

107TH CONGRESS } 2d Session }	SENATE	{ EXEC. REPT. 107-9 }
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CONVENTION ON THE ELIMINATION OF ALL FORMS OF  
DISCRIMINATION AGAINST WOMEN

SEPTEMBER 6, 2002.—Ordered to be printed

Mr. BIDEN, from the Committee on Foreign Relations,  
submitted the following

REPORT

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany Treaty Doc. 96-53]

The Committee on Foreign Relations to which was referred the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the United Nations General Assembly on December 18, 1979, and signed on behalf of the United States of America on July 17, 1980, having considered the same, reports favorably thereon and recommends that the Senate give its advice and consent to ratification thereof, subject to four reservations, five understandings, and two declarations as set forth in this report and the accompanying resolution of advice and consent to ratification.

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## I. PURPOSE

The purpose of the Convention is to achieve the elimination of discrimination against women. The Convention obligates States Parties to condemn discrimination against women, to take all appropriate measures to end discrimination in a range of areas, including the political and economic spheres.

## II. BACKGROUND

The Convention on the Elimination of All Forms of Discrimination Against Women (hereafter "CEDAW," "Women's Convention," or "Convention") was adopted by the United Nations General Assembly on December 18, 1979, and entered into force on September 3, 1981. The Convention sets forth internationally accepted principles and measures to achieve equal rights for women throughout the world. As of August 1, 2002, 170 nations were party to the Convention.

Women's rights and the equality of men and women are addressed in general terms in various international instruments such as the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. A small number of treaties deal with certain specific rights and issues affecting women. None of these documents, however, are as comprehensive as the Convention.

During the Carter Administration, the United States played an active role in the negotiating process leading to the Convention and strongly supported the concept of a comprehensive and effective international instrument to achieve the elimination of discrimination against women. The United States signed the Convention on July 17, 1980. President Carter submitted the Convention to the Senate on November 12, 1980, for its advice and consent to ratification. It has been pending before the Senate since then.

Prior to the 107th Congress, the Committee held hearings on the Convention in 1988 and 1990.<sup>1</sup> It did not proceed to a Committee vote on the Convention in 1988 and 1990 because neither the Reagan Administration nor the first Bush Administration indicated that they supported ratification. The Clinton Administration endorsed ratification of the Convention. In September 1994, the Committee held another hearing, and that same month ordered the Convention reported by a vote of 13-5.<sup>2</sup> The full Senate did not act on the Convention during the remaining days of the 103rd Congress. Under Senate Rule XXX, the Convention was returned to the Committee. No action was taken in the Committee during the 104th through 106th Congresses.

### *Bush Administration position*

The Bush Administration has indicated that it supports the Convention, but that it is currently undertaking a review of the Convention to ascertain whether additional reservations, understandings, and declarations may be required in addition to those proposed by the Committee. The Administration has had considerable time to consider its position. The chronology of action on the

<sup>1</sup>S. Hrg. 100-1039 (1988); S. Hrg. 101-1119 (1990).

<sup>2</sup>See Exec. Rpt. 103-38 for a review of the Committee's consideration of the Convention in 1994. The hearing record is set forth in S. Hrg. 103-892 (1994).

Convention in the past year—which demonstrates the time afforded the Administration by the Committee—deserves elaboration.

By letter dated June 29, 2001, Chairman Biden invited the Secretary of State to submit the Administration's priorities for treaties pending in the Senate during the 107th Congress (this letter reiterated an invitation first issued by then-Chairman Helms in March 2001). In the letter, the Chairman indicated that he expected to convene hearings on the Convention in the coming year, and that the Department would be invited to testify. By letter dated February 7, 2002, the Department of State responded. The letter placed CEDAW in "category III"—those treaties which the Administration "believes are generally desirable and should be approved." In other words, the Administration indicated its support for U.S. ratification of the Convention.

On that basis, Chairman Biden proceeded with plans for a hearing on the treaty. By letter dated March 7, he informed the Secretary of State that a hearing would be held after the Easter recess, and that a State Department representative would be invited to testify. In mid-April, a formal invitation was issued to the Under Secretary of State for Global Affairs to testify at a hearing scheduled for May 15. As the hearing date neared, the State Department indicated that it had not decided who would testify. The hearing was postponed, and a new invitation was issued to the Under Secretary for a hearing scheduled for June 12 (later rescheduled for June 13). At the end of May, the Department of State orally requested an additional delay, contending that the Justice Department had just commenced a review of the treaty. By letter dated June 4, 2002, the State Department formally requested a delay; the letter, however, reiterated the Administration's support for ratification of the Convention.

