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SPECIAL ESSAY

THE UNITED NATIONS AND THE PROMOTION AND PROTECTION OF THE RIGHTS OF WOMEN: HOW WELL HAS THE ORGANIZATION FULFILLED ITS RESPONSIBILITY?

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I. ESTABLISHING THE IDEAL

Towards the end of World War II, the great powers recognized that a new world order had to be established to replace the one that had failed. Amid the ruins, the world reexamined and reevaluated the values upon which to rebuild. Reeling from the shock of naked aggression and death camps, the world realized that something had to be done so that the destruction and atrocities of the great war would never be repeated. One of the most important lessons learned from the war was that the inherent dignity and rights of every human being, without distinction, had to be guaranteed and protected.

In June of 1945, in the city of San Francisco, the world came together to establish the United Nations. In the preamble of its Charter, the peoples of the United Nations proclaimed their determination "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."¹ Although not the first international effort to deal with gender equality, the Charter is the first international instrument to mention specifically the equal rights of women and men.

In Article 1 of the Charter, one of the named purposes and principles of the United Nations is "[t]o achieve international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms of all without distinction as to race, sex, language, or religion."² Articles 13, 55, 56, and 76

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1. U.N. CHARTER pmbl.

2. *Id.* art. 1, ¶ 3.

further express a commitment on the part of the United Nations and of its Member States to promote universal respect for and observance of "human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."³

Within the Organization itself, there is a similar commitment to promoting gender equality. Article 8 states that, "[t]he United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs."⁴ In 1949 the United Nations further developed the principle of equality in the Universal Declaration of Human Rights (UDHR). As the first instrument in the collection known as the International Bill of Rights, it was "a common standard of achievement for all peoples and all nations."⁵ The UDHR proclaimed in Article 1 that "[a]ll human beings are born free and equal in dignity and rights."⁶ In Article 2 it further stated that "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."⁷ Although legally non-binding, the Declaration set the stage for the other International Bill of Rights instruments and later human rights treaties which did guarantee equality for women and men.

Having thus acknowledged the ideal of gender equality and committing itself to its fulfillment, the great task ahead for the United Nations was to make that ideal a reality, that is, defining legal standards and implementing them. Over the 50 years of its existence, the United Nations has developed two approaches to promoting gender equality.⁸ The first approach is based on policy pronouncements. The work of the Commission on the Status of Women is primarily focused on this area. The second is based on treaty, in particular, the Convention on the Elimination of All Forms of Discrimination Against Women, which is monitored by the Committee on the Elimination of Discrimination Against Women.

3. *Id.* art. 13, ¶ 1b, art. 55, ¶ C, art. 56, art. 76, ¶ C.

4. *Id.* art. 8.

5. *Universal Declaration of Human Rights*, pmb., G.A. Res. 217A, U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810 (1948).

6. *Id.* art. 1.

7. *Id.* art. 2.

8. *United Nations Action in the Field of Human Rights*, para. 1682. Published by the Centre for Human Rights, Geneva, 1994 [hereinafter *United Nations Action*].

One might wonder why it is necessary to have two regimes. In a way, having two approaches, with their own documents and personnel, seems to be an inefficient use of precious resources. It could be argued that consolidating the work done on both fronts would allow for the maximum use of the limited resources available. It is helpful, however, to keep in mind the nature and purposes of each approach and the extent of the interaction between the two. They both start out with the same goal of equality between women and men. The means each uses to that end, however, sometimes seem to be very distinct while at other times are clearly intertwined.

A treaty is a legally-binding document which delineates the obligations of State Parties, who can then limit their obligations by submitting reservations. While a treaty is a powerful tool for creating international law and changing national law, it is limited first to those states who have accepted it and second by their reservations. Monitoring compliance with the treaty is extremely time consuming, and can be fraught with overwhelming problems. There is the possibility that treaty law will become universally accepted, binding even those who are not parties to the instrument. This evolution, however, may take a considerable amount of time.

United Nations policy, on the other hand, may not be legally binding, but creates a goal towards which the organization and its members can work. Policy also creates guidelines for achieving that goal. In addition, declarations and conferences are not only solid foundations for future treaties, but are concrete manifestations of progress as well. Because the policy regime is couched more in terms of "governments should" or "governments are urged" rather than "governments shall" or "governments are obliged," it tends to allow for broader, more detailed measures for achieving the ultimate goal. The Nairobi Forward-looking Strategies, for example, are more detailed than even the comprehensive Convention on the Elimination of All Forms of Discrimination Against Women. Moreover, this strategy makes for easier acceptance by governments, as was the case with the unanimous adoption by the General Assembly of the Declaration on the Elimination of Discrimination Against Women. United Nations policy also allows for the wider, more active participation of governments, inter-governmental organizations, and non-governmental organizations in the implementation of the policies as well as in creating them. A world conference, for example, would allow for more interaction among various groups than the drafting of a treaty.

