international law. *Id.* at 131.

80. Kim, *supra* note 51, at 67. The public/private distinction is derived from Western notions of liberalism. *Id.* at 67-68. While the existence of a private sphere of activity does protect individuals from state intervention into their personal lives, it also hurts women by failing to protect them in those same areas. *Id.* at 67; see Charlesworth, *supra* note 78, at 625 (describing how issues that concern women are usually given less scrutiny and international institutions do not examine them).

81. Kim, *supra* note 51, at 72. The effects of non-intervention on domestic violence are particularly horrifying. *Id.* Women worldwide are battered and abused by their husbands and boyfriends, with many cases going unreported. *Id.*

82. *Hearing on International Human Rights Abuses Against Women Before the Subcomm. on Human Rights and Int'l Org. of the House Comm. on Foreign Affairs*, 101st Cong., 2d Sess. 3 (1990) (statement of Rep. Patricia Schroeder).

83. HR WATCH, *supra* note 2, at 19-20.

84. Kim, *supra* note 51, at 74. This allocation allows states to preserve gender imbalances. *Id.* While women suffer as a result of the public/private dichotomy, men often benefit from laws that regulate what is otherwise allocated as private, such as marriage and sexual relations. *Id.* In other words, when a behavior or practice will benefit men, it is removed from the private sphere and placed in the public sphere and receives the protection of international human rights law. *Id.*

85. *Id.*

86. See Wilkinson, *supra* note 50, at 15 (stating that the West disseminates its influence over the world by imposing its ideas on other cultures).

III. ANALYSIS OF INTERNATIONAL LAW

A. UNITED NATION RESOLUTIONS AND CONVENTIONS

1. Incorporation of the Feminist Perspective into International Law

International law does not reflect the unique perspective of women.⁸⁷ While theorists debate how to change international law properly in order to reflect the concerns of women, none, however, deny that change is necessary.⁸⁸ The recognition that women do not have a single voice, nor a uniform body of needs, is critical to positive change.⁸⁹ Western feminists, to assist Russian women successfully, must orient themselves to the problems of a post-communist nation and the consequences for women in that culture.⁹⁰ An analysis of the tools available to feminists is valuable for discovering the best combination for success.

87. See Otto, *supra* note 28, at 413 (concluding international law must be transformed in order to promote democracy and deconstruct gendered social realities); see also Charlesworth, *supra* note 78, at 613 (stating international law has largely escaped feminist scrutiny). International organizations reflect their creator's states, and therefore the structure of international organizations is dominated by men. *Id.* at 622. For example, only one woman judge has served on the International Court of Justice and the International Law Commission has never boasted a female member. *Id.* at 623.

88. See Otto, *supra* note 28, at 396-413 (arguing for reform of international law to allow implementation of emancipatory democracy in order to include women in the democratic process); see also Charlesworth, *supra* note 78, at 614, 618 (stating international law must be subject to feminist analysis, with special consideration of the different needs of Western and non-Western women); Elizabeth K. Spahn, *Waiting for Credentials: Feminist Theories of Enforcement of International Human Rights*, 44 AM. U. L. REV. 1053, 1069-70 (1995) (proposing a 'transformative' notion of human rights that involves concrete action at the local level, using both public and private international law, to achieve meaningful change for women); Cook, *supra* note 67, at 128-30 (suggesting collaboration by international lawyers and feminist legal analysts to hold states accountable for violations of women's human rights).

89. See Charlesworth, *supra* note 78, at 618-19 (discussing Western feminist insensitivity to the needs of Third World women). Non-Western women face particularly difficult obstacles because Western feminists systematically fail to recognize or understand the special problems that arise for women in non-Western nations. *Id.* In addition, non-Western women are forced to communicate in the Eurocentric, patriarchal language of international law. *Id.* at 619.

90. See Wilkinson, *supra* note 50, at 15 (urging Western feminists to refrain from imposing Western feminism on non-Western cultures).

2. Convention on the Elimination of All Forms of Discrimination Against Women

Western feminists can use the United Nations Convention on the Elimination of All Forms of Discrimination Against Women⁹¹ (Women's Convention) as one tool to combat discrimination.⁹² The Women's Convention requires that parties ensure that authorities comply with a policy of non-discrimination,⁹³ guarantee equal remuneration to women,⁹⁴ and prohibit dismissal of women on the basis of pregnancy or maternity leave.⁹⁵ These provisions of the Convention would be useful to Western and Russian feminists in addressing the particular problems that face Russian women.⁹⁶ In addition, the Women's Convention succeeds in drawing attention to the specific needs of women by emphasizing that all women do not have the same concerns.⁹⁷ Some scholars argue, however, that the Women's Convention is not useful when applied within the context of current international law.⁹⁸

The creation of the Women's Convention, despite demanding equality of result and not simply equality of opportunity,⁹⁹ was based on a male

91. G.A. Res. 34/180 (Dec. 18, 1979) (entered into force Sept. 3, 1981) [hereinafter Women's Convention].

92. See Charlesworth, *supra* note 78, at 631 (stating that the Women's Convention is the most well-known international instrument recognizing the unique problems that face women worldwide). However, the Women's Convention is sharply criticized as offering little opportunity to effect real change. *Id.*

93. Women's Convention, *supra* note 91, art. 2(d).

94. *Id.* art. 11(1)(d).

95. *Id.* art. 11(2)(a).

96. See *supra* notes 28-34 and accompanying text (discussing the economic hardships Russian women face because of widespread sexual discrimination). Russian women face widespread discrimination in the workplace, including less pay for equal work and sexual harassment. Women also face discrimination with the police when they try to report domestic violence. *Id.*

97. Charlesworth, *supra* note 78, at 632. Western and non-Western women evaluate needs and problems differently. *Id.* at 618. Western women seek to be treated the same as men, a notion that does not always appeal to non-Western women. *Id.* at 619.