Subsequent communications have been received from the Departments of State and Justice on the Convention, in response to letters from Chairman Biden inquiring about the scope and timing of the Administration's review of the Convention. Although these letters have been generally unresponsive—and have failed to reply to several direct questions posed—the letters have not renounced the Administration's previous expressions of support for ratification of the Convention. The letters do indicate that the Administration is conducting a review of certain issues raised by the Convention and the CEDAW Committee (the advisory panel created by the Convention), and have urged that the Committee delay consideration of the Convention until this review is completed.

Because of the limited time remaining in the 107th Congress, and because the Administration refused to provide any information about when its review would be completed, the Chairman decided to proceed with a hearing in mid-June, and the Committee vote in July.

### III. ENTRY INTO FORCE

Pursuant to Article 27, the Convention entered into force on September 3, 1981 after the twentieth nation ratified or acceded to it. If the United States ratifies the Convention, it will become a party on the thirtieth day after the date of the deposit of the instrument of ratification.

#### IV. COMMITTEE ACTION

On June 13, 2002, the Committee conducted a hearing on the Convention; the hearing was chaired by Senator Boxer. Testimony was received from five members of the House of Representatives (Representatives Jo Ann Davis, Carolyn Maloney, Juanita Millender-McDonald, Constance Morella, and Lynn Woolsey), and six witnesses from the private sector. The private sector witnesses included senior State Department officials from the last three presidential administrations who were involved with human rights or UN matters.

On July 30, 2002, the Committee considered the Convention, and ordered it favorably reported by a vote of 12–7, with the recommendation that the Senate give its advice and consent to the ratification of the Convention, subject to 4 reservations, 5 understandings, and 2 declarations set forth in the resolution of advice and consent to ratification. Ayes: Senators Biden, Sarbanes, Dodd, Kerry, Feingold, Wellstone, Boxer, Torricelli, Nelson, Rockefeller, Smith, and Chafee. Nays: Senators Helms, Lugar, Hagel, Frist, Allen, Brownback, and Enzi.

#### V. MAJOR PROVISIONS

The Convention contains the most specific obligations adopted to date by the international community in the area of gender discrimination. Current U.S. law is largely consistent with the provisions of the Convention because the U.S. Constitution and federal law provide strong guarantees of equal protection as well as effective protections against discriminatory conduct.

Through its broad definition of the term “discrimination against women” in Article 1, the Convention seeks to promote equal rights and freedoms for women, regardless of marital status, in all fields including political, economic, educational, social, cultural, and civil.

Article 2 sets forth the fundamental obligation of States Parties to pursue a policy of eliminating discrimination against women by embodying the principle of equality of men and women in their national constitutions or other appropriate legislation, adopting legislation and other measures prohibiting discrimination against women, establishing legal protections for women, ensuring that no public authorities or institutions discriminate against women, and taking steps to eliminate measures or practices that constitute discrimination against women. Article 3 requires States Parties to take “in all fields . . . all appropriate measures” including legislation to ensure the full development and enhancement of women. The Convention, in article 4, also permits “temporary special measures” to accelerate *de facto* equality between men and women.

Articles 5 through 16 outline specific steps that the parties must undertake in a variety of fields. These include providing equal rights for women in political and public life, equal access to education, non-discrimination in employment and pay, guarantees of job security in the event of marriage and maternity, and access to adequate health care facilities. The Convention underlines the equal responsibilities of men with women in the context of family life and stresses the social services needed—especially child care facilities—for combining family obligations with work responsibilities and participation in public life.

Articles 17 through 22 establish a framework under the treaty for reviewing the implementation by States Parties. Article 17 establishes the Committee on the Elimination of Discrimination Against Women, consisting of 23 experts of high moral standing and competence. These experts are selected from among nationals of States Parties, but serve in their personal capacity. The Committee generally meets once a year to receive and review reports from the Parties regarding implementation. Although the Committee can make recommendations, it has no competence under the Convention to consider complaints or petitions from individuals or governments, and no power to enforce its recommendations.