The two regimes are not so separate or distinct, however. Both share the goal of gender equality. Both are concerned with standard setting and enforcement. The Commission on the Status of Women and the Committee on the Elimination of Discrimination Against Women, though they do not share a formal link, are constantly working together to help governments implement measures, to pressure governments into compliance, to monitor progress, and to do whatever else is necessary to reach the goal of equality between women and men. The two approaches to gender equality together create a network that touches every aspect of the organization and its members. Since policy is system-wide, it has a universal reach that no treaty enjoys. Having various bodies working on gender equality likewise has the effect of mainstreaming women's issues while maintaining a focus on the special concerns of women.

II. POLICY BASED APPROACH

A. *Commission on the Status of Women*

The Charter designates the General Assembly, the Economic and Social Council, and the Secretariat as the principal organs that have primary responsibility for human rights, including the rights of women. In 1946, the Council established the Commission on Human Rights and, recognizing that the Commission would need advice on problems relating to the status of women, also set up a Subcommission on the Status of Women. Some analysts feared that this effort was not enough to guarantee that women's rights would receive the required attention.⁹ Receptive to this problem, the Council, later that year, expanded the Subcommission into a full Commission that reported directly to the Council. Originally, the Commission had fifteen members, but, consistent with the expansion of the membership of the United Nations, membership had increased to forty-five members as of 1989.

The Commission over the years has developed a three-part mandate.¹⁰ The first is "to prepare recommendations and reports to the Economic and Social Council on promoting women's rights

9. U.N. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, REPORT OF THE COMMITTEE ON PROGRESS ACHIEVED IN THE IMPLEMENTATION OF THE CONVENTION para. 13, U.N. Doc. CEDAW/C/7 (1995) [hereinafter PROGRESS REPORT].

10. *Id.* para. 18.

in political, economic, social and educational fields.”¹¹ Second, it must prepare recommendations and reports to the Council on “urgent problems requiring immediate attention in the field of women’s rights with the object of implementing the principle that men and women shall have equal rights, and to develop proposals to give effect to such recommendations.”¹² The third part includes the functions of promoting equality, development, and peace; monitoring the implementation of measures for the advancement of women; and reviewing and appraising progress made at all levels, including national, sub-regional, regional, sectoral, and global.

In line with its mandate, one of the most important endeavors of the Commission is the writing of declarations and treaties. Two of its greatest achievements are the Declaration on the Elimination of Discrimination Against Women and the Convention for the Elimination of All Forms of Discrimination Against Women.

The Declaration was proclaimed by the General Assembly in 1967. Although legally non-binding, its comprehensive scope defined the policy and goals of the United Nations regarding gender equality. It also set the stage for the Convention, which entered into force in 1981. The Declaration proclaims in Article 1 that discrimination against women is “fundamentally unjust and constitutes an offence against human dignity.”¹³ It urges states to take “all appropriate measures”¹⁴ to abolish discriminatory laws, customs, and practices in the political, social, economic, and cultural life of the nation. The work of the Commission has also involved working closely with various organs, specialized agencies, and other bodies of the United Nations, as well as intergovernmental and non-governmental organizations. The Commission on the Status of Women has worked closely with the Commission on Human Rights, for example, when it discussed sections of the international bill of rights draft that dealt with women’s rights and when issues concerning women were on its agenda. The Commission and the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), and the Food and Agriculture Organization (FAO) have also cooperated on issues of concern to women.

11. *Id.*

12. *Id.*

13. *Declaration on the Elimination of Discrimination against Women*, G.A. Res. 2263, U.N. GAOR, 22d Sess., art. 1, U.N. Doc. A/6880 (1967).

14. *Id.* arts. 2-4.

Intergovernmental and non-governmental organizations have perhaps maintained an even closer working relationship with the Commission, sending observers, giving advice, exchanging information, and making statements. The non-governmental organizations have been especially valuable in helping to carry out the recommendations of the Commission through lobbying and programs established by their national affiliates.¹⁵

In spite of its full Commission status, however, it has had to struggle to maintain the support of the Council. One big problem is that it has not always been given the permission and the resources to hold meetings every year. Another obstacle to the cooperation between the Commission and other human rights bodies is the geographical separation between their relevant Secretariat units. There seems, however, to be a renewed interest in supporting the work of the Commission with the Fourth World Conference on Women and the closing of the century both drawing near. Continued support for the work of the Commission is an important way the United Nations can reach its goal of gender equality.

B. International Women's Year — 1975

The goals of the International Women's Year were to promote equality, to ensure the full integration of women in the total development effort, and to recognize the contribution of women to world peace.¹⁶ The focal point of the observance of the Year was the World Conference of the International Women's Year, which was held in Mexico City and was attended by over 1,000 representatives from 133 states. The Conference adopted the Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace, 1975, and the World Plan of Action for the Implementation of the Objectives of the International Women's Year, in addition to adopting other important documents.