98. *Id.* at 633. A large number of reservations have been made to the Women's Convention, based on cultural and religious customs of non-Western nations. *Id.* The pattern of reservations demonstrates the inadequacy of international law in recognizing women's human rights. *Id.*

99. See *supra* notes 93-95 and accompanying text (noting that the Women's Convention explicitly provides for equal remuneration and prohibits termination on the basis of pregnancy as well as a general prohibition against a policy of discrimination).

standard.¹⁰⁰ This standard makes the Women's Convention, in its current form, a weak tool for concrete change.¹⁰¹ The ineffectual implementation procedures are another problem with the Women's Convention.¹⁰² Furthermore, because the convention is narrowly tailored to address the needs of women only, other human rights bodies are able to excuse themselves from considering women's needs.¹⁰³ Moreover, many states made reservations when signing the Women's Convention,¹⁰⁴ emphasizing a lack of commitment to substantive change.¹⁰⁵

Given the strengths and weaknesses of the Women's Convention, it is likely the convention will be best used in conjunction with other conventions and theories to exert the pressure needed to reform international law to reflect the specific needs of women. The Covenants on Economic, Social and Cultural Rights¹⁰⁶ and Civil and Political Rights¹⁰⁷ are other tools available to feminists that may be effectively combined with the Women's Convention for maximum success.

100. Charlesworth, *supra* note 78, at 631. Charlesworth argues the underlying assumption in the Women's Convention is that women and men are the same, resulting in women always being measured by a male standard. *Id.* This assumption is not challenged, and thus, only a limited form of equality is offered by the Convention. *Id.* at 632.

101. *Id.* at 634. The Convention recognizes that discrimination is a legal issue, but cannot offer substantive structural change in the legal system. *Id.*

102. *Id.* at 632. The implementation procedures established in the Women's Convention are much less stringent than other international human rights instruments, such as the Convention on the Elimination of All Forms of Racial Discrimination. *Id.* In fact, other human rights bodies cite the unique nature of the convention to justify downplaying women's perspectives in other human rights instruments. *Id.*

103. *Id.*

104. Charlesworth, *supra* note 78, at 632. More than 40 of the 105 total signatories to the Women's Convention made almost 100 reservations to the terms of the convention. *Id.* at 633.

105. *Id.* at 633. Many reservations limit states' compliance in order to conform with cultural and religious customs. *Id.* The large number of reservations suggests the international community is willing to acknowledge subordination of women, but not to require changing it. *Id.*

106. G.A. Res. 2200, U.N. GAOR, 22d Sess., 1496th plen. mtg. (1966) [hereinafter Social Covenant].

107. G.A. Res. 2200, U.N. GAOR, 22d Sess., 1496th plen. mtg. (1966) [hereinafter Political Covenant].

3. International Covenant on Economic, Social and Cultural Rights (Social Covenant)

Economic, social and cultural rights are generally considered lesser international rights but are usually the realms in which women experience the most discrimination.¹⁰⁸ Women in Russia experience severe oppression in the economic realm in the form of high unemployment and low wages.¹⁰⁹ The Social Covenant guarantees equal pay for equal work¹¹⁰ and equality of opportunity¹¹¹—two provisions important to improving the lives of Russian women. The effective enforcement of these guarantees could assist Russian women in achieving equal status in the workplace. Moreover, Western feminists could help Russian women by focusing their efforts on obtaining full implementation of the Social Covenant. The task is difficult, however, because the rights guaranteed in the Social Covenant are very difficult to enforce.¹¹² Similar to the Women's Convention, the ideals incorporated in the United Nations Social Covenant are useful, but enforcement of these ideals remains difficult because international law accords less meaning to the needs of women.¹¹³ Western and Russian feminists will have to reform international law so it effectively incorporates women's perspectives before any true progress is made in remedying the lives of women in Russia.¹¹⁴ Both the Women's Convention and the Social Covenant are excellent

108. Charlesworth, *supra* note 78, at 635. Granting women rights does not necessarily result in progress for women. *Id.* The granting of economic, social and cultural rights may improve individual situations but leave the system unchanged. *Id.*

109. See *supra* notes 28-35 and accompanying text (discussing the pervasive discrimination and harassment experienced by Russian women in the workforce).

110. Social Covenant, *supra* note 106, pt. III, art. 7(a)(1). The article states, in part, that parties to the Social Covenant recognize the rights to "fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men" *Id.*

111. *Id.* art. 7c. The article guarantees equal opportunity to promotion without consideration of any factors other than seniority and competence. *Id.*

112. Charlesworth, *supra* note 78, at 635. Economic, social, and cultural rights, the primary areas in which women suffer violations of their human rights, are considered lesser rights and are therefore difficult to enforce effectively. *Id.*

113. See *supra* notes 78-81 and accompanying text (discussing the distinction made between the public and private spheres in international law, resulting in women's issues receiving little protection from the international legal system).

114. See Otto, *supra* note 28, at 406 (stating international law does not, in its current form, reflect the needs of women).

tools for feminists to use to restructure international law in this way and to promote economic and social change.¹¹⁵

4. International Covenant on Civil and Political Rights (Political Covenant)

The Political Covenant has the most potential to protect the rights of women because civil and political rights are considered part of the public sphere and are, therefore, accorded more deference.¹¹⁶ Similar to the Social Covenant, the Political Covenant also asserts that discrimination on the basis of sex is prohibited.¹¹⁷ The challenge lies again in effective enforcement.¹¹⁸ Feminists must force women's issues into the public sphere in order to scrutinize the abuses under international law.¹¹⁹ Until this is achieved, the Political Covenant is of little use because the Covenant operates only within the public realm.¹²⁰ Progress will be made if feminists are able to shift women's issues into the public sphere because the laws that govern the public sphere will be enforced in cases of abuse and discrimination against women.¹²¹

In addition to United Nations Conventions and Covenants, several theories proposed by feminist scholars to protect the rights of women are available to feminists. A combination of theory and United Nations conventions and covenants may be the most effective method for Russian and Western feminists to work together and improve the plight of Russian women.

115. Charlesworth, *supra* note 78, at 644. These tools are a basis for change, but first the notion of state responsibility must be expanded to include the abuse of women. *Id.* Further, responsibility must be extended to include acts of discrimination and abuse by private individuals since much of the abuse occurs in the private sphere. *Id.* at 645.

