

CEDAW: It's Old, It Doesn't Work, and We Don't Need It

by Lester Munson*

It's pretty hard to say you're not for women's rights." So says Eleanor Smeal, who believes that women's rights will be advanced by the ratification by the U.S. Senate of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Smeal's argument makes for compelling rhetoric, but is ultimately misleading.

CEDAW is not synonymous with women's rights, and the Senate should not ratify the treaty. Opponents of CEDAW have pointed to some of its more preposterous consequences, such as the recommendations against Mother's Day and the promotion of legalized prostitution. These criticisms are certainly valid, but there are substantive reasons to oppose the treaty. CEDAW should not be ratified because: 1) The structure of CEDAW's institutions are hopelessly and unacceptably flawed, allowing for non-democratic nations to have influence over American domestic policy; 2) The convention is a distraction from legitimate diplomacy and the real issues confronting women around the world; and 3) CEDAW is an anachronism.

Background

CEDAW was adopted by the United Nations (General Assembly in 1979, and today 170 nations are party to it. President Carter signed the treaty in 1980, but the U.S. Senate has not ratified the treaty. The Democratic-controlled Senate failed to ratify CEDAW, not once, but twice—in 1994

and 2002—when it reached the Senate floor.

"Foreign Entanglements"

Every year, George Washington's farewell address to the young American nation is read into the record of both houses of Congress and his recommendation therein to avoid "foreign entanglements" always resonates. Washington did not urge Americans to avoid

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involvement in the world. Rather, he reminded his countrymen that the timeless principles of democracy and freedom are too precious to sacrifice for the inevitable and frequently unwise compromises of international diplomacy and give-and-take. CEDAW is just the kind of entanglement that Washington warned against.

Consider CEDAW's essential component: the unelected CEDAW Committee (Committee) that reviews the status of women in countries that are

parties to CEDAW and makes recommendations viewed by the Committee as binding. While the goals of this procedure are laudable, its mechanics are not. The members of the Committee are elected by CEDAW parties, which include the non-democratic regimes of China, Cuba, Iraq, Libya, Myanmar (Burma), North Korea, and Saudi Arabia. Another party to CEDAW is Nigeria, where a woman has recently been sentenced to death by stoning for the crime of adultery. Why would Americans want nations such as these selecting individuals who will sit in judgment of our domestic policies and politics?

Today, the CEDAW Committee boasts members from Cuba, Egypt, and Nigeria. While these members serve as individuals and not as representatives of their nations, there are no assurances that their judgments will be unaffected by their domestic politics; indeed, it is utterly foolish to think that there ever could be such assurances.

One need not look to such marginal regimes for troubling conflicts of interest, however. France and Germany are both signatories to CEDAW and have citizens on the Committee. Yet, the United States has serious problems with both nations on the issue of child abductions. There are numerous incidents of French and German parents bringing their American children, in violation of American divorce decrees, to France and Germany where they are protected by local courts in contravention of international conventions. Indeed, these nations also refuse unconditional extradition of people who murder our women and girls. We should not pretend that these nations, with which we otherwise have so much in common, do not have ulterior motives in their dealings with the United States in international fora.

The involvement of non-democratic nations in the processes of CEDAW highlights a related problem: the Committee's interference with democratic nations. In 1999, the Committee took issue with Ireland's pro-life policies and urged "a national dialogue on . . . the restrictive abortion laws." Ireland could

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not be called anything but a democracy today. Its ratings on civil and political rights from Freedom House, a widely respected, non-partisan human rights organization, are the highest possible. Ireland's policies on abortion are the product of a democratic process with which only the most intractable activist could quibble. The commentary of the CEDAW Committee, which to some extent is the product of non-democratic institutions, cannot possibly augment the democratic nature of Ireland's existing policy.

Additionally, there is a fatal flaw lurking in the CEDAW Committee's interpretation of the convention. The convention, unlike more recent UN treaties, does not itself prohibit reservations, the normal mechanism by which nations protect themselves from objectionable treaty provisions. The CEDAW Committee has, however, announced that Article 2 of CEDAW, which constitutes the broad, over-reaching central obligation under the treaty, is "central to the objects and purpose" of the treaty, therefore no reservations to this Article are permissible, even for "national, traditional, religious or cultural reasons. . . ." The Committee has also announced that, in addition to Article 2, Article 16 (family roles and marriage) is a "core provision" of the treaty. According to this interpretation, a state party cannot protect its domestic laws or constitution through the use of reservations.