One of the most important resolutions of the Conference was the recommendation to establish an International Research and Training Institute for the Advancement of Women (INSTRAW).¹⁷ Its purposes were the collection and dissemination of information, the design of research for monitoring changes, and the develop-

15. PROGRESS REPORT, *supra* note 9, at para. 30.

16. *United Nations Action*, *supra* note 8, at para. 1694.

17. *Id.* paras. 1714-18.

ment of training programs for women to do research, assume leadership roles, and increase earning possibilities. It was set up in Santo Domingo, Dominican Republic, with funding from the United Nations Trust Fund for the Institute.

The publicity, interest, and activities generated by the Year helped to bring recognition to the fact that women's rights and issues were not isolated concerns, but were important to society as a whole.¹⁸ It also marked a change in the United Nations, with the system as a whole now becoming more actively involved in improving the situation of women.

C. United Nations Decade for Women — 1976-1985

The success of the International Women's Year led to the decision to celebrate a Women's Decade. The General Assembly designated the years 1976-1985 as the United Nations Decade for Women: Equality, Development and Peace. Among the main goals of the Decade were the full observance of gender equality and the elimination of *de jure* and *de facto* discrimination.

Two World Conferences were held during the Decade. The World Conference of the United Nations Decade for Women: Equality, Development and Peace was held in Copenhagen in 1980. Attended by more than 2,000 delegates from 145 states, the Conference formulated the Programme of Action for the Second Half of the United Nations Decade for Women, 1980-1985. It also evaluated the progress made and obstacles encountered in accomplishing the goals of the Decade. In 1985, the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace was held in Nairobi. It is notable that each Conference brought wider world participation. At this third conference, there were representatives from 157 states and several liberation organizations, the latter group attending in the capacity of observers.

The Conference agenda contained two substantive items.¹⁹ The first was the critical review and appraisal of progress achieved and obstacles encountered in attaining the goals of the Decade in regard to its main theme of equality, development, and peace and its sub-theme of employment, health, and education. The second involved forward-looking strategies of implementation for the advancement of women up to the year 2000.

18. PROGRESS REPORT, *supra* note 9, paras. 118, 135.

19. *United Nations Action*, *supra* note 8, para. 1735.

*D. Nairobi Forward-looking Strategies for the Advancement of Women*²⁰

The Nairobi Forward-looking Strategies are currently the major policy instrument of the United Nations on the advancement of women. The Strategies were adopted by consensus at the Nairobi Conference in 1985. Based upon the three key concept of equality, development, and peace, the document outlines obstacles to the advancement of women, strategies for overcoming them, and measures for the implementation of the basic strategies at the national level. The lists of impediments to the advancement of women are very detailed and thorough, covering every aspect of society. The suggestions are ambitious in their scope yet also practical in that they recognize and deal with the different realities that exist around the world.

In Paragraph 11, equality is defined as "both a goal and a means whereby individuals are accorded equal treatment under the law and equal opportunities to enjoy their rights and to develop their potential talents and skills"²¹ to be able to participate in the various aspects of national life and to benefit from its results. In particular, equality for women means "the realization of rights that have been denied as a result of cultural, institutional, behavioural and attitudinal discrimination."²² In the area of development, the role of women "is directly related to the goal of comprehensive social and economic development and is fundamental to the development of all societies."²³

In Paragraph 13, the Strategies acknowledge that, "[t]he full and effective promotion of women's rights can best occur in conditions of international peace and security."²⁴ The Strategies further state that "[p]eace is promoted by equality of the sexes, economic equality and the universal enjoyment of basic human rights and fundamental freedoms."²⁵ Peace also requires that "women be enabled to exercise their right to participate on an

20. See REPORT OF THE WORLD CONFERENCE TO REVIEW AND APPRAISE THE ACHIEVEMENT OF THE UNITED NATIONS DECADE FOR THE WOMAN: EQUALITY, DEVELOPMENT AND PEACE, *Nairobi Forward-looking Strategies for the Advancement of Women*, July 15-16, 1985, U.N. Doc. A/Conf 116/28, U.N. Sales No. E.85.IV.10, chap. I, sect. A (1985). Published by the UN Department of Public Information, New York. (Printed in full in CIS 1986 H382-2, pp. 83-168).

21. *Id.* para. 11.

22. *Id.*

23. *Id.* para. 12.

24. *Id.* para. 13.

25. *Id.*

equal footing with men" in all spheres of the life of their country, "particularly in the decision-making process."²⁶ The goal involves the recognition of the value of women's strengths, capabilities and contributions to society as well as the building of a "participatory human infrastructure"²⁷ to accomplish the mobilization of women at all levels.

Intended as a practical guide for global action, the measures are meant for immediate action, with monitoring and evaluation to take place every five years. The Strategies, however, do recognize that countries are at different stages of development, and have different priorities and resources. The Strategies outline several significant obstacles to equality.²⁸ Poverty and underdevelopment, which are products of imperialism, colonialism, neo-colonialism, apartheid, racism, and unjust international economic relations, are serious impediments to the equality of women. Other impediments include stereotypes perpetuating the inferiority of women, the denial of equal access to the power structure, and the ineffective implementation of legislative changes and dissemination of information. Custom and the "deeply rooted resistance" by society's conservative elements to the necessary change in attitude are further obstacles to equality.