116. *Id.* at 635; see Kim, *supra* note 51, at 67 (stating political practices are within the public sphere and therefore subject to scrutiny under international law).

117. Political Covenant, *supra* note 107, pt. III, art. 26.

118. See *supra* notes 78-81 and accompanying text (discussing the placement of women's issues in the private sphere, unprotected by international law).

119. See Charlesworth, *supra* note 78, at 626 (stating that men's issues are protected because they fall within the public sphere and women's ignored because they are generally regarded as private).

120. *Id.* at 635.

121. See *id.* at 627 (stating that law is historically enforced in the public sphere but is considered inappropriate in the private sphere).

B. FEMINIST THEORIES ON THE PROTECTION OF WOMEN

1. Redefining Democracy to Promote Change

The theory of global democratic reform, proposed by Dianne Otto, calls for a transformation of international law to assist the implementation of emancipatory democracies.¹²² The utility of emancipatory democracies can be evaluated by examining the specific consequences of liberal democracy in Russia.¹²³

The advent of liberal democracy in Russia resulted in the further marginalization of women.¹²⁴ When communism fell, women's limited political power under the Soviet state further decreased.¹²⁵ The state continues to exploit women's labor instead of valuing it.¹²⁶ Economic disadvantage, resulting from this transformation to a liberal democracy, also exposes women to other forms of abuse.¹²⁷

One theory proposed to remedy the problems of Russian women in a newly established liberal democracy is the creation of an emancipatory democracy.¹²⁸ Democracy offers the opportunity to challenge or to reinforce the balance of power in a society.¹²⁹ Liberal democracy

122. Otto, *supra* note 28, at 371.

123. See *id.* at 386 (discussing the effects of liberal democracy on Russian women).

124. *Id.* Male dominance is the standard for both communism and liberal democracy, so when Russia transformed its political system to a liberal democracy, it did not also transform the treatment of women within Russian society. *Id.* While nationalistic and ethnic problems are readily addressed by the new Russian government, women's concerns are neglected. *Id.* The attention given to nationalistic and ethnic concerns, but not to those of women, reflects the public/private dichotomy and is indicative of how political and civil rights are protected, while cultural rights are not. *Id.*

125. *Id.* at 389. The government abolished quotas which previously ensured participation by women in the political system. *Id.* Since the abolition of quotas, female representation in the Russian government has significantly declined. *Id.*; see *Russia: Women's Bloc Fears Exclusion From Russian Politics*, *supra* note 30 (stating that the numbers of women participating in the Russian parliament has dramatically decreased).

126. See Otto, *supra* note 28, at 391 (stating that the exploitation of women's labor in post-communist Russia, made possible by liberal democracy, has extended the worldwide problem of women's poverty).

127. *Id.* at 394. Rape and domestic violence have increased dramatically since the fall of communism in the former Soviet Union. *Id.*; see HR WATCH, *supra* note 2, at 20 (documenting the enormous increase in domestic violence in Russia).

128. See Otto, *supra* note 28, at 396 (stating that emancipatory democracy challenges the rhetoric of liberal democracy by expanding the reach of democracy, using diversity as an empowering tool, and redefining "political" to destroy the public/private dichotomy).

129. *Id.* at 397. Liberal democracies are constructed to speak with one voice: that

chooses the latter, perpetuating conditions that rarely recognize the needs of women.¹³⁰ In contrast, emancipatory democracy embraces diversity and is based on the notion of participation and egalitarian values.¹³¹

The international legal system can assist the formation of emancipatory democracies.¹³² "Soft" law, a controversial category into which United Nations resolutions fall,¹³³ offers great potential for reform by challenging the structure of liberal democracy.¹³⁴ To effect change, the pool of resources must expand to include women, minorities, and indigenous peoples.¹³⁵ In addition to incorporating "soft" law into the international legal system, advocates of emancipatory democracy must expose the professed neutrality of the law as a biased position that perpetuates power imbalance.¹³⁶ In reconstructing that neutrality, proponents must create new foundations based on the collective experience of those excluded by the current system.¹³⁷

of those in power. *Id.* Liberal democracy is modeled on the male standard, thus, it leaves little room for deviation to include those marginalized, like women. *Id.*

130. *See id.* at 397 (stating that liberal democracy assumes an individual with a male perspective, who is driven by self-interest). The lack of substantive equality under liberal democracy allows those with power to exploit the rhetoric of equality to serve themselves. *Id.*

131. *Id.* at 398. Emancipatory democracy arises from oppression and tries to direct efforts away from the liberal notion of self-interest in order to prevent abuse against women and minorities. *Id.*

132. Otto, *supra* note 28, at 406. However, before the international system of law can assist in the promotion of emancipatory democracies, it must be reformed. *Id.* International law itself has played a key role in the construction of a gendered system. *Id.*

133. *Id.* at 408.

134. *Id.* Progressive change will rely on the use of "soft" law because traditional legal processes do not challenge the already established norms of the international legal system which favor a Eurocentric, gendered model. *Id.* Defenders of the traditional system attack "soft" law as a threat to the foundation of the international legal system. *Id.* Of course, arguably, those who defend the traditional system are those who are most benefited by it, which in this case are usually men.