A Distraction

Advocates of CEDAW say that U.S. ratification is needed to help women in other nations. Nicholas Kristof, a columnist for the *New York Times*, wrote, "the Bush administration is busy devastating third-world women. . . . It is trying to block a landmark international treaty on the rights of women, even though the State Department initially backed it. CEDAW would make no difference in America but would be one more tool to help women in countries where discrimination means death." This argument is false. The treaty has not been blocked—CEDAW is already a reality for women in 170 countries. Ratification by the United States will not affect their situations in the slightest.

Subjecting American jurisprudence to the vagaries of international committee-dom will do nothing to help women in Nigeria, who suffer under

unimaginable corruption and, in some states, the harsh jurisprudence of Sharia, or in Saudi Arabia, where an undemocratic regime does not allow women to drive cars or appear in public, or in Mozambique, with its unremitting poverty. These are the real threats to women's rights in the world—poverty, corruption, and the lack of democracy. The United States, as the world's largest provider of foreign assistance and foreign trade, fights these evils around the globe, whereas CEDAW does not even address these factors.

An Anachronism

As agreements between sovereign states, treaties are effective only when all parties are advantaged. There is no governing institution—not even the UN—that can compel compliance. Thus, a nation must see compliance with a treaty or convention as bringing it some benefit. The great American writer Washington Irving put it better: "Treaties at best are complied with so long as interest requires their fulfillment. Consequently, they are virtually binding on the weaker party only; or, in plain truth, they are not binding at all."

CEDAW was signed in 1980, when the Cold War between the United States and the Soviet Union was reaching its zenith: Soviet troops occupied Afghanistan, the Sandinistas were ruling Nicaragua, and Solidarity was challenging the Russian puppet masters in Poland. At that time, the ideological battle between the forces of freedom and totalitarianism influenced every movement of international organizations, particularly the organs of the UN. But whatever justification that existed for CEDAW then is gone now.

Washington Irving's character Rip Van Winkle may have appreciated today's debate over CEDAW. Like Rip Van Winkle, CEDAW has been awakened a generation later to a different world. The United States alone is a world power. While terrorism and rogue nations are the most pressing threats to America today, there is also the danger that large groups of nations, alarmed (rightly or wrongly) at the enormous relative power of the United States, will come together in opposition to American interests and seek a new balance of power.

This phenomenon, known as "balancing" to political scientists, has already been manifest at the UN. Although it was recently reinstated to the UN Commission on Human Rights

(Commission), in 2001 the United States was rudely dismissed from the Commission by an unlikely combination of European democracies and Near Eastern dictatorships. (The United States was also voted off the United Nations' Narcotics Control Board.) In any case, the Commission has proved to be a dubious clarion for the cause of human rights; it is routinely unable to condemn the obviously deplorable treatment of citizens in Cuba and China, among other such acts. We should fully expect that the various organs of CEDAW will be used in a similar manner.

The organizational chart for the UN looks like the schematics for a Rube Goldberg contraption, impossibly complicated and seemingly without direction. The various agencies, task forces, and committees of the UN take up thousands of hours of the valuable time of our diplomats and international officials. For several years, the Helms-Biden reform package, supported by Secretary-General Kofi Annan, has pushed the UN toward more focused and streamlined operations. The CEDAW Committee and other appurtenances move in the wrong direction.

Conclusion

In considering CEDAW, the Senate needs to move beyond the simple rhetoric of the treaty's proponents. Tough questions about the treaty and its consequences for America and U.S. foreign policy need to be asked.

Should the governments of Cuba, Iraq, Libya, and North Korea have influence—even indirectly—over American domestic law and custom? Is the time of international diplomats well spent on the merits of the various Western European governments' programs to educate their men on parental responsibilities? Can the deliberations of a political body at least three times removed from actual democratic institutions be instructive for citizens of the world's greatest representative democracy? Has the ratification of CEDAW by any country done anything to alleviate poverty, stamp out corruption, improve education, or strengthen health care in that country? Most Americans would say no to all of these questions. Accordingly, the Senate should say no to CEDAW. ☹

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