Strategies and measures for implementation are presented as guidelines for overcoming these obstacles.²⁹ First and foremost, the document urges governments to ratify the Convention on the Elimination of All Forms of Discrimination Against Women and to establish monitoring bodies to evaluate compliance. Governments are also encouraged to pass legislation guaranteeing equality in the legal, political, economic, and social spheres of society. In addition, education and dissemination of information are considered imperative to the accomplishment of equality. Special importance is given to teaching equality to young children and mobilizing them to act as future leaders for change. Agents of the state, including the judiciary and the police force, must also be educated on gender equality and the special legal needs of women, particularly in dealing with violent crimes.

Obstacles to development revolve mostly around the large gap between developed nations and developing states.³⁰ Paragraph 94

26. *Id.*

27. *Id.* para. 15.

28. *Id.* paras. 44-50.

29. *Id.* paras. 51-92.

30. *Id.* paras. 93-106.

points to the "coercive measures of an economic, political and other nature that are promoted and adopted by certain developed States and are directed towards exerting pressure on developing countries."³¹ Other impediments include imperialism, colonialism, neo-colonialism, expansionism, apartheid and other forms of racism, exploitation, foreign occupation, and protectionism. Stereotypes about traditional gender roles also play a large part in inhibiting the advancement of women. Other social factors mentioned include poverty, rising divorce rates, population growth, and the deteriorating economic conditions in developing countries.

It is imperative that different socio-economic and cultural conditions be taken into account in the identification of obstacles and the design of strategies.³² The strategies must be geared towards the effective participation of the entire population and helping women build economic independence and self-reliance.³³ Paragraph 116 encourages governments to achieve this by increasing the number of women in society who are decision makers, policy makers, managers, professionals and technicians. Another important Strategy is establishing or strengthening national machinery to institutionalize women's issues and promote participation of women at all levels.³⁴ Areas of particular concern include employment, health, education, industry, trade, science and technology, communications and dispelling stereotypes, housing, environment, and social services.

In the third key area of equality, obstacles revolve around threats to and existing breaches of international peace and security. Paragraphs 232 and 233 list the arms race, war, armed conflicts, foreign occupation, aggression, imperialism, colonialism, neo-colonialism, racism, apartheid, and the lack of tolerance among the major obstacles to human progress and the advancement of women. The Strategies assert that peace requires "the participation of all members of society" and that women and men have "an equal right and the same vital interest in contributing to international peace and co-operation."³⁵ The vulnerability of women in areas of armed conflict and violence against women in daily life are of special concern and require immediate attention. Increased international and regional cooperation is strongly advo-

31. *Id.* para. 94.

32. *Id.* para. 108.

33. *Id.* paras. 109, 113.

34. *Id.* paras. 126-27.

35. *Id.* paras. 240, 251.

cated.³⁶ The importance of the interaction between monitoring on the national, regional, and international levels is likewise outlined.

The United Nations system has also come under much scrutiny, with the emphasis on the role of its organizations as models for the incorporation of women into decision making.³⁷ There has been some success in attaining equality in the entry-level and regular professionals, but much work needs to be done in the middle and senior management. In 1987, 38.1 percent of entry-level professionals, 23.4 percent of regular professionals, 6.6 percent of middle management, and 3.4 percent of senior management were women. A comparison in 1993 revealed that 47.0 percent of entry-level professionals, 30.4 percent of regular professionals, 12.9 percent of middle management, and 8.4 percent of senior management were women.³⁸ The United Nations itself needs to continue implementing its programs for gender equality within its own structure. In so doing, it will build the credibility and effectiveness it needs to deal with the problems of its Member States.

In 1990, the Commission, in its thirty-fourth session, conducted the first review and appraisal of the implementation of the Nairobi Forward-looking Strategies.³⁹ The review acknowledged the results of continued efforts as well as the apparent stagnation due to the world economic situation in the 1980's. The review also called for an improved pace of implementation, recognizing the high cost of failure to do so to societies in terms of slowed economic and social development, misuse of human resources, and reduced social progress. In the years since then, the General Assembly has consistently reaffirmed the recommendations of the Commission in its resolutions.⁴⁰

The United Nations is currently preparing for the second review and appraisal, on the agenda for the Fourth World Conference on Women, to be held in Beijing this September. It is

36. *Id.* paras. 309-21.

37. PREPARATIONS FOR THE FOURTH WORLD CONFERENCE ON WOMEN: ACTION FOR EQUALITY, DEVELOPMENT AND PEACE, paras. 54-57, U.N. ESCOR, Commission on the Status of Women, 36th Sess., Resolution 36/8, U.N. Doc. E/CN.613 addendum 10 (1992).

38. *Id.* at para. 55.

39. FIRST REVIEW AND APPRAISAL OF THE IMPLEMENTATION OF THE NAIROBI FORWARD-LOOKING STRATEGIES, U.N. ESCOR, U.N. Doc. E/CN.6/15 (1990).