135. *Id.* at 409. Past attempts to incorporate "soft" law into the arena of internationally recognized law failed in the face of the traditionalist resistance. *Id.* Third World countries bound together in the 1970s and 1980s to attempt to promote a New International Economic Order that used "soft" law in the creation of international law. *Id.* Future attempts to incorporate "soft" law should build from a broader base. *Id.*

136. Otto, *supra* note 28, at 413. Liberal democracy validates its claim of international superiority by characterizing itself as neutral. *Id.* at 400. The challenges by feminists and persons of the Third World have exposed liberalism as biased toward Western privilege. *Id.*

137. *Id.* at 401. The exposure of the biased nature of the current system will

Change in the international legal system must begin with the recognition and rejection of the alliance between international law and liberalist notions of male domination and Western privilege.¹³³ To achieve this end, channels must open to allow dialogue between local and international activists.¹³⁹ In addition, the devices that already exist to assist women, for example, the Women's Convention and Social Covenant, must be expanded and the experiences of women worldwide collectivized.¹⁴⁰

The theory of emancipatory democracy incorporates the use of United Nations resolutions to reform the international legal system.¹⁴¹ It also requires that feminists transform international law to reflect the needs of women before the international legal system can help Russian women. In contrast, the state responsibility doctrine, proposed by Rebecca Cook, works within the established international legal system to promote change.¹⁴²

2. The State Responsibility Doctrine

The doctrine of state responsibility holds a state directly responsible for violations of international obligations committed by the state or attributable to the state.¹⁴³ Despite recent developments to hold states accountable in more cases, states regularly escape liability for breaches of obligations to protect women's human rights.¹⁴⁴ The first step in

allow for the creation of a democracy that is connected to notions of sexual, racial, and economic equality. *Id.*

138. *Id.* at 413. Fundamental change is necessary but likely difficult because of the entrenched nature of sovereign states. *Id.*

139. *Id.* at 415. Cooperation between local and international feminists is likely to achieve the best results in ending discrimination against and abuse of women worldwide. See Wilkinson, *supra* note 50, at 15 (advocating that women's problems be solved at a local level, without interference from Western feminists).

140. Otto, *supra* note 28, at 415.

141. See *id.* at 407 (discussing the use of General Assembly Resolutions to effect maximum change in the liberal democratic system).

142. See Cook, *supra* note 67, at 125 (discussing the use of the state responsibility doctrine to hold states responsible for violations of women's human rights).

143. *Id.* at 127. Violations of international obligations include breaches of international customary law and of binding treaties. *Id.* Recent developments in the area of international state responsibility expanded the obligations of states and improved the possibilities for enforcement of those obligations. *Id.*

144. *Id.* at 127-28. In fact, states regularly deny obligations to protect women even exist. *Id.* Practices that are rooted in cultural or national norms are defended vehemently and are denied as violations of women's human rights. *Id.* States either

protecting women from these violations is to document the abuse and recognize it as a human rights violation.¹⁴⁵ Integral to the process of documentation is the recording of specific data to prove the violations.¹⁴⁶ Documenting abuse can result in a state changing its policies and the way it interacts with other states.¹⁴⁷ Data can also assist feminists in pinpointing specific areas of oppression and in identifying any systemic abuses.¹⁴⁸

Once a form of oppression against women is recognized as a violation of an internationally protected human right, the next challenge is finding a method to hold a state responsible for that violation.¹⁴⁹ A legal link between the violation and a state's exercise of power must be established in order to utilize the doctrine of state responsibility to protect women's human rights.¹⁵⁰ Developments in human rights law now

deny the questioned practices exist, deny they violate international obligations or deny that the obligation is binding. *Id.*

145. *Id.* at 128. States generally do not take women into consideration in the formation of policy. *Id.* at 130. The collaboration of international lawyers and feminist legal scholars may help in efforts to document abuses against women and elevate those abuses to the status of human rights violations. *Id.* at 132. The historical background of modern human rights law systematically ignored the rights and concerns of women, resulting in a body of law that claims to protect women, but fails miserably to do so. *Id.*; see Eaton, *supra* note 25, at 5 (quoting President Gorbachev as stating women are meant to be mothers and wives); see also *Russia: Women's Bloc Fears Exclusion From Russian Politics*, *supra* note 30 (documenting the decline in the number of women who participate in the Russian parliament).

146. Cook, *supra* note 67, at 134. Incriminating data can play a key part in holding states accountable for violations of protected human rights. *Id.*

147. *Id.* at 134. States may react to negative international feedback regarding its practices by amending policies that promote violations of women's human rights. *Id.*

148. *Id.* at 134. Empirical evidence can also target specific areas of abuse for which states may be held responsible. *Id.* Meticulously documented data with solid evidentiary sources can succeed in proving a state employs a policy of discrimination and abuse. *Id.* at 135. The integrity of the evidentiary sources of the data is essential to the credibility of the data. *Id.* at 136. For example, reports on women's human rights violations can establish international recognition of those rights by offering specific information on cases and victims. *Id.* It is important that this information be carefully prepared to survive the severe scrutiny of the states accused of violations who hope to repudiate and condemn such data. *Id.*

149. See *id.* at 137 (stating that a legal link must be found between the violations of women's human rights and the exercise of state power in order for the state responsibility doctrine effectively to hold states responsible for violations of women's human rights). The state's conduct can be measured against both customary international law and specific human rights conventions for violations of women's human rights. *Id.*

150. Cook, *supra* note 67, at 137. Similar to any case, attorneys, in using the

allow a state, subject to strict limitations, to monitor how its nationals treat one another.¹⁵¹ State intervention into the private realm is most easily defended when a private national has sought out the protection of a state institution, such as the police, and requested remedy for the violation of an internationally protected human right.¹⁵² This development in human rights law will assist feminists in combating the widespread, systemic discrimination and abuse of women in Russia.¹⁵³

A state may also be held responsible for violations of international obligations under customary law.¹⁵⁴ Customary international law, while focusing primarily on acts of the state, does recognize some legal principles that hold states responsible for acts or omissions of its private nationals not acting on the state's behalf.¹⁵⁵ The recognition of state liability for private acts dissolves the public/private distinction in international law, which in turn helps women receive the remedies they seek.¹⁵⁶ Thus, under customary law, if a wife files a spousal abuse

state responsibility doctrine, must establish a connection between the recognized wrong and the party identified as having a duty to prevent and remedy that wrong. *Id.*

151. *Id.* at 137. States must observe strict guidelines in monitoring its nationals and in regulation of private conduct. *Id.* A state must be held accountable for its acts and omissions, initiatives, and maintenance of the status quo despite evidence of pervasive inequality, *Id.*

152. *See id.* at 138 (stating that when an individual has sought out state aid to prevent a violation of human rights, state intervention may be compelled). In Russia, women frequently seek access to the police and justice system to protect them from their abusive husbands. *See* HR WATCH, *supra* note 2, at 20 (stating that Russian women seek assistance from police, but are generally refused because the authorities do not recognize crimes against them as serious). For example, Russian women are told by police that sexual assault against women is not an issue for law enforcement. *Id.*

153. *See* HR WATCH, *supra* note 2, at 2-3 (asserting that violence against Russian women in both the workplace and the home is increasing at an alarming rate and the Russian state is doing little to prevent it).