## VI. COMMITTEE COMMENTS

The Convention is a landmark treaty, designed to advance the rights of women around the world. It builds on the principles of nondiscrimination found in earlier international documents, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Because of its comprehensive nature, the Convention has become an important instrument in the struggle for equal rights for women around the globe.

The treatment of women in Afghanistan under Taliban rule serves as a reminder that the struggle for women's rights is far from complete. Although women in the United States enjoy equal opportunity and equal protection of the law, these rights are not universally guaranteed elsewhere. The Convention provides an important means to advance these rights.

The Committee believes that U.S. ratification of CEDAW will serve several important purposes.

First, it will reaffirm the commitment of the United States before the eyes of the world to the principle of equality between men and women and to the promotion and protection of women's rights at home and abroad. The United States has long been a leader in advancing women's rights. But, as witnesses with recent experience in international diplomatic conferences testified before the Committee, women from other countries are discouraged by the failure of the United States to join the Convention. This failure undercuts the effectiveness of our message in promoting women's rights.

Second, ratification will enhance the ability of the United States to press for women's rights globally. To be sure, as the world's leading nation, the United States already has a powerful voice, and can speak out for such rights whether or not it is a party to the Convention. But U.S. ratification will give our diplomats a tool—a means to press other governments to fulfill their obligations under the Convention. If we are a party, when U.S. diplomats raise women's rights and are confronted with rebuttals from foreign officials that the United States is seeking to advance "Western values" which have no applicability in their land, U.S. diplomats can reply with a strong rejoinder: your government adhered to the Convention freely, and it is required to keep its international commitments.

Third, ratification will further empower women in foreign nations who seek to use CEDAW to press for women's rights in their respective countries. With the United States adding its voice in promoting adherence to CEDAW obligations, women in many coun-

tries will be further encouraged to press vigorously for fulfillment of CEDAW obligations. This argument was made forcefully to the Committee in a letter, dated June 12, 2002, to Senator Boxer by the then-Afghan Minister for Women's Affairs, Dr. Sima Samar (Dr. Simar is now Chairman of the Human Rights Commission in Afghanistan). She stated as follows:

I understand that the U.S. Senate is now considering whether the United States should join 169 other countries in ratifying [the Convention]. I believe it will be important for me and other Afghan women if you do take this step. We will then be able to tell our countrymen that the United States, where women already have full legal rights, has just seen the need to ratify this treaty. This treaty will then truly be the international measure of the rights that any country should guarantee to its women. We will be able to refer to its terms and guidelines in public debates over what our laws should say. Your advisers to many of our leaders here will be able to cite its provisions in their recommendations. And perhaps we women will achieve full human rights for the first time in a generation.

During the last decade of the Cold War, the Helsinki Final Act—a document in which Soviet Bloc states committed to protect human rights—served to embolden advocates throughout Eastern and Central Europe, who used the document to press their Communist governments for protection of civil liberties. So, too, CEDAW can serve as a tool which will allow women and women's rights advocates around the world to seek an end to discrimination against women.

Fourth, the advancement of women promotes stability and economic growth for societies as a whole. A recent UN-sponsored study of the Arab world (a study conducted by Arab scholars) concluded that an important reason for economic underdevelopment in the region was the lack of empowerment of women. Commenting on the lack of equal opportunity in both the political and economic spheres, the report noted that “[s]ociety as a whole suffers when a huge proportion of its productive potential is stifled, resulting in lower family incomes and standards of living.”<sup>3</sup> Secretary of State Powell stated the case well. Speaking on International Women's Day earlier this year, he said:

Women's issues affect not only women; they have profound implications for all humankind. Women's issues are human rights issues. They are health and education issues. They are development issues. They are ingredients of good government and sound economic practice. They go to the heart of what makes for successful, stable societies and global growth. Women's issues affect the future of families, societies and economies, of countries and of continents. We, as a world community, can not even begin to tackle the array of problems and challenges confronting us without the full and equal participation of women in all aspects of life . . . It is not just popular opinion, but plain fact: countries that treat women with dignity, that afford

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<sup>3</sup> UN Development Program, *Arab Human Development Report 2002*, at 3 (2002).

women a choice in how they live their lives, that give them equal access to essential services, give them an equal opportunity to contribute to public life—these are the countries that are the most stable, valuable and capable of meeting the challenges of the new century.<sup>4</sup>

Most fundamentally, the Convention's promise of providing equal rights to women addresses a question of basic fairness which women have been asking for centuries: why should rights be denied to half the population simply because of their gender? The Convention provides a response: women's rights are human rights, which should be accorded on a universal basis.