40. See, e.g., *Resolution Adopted by the General Assembly — Implementation of the Nairobi Forward-looking Strategies*, G.A. Res. 49, U.N. GAOR, U.N. Doc. 49/161 (1995); G.A. Res. 48, U.N. GAOR, U.N. Doc. 48/108 (1994).

based on three main area of review.⁴¹ The first basis is national reports, of which 130 have been received by the Conference secretariat as of the end of 1994. The second is statistical analysis of national reports, results of regional conferences, and information provided by specialized agencies. The third is information from other governmental and non-governmental organizations.

III. TREATY BASED APPROACH

A. *Early Conventions Dealing With Women's Rights*

Before the Convention on the Elimination of All Forms of Discrimination Against Women, the United Nations' instruments dealing with gender equality and the rights of women addressed very specific issues such as prostitution and the nationality of married women. The General Assembly approved the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others in 1949 and entered into force in 1951. The Convention expanded on previous agreements already in force as well as a draft initiated by the League of Nations. The obligations of the State Parties include punishment for individuals who procure or exploit another person for prostitution even with that person's consent, punishment for individuals involved in the running of a brothel and abolishment of laws that encourage prostitution. In addition, State Parties are committed to the establishment of social, political and economic measures to prevent prostitution and to the protection of immigrants, particularly women and children, to prevent the traffic in persons for prostitution.

Adopted by the General Assembly in 1952, the Convention on the Political Rights of Women entered into force in 1954. This Convention guaranteed women's right to vote, to be eligible for public election, and to hold public office "on equal terms with men, without any distinction."⁴² The Convention on the Nationality of Married Women was adopted by the General Assembly in 1957 and entered into force in 1958. This Convention recognized that "everyone has the right to a nationality" and that "no one

41. SECOND REVIEW AND APPRAISAL OF THE IMPLEMENTATION OF THE NAIROBI FORWARD-LOOKING STRATEGIES, U.N. ESCOR, 39th Sess., U.N. Doc. E/CN.6/3 (1995).

42. *Convention on the Political Rights of Women*, Mar. 31, 1953, 27 U.S.T. 1909, TIAS No. 8289, art. I-III, 193 U.N.T.S. 135 (1954).

shall be arbitrarily deprived of his nationality nor denied the right to change his nationality,"⁴³ as defined in Article 15 of the Universal Declaration of Human Rights. The Convention guaranteed a woman's right to a nationality independent of her husband. No longer would marriage, dissolution of marriage, or a change in a husband's nationality automatically affect his wife's status.

In 1964, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which had been adopted by the General Assembly in 1962, entered into force. Clearly emphasizing a break from tradition, the Convention recognized that "certain customs, ancient laws and practices relating to marriage and the family were inconsistent with the principles set forth in"⁴⁴ the Charter and the Universal Declaration. The Convention obliged the States to prohibit non-consensual marriages and child marriages. It further required the States to specify a minimum age for marriage and to register all marriages. Going further than just articulating an abstract ideal, the Convention specifically challenged traditions that no longer fit into the new world order.

Each of these instruments effected a change in the area they covered. Along with other human rights instruments that dealt with gender equality, they were able to improve the status of women in a variety of ways. The act of creating treaties is in itself an effective way of setting standards and defining international norms. As more nations ratified these treaties, the more accepted the principle of gender equality became. Each treaty addressed a particular problem in a particular area, be it political or social or economic, thus making inroads into every sphere of society.

As the understanding of gender equality developed, however, it became apparent that there was a serious need for a consolidation of the various instruments and an expansion of the definition of the rights. In spite of the numerous efforts undertaken, the status of women several decades after the establishment of the United Nations left much to be desired.

43. *Convention on Nationality of Married Women*, Feb. 20, 1957, G.A. Res. 1040, U.N. GAOR, 11th Sess., pmbl., 309 U.N.T.S. 65 (1958).

44. *Convention on the Consent to Marriage, Minimum Age for Marriage, and Registration for Marriage*, Dec. 9, 1964, G.A. Res. 1763A, U.N. GAOR, 17th Sess., 521 U.N.T.S. 231 (1964).

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

Adopted unanimously by the General Assembly in 1979, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) entered into force in 1981.⁴⁵ CEDAW is a concrete commitment designed to implement the principles set forth in the Declaration.

The Preamble recognizes that in spite of the various instruments already in force, "extensive discrimination against women continues to exist."⁴⁶ CEDAW reiterates that discrimination against women violates "the principles of equality of rights and respect for human dignity."⁴⁷ The preamble also acknowledges "the great contribution of women to the welfare of the family and to the development of society"⁴⁸ and calls for a change in "the traditional role of men as well as the role of women in society and in the family."⁴⁹ Considered the International Bill of Rights for women, CEDAW prohibits discrimination against women in all its forms and manifestations, both *de jure* and *de facto*. The rights guaranteed to women are extensive, encompassing civil, political, social, economic, and cultural rights. Wide-ranging in its scope, CEDAW also sets out an agenda for action to guarantee its promise of equality.