154. Cook, *supra* note 67, at 142. This is particularly important for women who live in countries that have not signed human rights treaties. *Id.*

155. *Id.* at 142-43. These principles include state agency, ratification or adoption of private citizens' acts, or state complicity in wrongs committed by private actors and the state's failure to exercise due diligence in controlling private actors. *Id.* at 143. Of particular use to activists working on the abuses of women in Russia are the latter two that implicate the state in the commission of a violation by either action or inaction.

156. *Id.* at 143. The nullification of the public/private dichotomy would allow women's human rights issues to be removed from the private sphere and placed on equal footing with issues of the public sphere where international law affords greater protection. *Id.*

complaint with the police against her husband, and the police fail to investigate adequately or prevent the abuse, the state may be responsible for the acts of the husband, a private national not acting on behalf of the state.¹⁵⁷

The doctrine of state responsibility can also arise under human rights conventions.¹⁵⁸ While individuals are not responsible for discriminating against women in violation of a human rights convention, a state is responsible for the breach if it fails to exercise the proper diligence in reducing or eliminating acts of private discrimination.¹⁵⁹ States are already held responsible for human rights violations such as disappearances,¹⁶⁰ and feminists must build on this success and expand the state responsibility doctrine to include protection against specific violations of women's human rights.

To utilize the state responsibility doctrine under human rights conventions effectively, the standard for determining violations must include criteria specifically designed to define the concerns of women.¹⁶¹ The development of criteria reflecting the needs of women is necessary to set a standard of state performance that will ensure protection of the

157. *Id.* at 145. This is an excellent opportunity to hold the state responsible for police who either disregard their claims of abuse or inadequately work to prevent them. See HR WATCH, *supra* note 2, at 19 (describing the poor treatment Russian women receive from the police when they report abuse or discrimination).

158. See Cook, *supra* note 67, at 147 (stating that when states sign human rights conventions, they become bound to uphold the obligations of those treaties in their countries).

159. *Id.* at 151. Thus, when a violation is proven pervasive or systemic, a state may be held liable as facilitating the commission of the violation, even when it is rooted in practices of private actors. *Id.*

160. *Id.* at 152. The Inter-American Court of Human Rights held Honduras liable under the state responsibility doctrine for lack of proper diligence in preventing disappearances in that country. *Id.*

161. *Id.* at 154. It is unlikely that states will agree on the definition of discrimination, therefore, an internationally recognized definition that focuses on the disadvantages women face would be useful in determining when the state responsibility doctrine can be applied. *Id.* Traditionally, international law measures violations by a male standard, forcing women to compare and argue their problems from a European male's perspective. *Id.* at 155; see Otto, *supra* note 28, at 413 (stating that international law perpetuates Eurocentric, gendered realities); see also Charlesworth, *supra* note 78, at 632 (asserting that equality for women depends on their being like men).

rights of women.¹⁶² Decisions must also be made regarding what constitutes a breach and the types of data needed to prove the breach.¹⁶³

States, however, regularly deny responsibility for human rights violations, and even if effectively utilized, the state responsibility doctrine has limits in its power to enforce liability.¹⁶⁴ Reservations, made by states at the time of treaty ratification, may reduce a state's obligations.¹⁶⁵ Reservations are a common device to subvert women's human rights when cultural or religious practices that violate a specific right in a treaty or convention are common in the state.¹⁶⁶ States also avoid liability for human rights violations by claiming a margin of appreciation.¹⁶⁷ The enforcement of treaty obligations in all states is diminished when states are granted a wide margin of appreciation.¹⁶⁸ Currently, international human rights tribunals use a flexible standard of scrutiny to evaluate human rights violations.¹⁶⁹ The protection of women's human

162. See Cook, *supra* note 67, at 154 (asserting that when a state is a party to a human rights convention to protect a certain right, sex and gender based criteria should be developed to obligate states to a certain standard of performance to ensure the proper "protection, respect and promot[ion] of that right"). The criteria must be developed to coincide with the wording of the right in the international convention and with the purpose of the convention itself. *Id.*

163. *Id.* at 154. International human rights tribunals have held that independent, international criteria will be used to determine violations of human rights, regardless of whether the criteria matches the violating state's definitions of a breach. *Id.*

164. See *id.* at 172 (discussing different types of limitations on state responsibility, such as the language of the treaties, the legal context of treaty operation, formal reservations to treaty obligations, and traditional notions of state sovereignty and cultural relativism).

165. *Id.* at 172-73. While reservations are technically required to be in harmony with the spirit of the treaty, international tribunals usually lack jurisdiction to scrutinize the compatibility of the reservation. *Id.* at 173. Thus, states can successfully enter reservations that dramatically limit their obligations. *Id.*

166. See Charlesworth, *supra* note 78, at 632 (discussing the large number of reservations made to the Convention of the Elimination of All Forms of Discrimination Against Women, many for religious and cultural reasons).

167. Cook, *supra* note 67, at 173. This margin allows a state to apply treaty requirements subject to the particular circumstances existing in that state. *Id.* The margin may be very narrow, leaving the state little room to maneuver outside treaty obligations, or it may be very wide, allowing the state granting the state almost complete autonomy in the performance of its obligations. *Id.*

168. See *id.* at 173 (stating that the greater the margin given to one state, the less effective the enforcement of the right in all states).

169. *Id.* at 174. The standard of evaluation of violations depends on the context in which the violation was committed. *Id.* This flexibility raises the question of what standard will apply to violations of women's human rights, which are typically ac-

rights must become a primary objective of international institutions in order to force states to comply with stringent applications of treaty obligations.¹⁷⁰

The state responsibility doctrine can successfully hold states liable for violations of women's human rights.¹⁷¹ The effectiveness of human rights treaties and conventions depends both on human rights tribunals and on the individual women themselves.¹⁷² Continued education of both women and states about the separate needs and concerns of women will assist in the development of international criteria designed to protect women's human rights.¹⁷³ Most important is the reconceptualization, on an international level, of women's human rights as a separate body of rights equal in importance to other fundamental human rights.

The state responsibility doctrine proposed by Cook, unlike the proposal of emancipatory democracy, seeks to work within the existing structure of international law.¹⁷⁴ Similarly, the transformative theory¹⁷⁵ works within the system and provides a roadmap for fundamental change that focuses on local activism instead of the transformation of the international legal structure.¹⁷⁶

corded less value than other protected human rights. *Id.*; see Kim, *supra* note 51, at 67 (stating that women's human rights are usually not protected to the full extent of the law because violations are regarded as occurring within the private sphere).

170. Cook, *supra* note 67, at 174. The European Court has specifically recognized the needs of women and has made the protection of women's human rights an important goal of the European Community. *Id.* This commitment will require that member states offer substantial explanations for any discrimination against women in order to be in compliance with treaties ratified by the Community. *Id.*

171. *Id.* at 128.

172. *Id.*

173. See *supra* notes 161-63 and accompanying text (discussing the development of internationally recognized standards and criteria for the evaluation of human rights violations). Human rights treaties and institutions must continue to educate states about the importance of protecting women's human rights and women themselves about their rights and how to achieve enforcement. Cook, *supra* note 67, at 155.

174. See Cook, *supra* note 67, at 124 (describing the doctrine of state responsibility and its potential to hold states liable for violations of women's human rights).

175. See Spahn, *supra* note 88, at 1070 (describing her proposal for the transformative theory of human rights, recognizable by four factors: sources of international law, targets or specific rights issues to attack, spaces to apply the law, and moves or strategies for action).

176. See *id.* (discussing the localized efforts for change made by Irish activists for reproductive freedom).

3. Transforming the Meaning of Human Rights

Human rights rhetoric is both empowering and defeating for women.¹⁷⁷ The gap between the theory of human rights and the reality of women's lives is the focus of the transformative theory of human rights.¹⁷⁸ Four separate factors contribute to the process of transformation that would ultimately narrow the gap between the theory of human rights and women's realities.¹⁷⁹

The first factor is the sources of human rights, which differ dramatically from the traditional notion of human rights.¹⁸⁰ The transformative theory uses a range of rights, or sources, within the international legal discourse to assert change.¹⁸¹ An important element of this theory is its emphasis on activism at the local level.¹⁸² Local activists make the strategic decisions regarding timing and the specific sources utilized in the movement.¹⁸³

177. See *id.* at 1066 (discussing how efforts to promote women's empowerment through human rights may divert attention away from other, more beneficial, paths; however, at the same time, human rights provide an important framework through which all women can relate). The rights rhetoric allows women to redefine their role in society and to diminish the apparent universality of male authority. *Id.*; see Charlesworth, *supra* note 78, at 614 (stating that international human rights law does not adequately reflect the unique needs and concerns of women); see also Otto, *supra* note 28, at 406 (asserting that the international legal system must be fundamentally reformed to assist in the creation of democracies that reflect the needs of women and minorities).

178. Spahn, *supra* note 88, at 1069. An examination of the manner in which rights and remedies relate is a key difference between this theory and other feminist analyses of human rights. *Id.* The transformative theory does not discuss whether women's human rights should be integrated into the larger body of human rights or if they should, instead, be purposefully separated from other human rights. *Id.*

179. *Id.* at 1070. The four factors, which do not necessarily exist together in all situations, are indicators of fundamental power shifts. *Id.*

180. See *id.* at 1072 (asserting that traditional notions of human rights characterize a right as beginning in human rights doctrines and flowing down to the oppressed women who need the protection of that human right). The transformative theory is also different from the "bottom up" theory that suggests local rights and customs become idealized until they are the norm and are used to maintain the status quo. *Id.*

181. *Id.* at 1073. Activists for change are not limited by the public/private distinction of international law under this theory because they use a variety of sources, including both the public and private spheres, to frame the immediate issue. *Id.*

182. Spahn, *supra* note 88, at 1074.

183. *Id.* at 1073. Other scholars have also emphasized the importance of local participation in the struggle for the recognition of women's human rights. See Wilkinson, *supra* note 50, at 15 (asserting that most issues affecting women are best

The second factor, targeting, is also a local, and not an international, strategic decision.¹⁸⁴ When targeting the issues for change, activists must work to define women's human rights independently, and not depend on the international legal system to establish those definitions.¹⁸⁵ Not all people will agree on what constitutes a fundamental human right, but the decision is best made by local activists who can target the specific legal barriers to the needs of women in that country.¹⁸⁶

The third factor in the transformative theory, the spaces, refers to the ability of local activists to utilize legal spaces to maneuver their proposal for change through the international legal system.¹⁸⁷ Again, while international activists can assist local activists, the decisions must ultimately be made at the local level.¹⁸⁸

The final factor of the transformative theory of human rights, the moves, consists of three parts: challenging, dissecting, and transforming.¹⁸⁹ The first step involves challenging the male construction of human rights.¹⁹⁰ Although a risk of rejection exists, there is little chance of fundamental change without first challenging the norm.¹⁹¹

The second move available to feminists is dissecting.¹⁹² This move works to reveal the distinction between "social" and "civil" law as analogous to the public/private dichotomy inherent in the international legal

attacked at the local level where women participate first hand in creating and implementing change).

184. Spahn, *supra* note 88, at 1074. The specific issues targeted by the movement for change, or transformation, are framed by local activists who more clearly identify the unique customs, challenges, and norms of their own country. *Id.*

185. *See id.* at 1074 (stating that it is essential for activists to refuse to wait for permission to label something as a women's human rights issue).