Of notable importance is Article 2 which commands State Parties to "condemn discrimination against women in all forms" and to "agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women."⁵⁰ These "appropriate means" include incorporating the principle of gender equality in national constitutions and other legislation, establishing legal protection for the equal rights of men and women, and adopting measures that would ensure gender equality in both the public and private sectors of society and that would modify or abolish laws, regulations, customs, and practices which constitute discrimination against women.

45. *Convention on the Elimination of All Forms of Discrimination Against Women*, G.A. Res 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/36 (1980) [hereinafter CEDAW].

46. *Id.* at pmb1.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* art. 2.

CEDAW not only prevents State Parties from practicing discrimination, but also imposes an affirmative duty to guarantee the equal rights of men and women on all levels of society. First and foremost is the commitment to incorporate gender equality in the constitution. By being incorporated in the national constitution, the guarantee of gender equality has a better chance of surviving changes in administration and national policy. CEDAW also requires the State Parties to change the very face of their societies and to reach into the private lives of their people by preventing discrimination practiced by private individuals and by eliminating discriminatory customs. This change has serious consequences for those who have used the shields of tradition, custom, or religion to perpetuate gender discrimination and inequality.

Article 3 requires State Parties to "take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women" in order to guarantee them "the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."⁵¹

State Parties are further required to "modify the social and cultural patterns of conduct of men and women"⁵² to eliminate practices, prejudices, and stereotypes based on the idea of the inferiority of women. Recognizing the "quintessential impact of culture and behaviour patterns on women's enjoyment of equality," the Committee on the Elimination of Discrimination Against Women has made it a point to stress the need for State Parties to give Article 5 special attention.⁵³ Consolidating and expanding the concerns addressed in previous treaties, CEDAW also deals with the suppression of prostitution,⁵⁴ the elimination of discrimination against women in the political, public, and international arenas,⁵⁵ and the guarantee of women's rights to acquire, change, or retain their nationality.⁵⁶

CEDAW has broad provisions dealing with equal access to education,⁵⁷ acknowledging that "education is a powerful instrument of public action and can act as a catalyst for change at all

51. *Id.* art. 3.

52. *Id.* art. 5.

53. PROGRESS REPORT, *supra* note 9, paras. 330, 333.

54. CEDAW, *supra* note 44, art. 6.

55. *Id.* arts. 7, 8.

56. *Id.* art. 9.

57. *Id.* art. 10.

levels for all women."⁵⁸ Equal access to employment and health care are likewise guaranteed.⁵⁹ Special concerns under health care for women include access to health services related to family planning, the eradication of the practice of female circumcision, and prevention and control of AIDS.⁶⁰ CEDAW also guarantees women equality with men before the law as well as equality with men in the social and cultural life of the country.⁶¹ In addition, State Parties are committed to eliminate discrimination against women in "all matters relating to marriage and family relations."⁶²

While it is difficult to assess the normative value of many of the rights, the cataloguing of women's rights in one comprehensive instrument in itself is significant to the development of a unified program for the promotion of gender equality. The number of states that have become parties to the Convention, accepting it as legally binding, is a good indicator of the extent to which *de jure* discrimination has been addressed.⁶³ As of January of 1995, 139 states have ratified the Convention, most of whom have accepted their obligations unconditionally. Twenty-nine states have entered substantive reservations, some based on religion, culture, and tradition.

C. Committee on the Elimination of Discrimination Against Women

Article 17 of CEDAW establishes the Committee on the Elimination of Discrimination Against Women to monitor the progress made in the implementation of the Convention. The Committee was initially to be composed of eighteen "experts of high moral standing and competence in the field covered by the Convention" serving in their personal capacity. The number was raised to twenty-three after the thirty-fifth ratification. With thirty-eight states having already become parties to the Convention before its first meeting, the Committee had twenty-three members from its very beginning.⁶⁴ The number stands at twenty-three today,

58. PROGRESS REPORT, *supra* note 9, para. 361.

59. CEDAW, *supra* note 45, art. 11, 12.

60. PROGRESS REPORT, *supra* note 9, paras. 422-24.

61. CEDAW, *supra* note 45, arts. 13-15.

62. *Id.* art. 16, ¶1.

63. PREPARATIONS FOR THE FOURTH WORLD CONFERENCE ON WOMEN: ACTION FOR EQUALITY, DEVELOPMENT, AND PEACE, para. 4, U.N. ESCOR, Commission on the Status of Women, 36th Sess., Resolution 38/8, U.N. Doc. E/CN.6/3 add. 7 (1992).

64. PROGRESS REPORT, *supra* note 9, paras. 167-68.

with the members coming from a diverse mix of educational and professional as well as geographical backgrounds.

The primary mandate of the Committee is the consideration of reports submitted by State Parties on the legislative, judicial, administrative, or other measures adopted to give effect to the provisions of the Convention. In addition, the Committee may make suggestions and general recommendations to the General Assembly based on the reports and information received from the State Parties. The Committee comments on the state reports, highlighting the most important points raised and identifying areas of progress and issues of concern.⁶⁵ This process allows for an on going interactive dialogue between the Committee and the State Parties which encourages constant improvement.

One of the major goals of the Committee has been to create a more systematic and structured cooperation with various groups, including specialized agencies and other United Nations bodies, non-governmental organizations, and the secretariat. The ILO, WHO, UNESCO, and FAO are a few of the most active participants, submitting information which has proved very helpful in the Committee's work.⁶⁶ Another area where the Committee is diligently working is on increasing cooperation with other human rights treaty bodies to ensure that women's rights are recognized "as part of a universal human rights responsibility."⁶⁷ Beyond the exchange of reports, there is no formal institutional link between the Commissions and the Committee. Their work, however, is closely related, with a shared goal of gender equality and an interaction between the policy and treaty regimes designed to reach as many states as possible.

D. Problems and Obstacles

A continuing problem plaguing the Committee is State Parties' noncompliance with reporting obligations. As of June of 1994, there were 117 reports overdue, 8 of which were more than 10 years late.⁶⁸ Beyond sending reminders to errant States and including information on non-compliance in its reports, the Committee does not seem to have the power to enforce reporting obligations. On the opposite end of the spectrum, the limited

65. *Id.* para. 227.

66. *Id.* para. 278.

67. *Id.* para. 289.

68. *Id.* para. 213.

meeting time available to the Committee in its annual sessions has resulted in a growing backlog of reports awaiting consideration. There was a backlog of thirty-three reports as of June, 1994.⁶⁹

Another problem with CEDAW involves an area the treaty does not address. Noticeably missing from the Convention is a section dealing with violence against women, particularly in the home, in the workplace, and during times of state conflict. Although violence against women is tangentially addressed under the provision prohibiting the traffic and prostitution of women and under several other provisions dealing with social and cultural concerns, it is not specifically mentioned in this comprehensive treaty.

United Nations' attempts at dealing with the issue of violence against women include the Nairobi Forward-looking Strategies, the Vienna Declaration and Programme of Action,⁷⁰ and the Declaration on the Elimination of Violence Against Women.⁷¹ The Declaration, especially, "signalled an intention to deal with the problem in its full complexity and to give appropriate priority to domestic violence."⁷² Attention to violence inside the home has revealed further manifestations of violence against women that occur within the family, but are tolerated or condoned by the community and state.⁷³ These include female foeticide and infanticide, neglect and abuse of girl-children, marital rape, *sati* (self-immolation by widows), and female genital mutilation. Some of the practices that are especially troublesome are those that are sources of cultural or religious pride.

Outside the home, certain areas have become a particular concern because of the high degree of risk of violence they create for women.⁷⁴ Unregulated industries and international labor migration frequently subject women to increased violence. Conflicts, whether internal or international, have also led to much female victimization. Hate, driven by ethnicity, religion, or politics, has

69. *Id.* para. 215.

70. *United Nations World Conference on Human Rights: Vienna Declaration and Programme of Action*, Vienna, June 14-25, 1993, U.N. Doc. A/Conf. 157/24 (1993), reprinted in 32 I.L.M. 1661 (1993).

71. DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN, G.A. Res. 48/104, U.N. GAOR, 48th Sess., U.N. Doc. CONF. 157/24 (1994).

72. MONITORING THE IMPLEMENTATION OF THE NAIROBI FORWARD-LOOKING STRATEGIES FOR THE ADVANCEMENT OF WOMEN, para. 4, U.N. ESCOR, 39th Sess., U.N. Doc. E/CN.6/3 add. 4 (1995).

73. *Id.* paras. 5-6.

74. *Id.* paras. 7-9.

given rise to the institutionalization of violence against women in the form of ethnic cleansing through systematic rape and forced pregnancies. Refugee women and girls, often alone and without the necessary documentation, are especially vulnerable to these dangers. Tragically, this comprehensive Convention fails to deal with this important issue. With the world starting to focus on the elimination of violence against women, however, there is great hope that the Declaration on the Elimination of Violence Against Women will someday lead to a legally binding document.