186. *Id.* An example of a hotly debated human right is reproductive freedom. *Id.*

187. *Id.* at 1075. The legal spaces can include both international law, public and private, as well as local law. *Id.*

188. *See Spahn, supra* note 88, at 1074 (emphasizing the work of local activists in Ireland and the success they achieved in deploying a variety of Irish legal spaces).

189. *Id.* at 1075. The three parts of this factor are representative of the many various techniques feminists use to effect change. *Id.*

190. *Id.* at 1075; *see Charlesworth, supra* note 78, at 626 (criticizing human rights as constructed around a male norm, evident in the language of human rights discourse).

191. Spahn, *supra* note 88, at 1076. Challenging is risky because challengers are likely to be labeled ignorant or naive by the institutions challenged, regardless of the manner in which the institutions are confronted. *Id.*

192. *Id.* at 1077.

system.¹⁹³ Activists must recognize the false distinction and work within the system to characterize the specific problem as within the public sphere.¹⁹⁴

The final move for activists is transformative.¹⁹⁵ At this point, local activists expand their efforts and engage in joint activity with international cultures.¹⁹⁶ Transformative moves can be executed by gaining exposure on a national or international level.¹⁹⁷ Activist interaction with national and international sources will provide valuable feedback to the local people about how the world views the human right being challenged and transformed.¹⁹⁸ In the case of Russia, local activists could strategize on an international level with foreign feminists, but foreign feminists must allow local activists to make the final decisions on the methods of transformation.¹⁹⁹ The implementation of strategies by foreign feminists is likely to fail without the support of local activists.²⁰⁰

193. *Id.* Just as the division of international law into public and private spheres accords women less power and recognition, so too does the distinction between social and civil law. *Id.*

194. *Id.* at 1078. By using both public and private international law, activists increase the probability of success. *Id.* Activists are most likely to succeed where they make public what is perceived as private. *Id.*; see Kim, *supra* note 51, at 67 (discussing the relationship between the public and private spheres of international law that accord drastically different protection to women). Once an issue is within the public sphere, it is given the protection of international law and activists will have increased their odds of success.

195. Spahn, *supra* note 88, at 1079.

196. *Id.* The media, educational efforts and political organizing are typical avenues for transformative moves. *Id.* Other, less often utilized methods, include the arts. *Id.*

197. See *id.* (describing the battle against apartheid in South Africa as an example of a successful transformative move). The apartheid battle was won through not only legal and political avenues, but also through music, books, and the media. *Id.* Exposure on a national or international level should not be limited by traditional devices, but should utilize all avenues, including student groups, churches, the local and international business communities, and the visual arts. *Id.* at 1080. As a story becomes widely exposed, the pressure to change the situation will flow from previously untapped, and perhaps even unknown, sources. *Id.* at 1079.

198. *Id.* at 1080. The feedback received from international exposure of the issue can help activists legitimize their cause and give them the courage that may be needed to continue the battle. *Id.* Negative feedback from the global community will exert tremendous pressure on local government to effect meaningful change. *Id.* at 1079.

199. See Spahn, *supra* note 88, at 1083 (concluding that fundamental change flows from local activism).

200. See Wilkinson, *supra* note 50, at 15 (asserting Western feminist strategies will probably fail in foreign cultures because of the gap between the source of the strategy and the place of its implementation).

The transformative theory of human rights is characterized as a struggle.²⁰¹ Women will not win human rights through legal battles but through local activism and cultural transformation.²⁰² Accusations of cultural relativism and disagreements about the meaning of human rights are likely inevitable.²⁰³ However, by viewing the human rights discourse as expansive and not constrained by the traditional limits of law, activists can seek to redefine human rights in a way that reflects their own culture and values.²⁰⁴

IV. RECOMMENDATIONS

A. EVALUATING HUMAN RIGHTS TREATIES AND FEMINIST THEORIES

Analysis of human rights conventions and feminist theories suggests the best solution is to combine the use of conventions with one or more theories. While the human rights instruments offer equality for women, state reservations and appreciation margins whittle away the reality of equality.²⁰⁵ Subjecting the instruments to feminist scrutiny and reform is essential to creating documents that guarantee the level of protection they promise.²⁰⁶

The strength of the theory of emancipatory democracy is its use of United Nations resolutions, covenants, and conventions to effect change within the international legal system. Human rights instruments already

201. See Spahn, *supra* note 88, at 1082 (predicting that miscommunication and misunderstanding is likely to occur between women during the transformative period).

202. *Id.* at 1083. The theory utilizes international institutions and law, but focuses on dramatically altering the status quo by challenging the male norm at the local level. *Id.*

203. See *id.* at 1082 (stating that the claim of cultural relativism does not necessarily always prevent the transformation of human rights). Practices such as slavery and apartheid were also once defended on cultural grounds. *Id.* Women are a diverse group who will view and approach human rights in different ways. *Id.* This conflict can be lessened, but probably not eliminated, by allowing activism to begin at the local level. *Id.* at 1074.

204. *Id.* at 1081. As activists engage in defining their own ideas of human rights, they simultaneously breathe new life into the human rights discourse. *Id.*

205. See Charlesworth, *supra* note 78, at 633 (arguing that the large number of reservations to the Women's Convention proves that international law, in its current form, is inadequate to address the specific needs of women); see also Cook, *supra* note 67, at 173 (asserting that margins of appreciation granted to states diminish the effectiveness of human rights treaties).

206. See Charlesworth, *supra* note 78, at 644 (asserting that international law does not reflect the needs of women and must be transformed).

contain the necessary provisions for the protection of women's human rights, but fail because the international legal system is aligned with a Western, male perspective.²⁰⁷

Despite its strengths, the theory of emancipatory democracy is unlikely to be successful in Russia. The increasing abuse of Russian women in both the home and workplace attest to the male-dominated democratic system being hewn from years of communist rule. An emancipatory democracy would have been easiest to create when communism fell.²⁰⁸ Any attempt to redefine democracy in Russia today, despite the turbulent political climate permeating the country, will likely meet fierce resistance by those in power. Emancipatory democracy's use of "soft" law to effect maximum change in a liberal democratic system, while one of the theory's greatest strengths, is a weakness in the context of protection of women's rights in Russia. "Soft" law designed specifically to protect women existed before the breakdown of communism in the former Soviet Union, and therefore, the chances of expediting the Russian government's recognition of those rights, without first reforming the entire international legal system, are slim. In sum, the theory of emancipatory democracy would require monumental change within the international legal system before effecting substantive change in Russia.