Another inherent problem with the Convention is that women do not have a right to petition as individuals. The only disputes recognized are those between State Parties, which are to be submitted to negotiation, arbitration, and finally, the International Court of Justice.⁷⁵ State Parties, however, are allowed to place a reservation on this provision and, indeed, many states have done so, thus rendering even this recourse highly ineffective.⁷⁶

If the ideal of gender equality is to become a reality, women must have a real way of addressing their concerns. An Optional Protocol giving women the right to individual petition, such as was established for the Covenant on Civil and Political Rights, would be a viable solution to this problem. For the Convention to live up to its reputation as a bill of rights for women, there needs to be a way for women to claim those rights. The Commission and the Committee are currently examining the feasibility of introducing an individual complaints procedure under the Convention.⁷⁷

Another significant obstacle to implementation of CEDAW is the reservations entered by the State Parties. The Convention for many years had the largest number of substantive reservations of any human rights treaty.⁷⁸ Several of these reservations have raised serious concerns in the Committee and among State Parties as being incompatible with the object and purpose of the Convention. The United Nations Secretariat, however, specified that although the Committee could comment on the reservations,

75. CEDAW, *supra* note 44, art. 29.

76. IMPLEMENTATION OF ARTICLE 21 OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN — ANALYSIS OF ARTICLE 2 OF THE CONVENTION, para. 90, U.N. Doc. CEDAW/C/4, Nov. 16, 1994 (1995) [hereinafter ARTICLE 21 ANALYSIS].

77. PROGRESS REPORT, *supra* note 9, para. 158.

78. *Id.* para. 321.

the authority to determine and evaluate such incompatibility rested with the State Parties and not with the Committee.⁷⁹ In addition, the possibility of reference to the International Court of Justice under Article 29 is ineffective because of the many reservations to that provision. The State Parties have been as of yet unable to resolve their disputes over the validity of some of the reservations.

Reservations to obligations under Article 2 are especially troublesome because they seem to be greatly incompatible with the unlimited scope of the article, which requires States "to pursue by all appropriate means and without delay a policy of eliminating discrimination against women."⁸⁰ Several countries, including Bangladesh, Egypt, and Morocco, have made reservations to allow noncompliance whenever the Convention conflicts with the Islamic Shariah. Arguably this reservation is incompatible with the requirement to abolish discriminatory laws, customs, and practices.

In monitoring progress of CEDAW's implementation, the Committee has urged State Parties to reconsider such reservations with a view to withdrawing them and has offered its resources to the State Parties to accomplish this goal. The Committee has also amended its guidelines for periodic reports to request the State Parties with substantive reservations to report on them in their periodic reports. In addition, the Committee has sought the aid of other organs, including the Commission on the Status of Women and the Commission on Human Rights, in addressing this issue.

Constantly making reservations an issue has some value in reminding State Parties of their obligations under the Convention. Arguably the strategy also has some normative effect in defining the scope and extent of the rights guaranteed under the Convention by replacing perhaps outdated ideas about women's rights with a modern and more comprehensive understanding of those rights. On the other hand, this limited reaction on reservations seems to be a very indirect and ineffective way of promoting change. Beyond suggestions and recommendations encouraging State Parties to withdraw their own reservations and to make an issue of other States' reservations, there seems to be little else the Committee can do to ensure that no reservations

79. *Id.* para. 322.

80. ARTICLE 21 ANALYSIS, *supra* note 75, at paras. 93-101.

are incompatible with the object and purpose of the Convention.

IV. THE FUTURE

As the Fourth World Conference on Women and the fiftieth anniversary of the founding of the United Nations draw near, it is important to applaud the accomplishments of the past. It is also imperative to renew and strengthen the commitment to gender equality. Much has been accomplished, but much has yet to be done.

The United Nations has been exceptionally successful in standard-setting, particularly with the Nairobi Forward-looking Strategies for the Advancement of Women and the Convention on the Elimination of All Forms of Discrimination Against Women.

The success of implementation has been more modest. Although many governments have followed some of the suggestions and recommendations of the Commission and the Committee, their national efforts at times seem small in the face of overwhelming inequities. The monitoring bodies have no real enforcing power besides applying international pressure on states. The lack of an individual right to petition and state reluctance to cooperate are still significant obstacles to the attainment of gender equality.

The continued and heightened interaction between the monitoring bodies and other United Nations organizations, governments, inter-governmental organizations, and non-governmental organizations, however, offers much hope. As more nations and organizations join in the cause of gender equality, seen in the ever-increasing world participation in the World Conferences, international pressure to conform may hasten the realization of the goal of gender equality.

Continued efforts in defining rights, promoting detailed guidelines for implementation, and conferences to evaluate and appraise the progress made will bring the world reality closer to the ideal of equality between women and men. The institutionalization of system-wide efforts also has the important effect of mainstreaming and integrating women's rights in the larger political, economic, social, and cultural contexts.

Some commentators have expressed concern, for example, that the Chinese government appears to dread the prospect of an army of outspoken women and journalists converging on their capital.⁸¹ In spite of this, however, the show will go on. As far

81. Steven Mufson, *Logistical Nightmare for Women's Conference*, San Jose Mercury News, May 3, 1995.

as its international reputation is concerned, it would be far worse for China to derail the Conference than it would be to suffer through a visit by thousands of opinionated foreigners.

Fifty years ago, there were few commitments and even fewer measures promoting gender equality. Today, there are several significant documents and implementation mechanisms in place that guarantee and protect the equal rights of women and men. Through the work of the United Nations, women's rights, along with the broader area of human rights, have been wrestled away from the domestic sphere and placed into the international arena. In the United Nations, women and women's groups from all over the world now have a forum in which to promote gender equality.