The doctrine of state responsibility is more likely to succeed in creating change in Russia. In contrast to the theory of emancipatory democracy, the doctrine does not require a complete transformation of the legal system before it can be effective.²⁰⁹ While the doctrine recognizes that the current international legal system allows states to escape liability for violations of women's human rights, it suggests that careful documentation and development of female-oriented criteria for measurement of violations could force states to recognize the rights of women.²¹⁰ The doctrine uses both customary law and human rights instruments,

207. See Otto, *supra* note 28, at 413 (claiming the international legal system will not assist in the promotion of emancipatory democracy until it recognizes and rejects its alliance with the Western male model).

208. See *id.* at 385 (suggesting that the end of the Cold War opened a window of opportunity for the development of an emancipatory democracy that could have reflected the needs of those traditionally marginalized in the Soviet Union).

209. See *id.* at 125 (suggesting the development of new criteria to assess violations of women's human rights, but working within the international legal system in its current form to enforce liability against states for violations of their obligations under human rights instruments).

210. *Id.* at 135-36.

giving it a broader base of resources to draw upon for exerting pressure on states.²¹¹

Another strength of the state responsibility doctrine is the potential collaboration between Western and Russian feminists. Western feminists could launch an educational program designed to empower Russian women with information about their human rights and methods to gain enforcement of those rights. Russian women could then meticulously document the abuses they experience and with the assistance of international lawyers and feminist legal scholars, elevate those abuses to the status of human rights violations.²¹²

The most viable alternative is the transformative theory of human rights.²¹³ Similar to the state responsibility doctrine, this theory does not require change within the international legal system.²¹⁴ The focus on local activism is the greatest strength of this theory. Decisions regarding the sources of law, the strategies to implement change and the timing of strategic battles occur at the local level, and international activists provide a support network.²¹⁵

This theory is most likely to succeed in Russia primarily because Western feminists can help Russian women without imposing Western culture.²¹⁶ Russian women will have the satisfaction of helping themselves and choosing strategies that are in harmony with Russian culture and values.²¹⁷ The transformative theory requires the least amount of change in the international system and routes energy directly to solving the problems Russian women face.

211. *Id.*

212. See Cook, *supra* note 67, at 132 (suggesting that collaboration could encourage both the identification of the instances when a state is responsible for human rights violations, and the fulfillment of those obligations).

213. See *supra* notes 176-98 and accompanying text (discussing the theory proposed by Elizabeth Spahn for transforming the meaning of human rights).

214. See Spahn, *supra* note 88, at 1083 (asserting that her theory depends on local activism and transformation of cultures).

215. *Id.*

216. See *id.* at 1073 (describing the transformative theory as reflective of the relationship between international human rights organizations and local activists). Change is achieved through the work at the local level, drawing on international doctrines and organizations as needed. *Id.* at 1083.

217. See Wilkinson, *supra* note 50, at 15 (discussing the advantages of fostering change at the local level).

B. SOLUTIONS FOR RUSSIAN WOMEN

In order for Western feminists to be able to help Russian women, they must first want to help themselves.²¹⁸ Both the transformative theory of human rights and the doctrine of state responsibility offer opportunities for Western feminists to assist Russian women actively in implementing change, without the threat of imperialism. Both theories draw on a variety of sources to effect change.²¹⁹ The advantage of the transformative theory is the flexibility at the local level.²²⁰ While change implemented by the transformative theory may not be as wide-sweeping as changes possibly achieved by the state responsibility doctrine,²²¹ change will occur faster and will occur in those areas most important to Russian women.

Reformation of the international legal system is essential in recognizing women's needs. However, as important as this reformation is, it is likely to be a long process. Russian women cannot wait too long for change.²²² The best option for Russian women is the transformative theory because it allows comparatively quick change in targeted areas and focuses on the local level.

CONCLUSION

Western imperialism threatens to exclude indigenous women from the process of change in their own countries. Transforming the treatment of women in Russia requires Russian women to work within their own culture and its accompanying set of values. Western feminists should act only as assistants to the process.²²³ The transformative theory of

218. See *id.* at 15 (discussing examples of failed Western attempts to change cultural practices in non-Western nations). The Western objections to the veil in Islam and female genital mutilation in African cultures are met with local resentment. *Id.* Non-Western cultures reject the Western tendency to define right and wrong, and attempts by Western nations to impose those value judgments on non-Western cultures. *Id.*

219. See generally Spahn, *supra* note 88, at 1079; Cook, *supra* note 67, at 129 (discussing the various sources, including human rights instruments, customary law and even the media, available to effect substantive change).

220. Spahn, *supra* note 88, at 1083.

221. See *id.* at 1081 (stating that change begins at the local level and only later affects the international human rights community).

222. See HR WATCH, *supra* note 2, at 2 (summarizing the violations of women's human rights in Russia). Discrimination in the workplace and violence in the home are escalating, creating an increasingly dangerous atmosphere for Russian women. *Id.*

223. See Wilkinson, *supra* note 50, at 15 (explaining the likely failure of policies

human rights offers Russian women the opportunity to lead the campaign for equality in Russia,²²⁴ and offers Western feminists the chance to help Russian women without imposing Western values and policies.

Eventually, the international legal system must be transformed to recognize the needs of women as an integral part of human rights.²²⁵ This task can involve women of every country and culture, as well as use human rights conventions and covenants. The needs of Russian women, however, are more immediate and change must occur swiftly.²²⁶ The time is ripe for change in Russia, but it must come from within.

without local input).

224. Spahn, *supra* note 88, at 1074.

225. See Charlesworth, *supra* note 78, at 621 (explaining the initiative of Third World feminists to focus upon problems of the most oppressed women).

226. HR WATCH, *supra* note 2, at 2.