## VII. SUMMARY OF PROVISIONS IN THE RESOLUTION OF ADVICE AND CONSENT

In transmitting the treaty to the Senate in 1980, the Carter Administration indicated that the treaty raised several issues with regard to whether U.S. domestic law conformed to the terms of the treaty, and noted that the United States had the option of changing U.S. law or submitting reservations to the treaty. The Administration recommended, among other things, a reservation relating to federalism, and a declaration that the substantive provisions of the treaty are not self-executing. The Carter Administration did not, however, make any specific recommendations as to appropriate language for implementing legislation or reservations. (Exec. R, 96th Cong., 2d Sess., Nov. 1980, at pp. VIII-IX).

In the 103rd Congress, the Clinton Administration undertook a thorough review of the Convention, and recommended that the Senate include nine conditions (four reservations, three understandings, and two declarations) in the resolution of advice and consent. The resolution approved by the Committee includes these provisions in the resolution. The resolution includes two other conditions: an understanding first proposed by Senator Helms in 1994 related to abortion, and an understanding proposed by Senator Biden this year related to the CEDAW Committee.

The provisions of the resolution are summarized below.

### RESERVATIONS

#### 1. *Private Conduct*

The Convention's definition of discrimination in Article 1 covers activities of private organizations, associations and individuals as well as those of federal and state governments. When read in conjunction with obligations under other articles of the Convention (Articles 2, 3 and 5), the effect of this definition is to reach into areas that are not regulated by the federal government. For example, Title VII of the Civil Rights Act of 1964 does not apply to private employers with fewer than 15 employees, religious institutions, or tax-exempt private clubs. Similarly, Title IX of the Education Act Amendments of 1972 does not apply to private institutions that receive no federal funds. This reservation therefore makes clear that the United States does not accept any obligation

<sup>4</sup>Remarks of Secretary Powell at a reception to mark International Women's Day (Mar. 7, 2002).

under the Convention to regulate private conduct except as mandated by the Constitution and U.S. law.

## 2. *Combat Assignments*

Article 2 obligates States Parties to pursue “by all appropriate means . . . a policy of eliminating discrimination against women.” Although women can serve in all non-combat positions in the U.S. armed forces, and attend all the military academies without restriction, the Defense Department and the military services have policies which preclude women from serving in units and positions that have missions which require routine engagement in direct combat. This reservation clarifies that the United States does not accept an obligation under the Convention to put women in all combat positions.

## 3. *Comparable Worth*

Article 11(1)(d) of the Convention provides women with the right to “equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.” This provision reflects a potentially broad definition of the concept of equal pay for women.

Pay equity is an established principle in U.S. law and practice. The Equal Pay Act of 1963 (29 U.S.C. 206(d)(1)) mandates equal pay for men and women performing jobs of equal skill, effort and responsibility under similar working conditions unless the pay differential is justified by one of four exceptions. The United States has not, however, adopted the concept of comparable worth. Although the Convention does not use the term “comparable worth,” the proposed reservation makes it clear that the United States does not accept an obligation under the Convention to adopt the doctrine of comparable worth.

## 4. *Paid Maternity Leave*

Article 11(2)(b) requires States Parties to take appropriate measures to “introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.” Although current U.S. law and practice provide for maternity and parental leave benefits in many employment situations, and the Family and Medical Leave Act of 1993 provides certain employees unpaid leave in certain circumstances, including the birth or adoption of a child, federal law does not require employers to provide paid leave or leave with comparable social benefits in connection with pregnancy or childbirth. Similarly, although the Family and Medical Leave Act provides a qualified employee pre-existing benefits for the duration of the leave at the level and under the same conditions as provided prior to commencement of the leave and provides such employees the right to return to his or her job or to an equivalent job, no federal law requires employers to hold vacant the position of a woman who has taken maternity leave or to reinstate her without loss of seniority or allowances. This reservation therefore states that the United States does not accept an obligation under Article 11 to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.



## UNDERSTANDINGS

*1. Federal-State Implementation*

Articles 2(d) and 24 taken together would require the federal government to ensure that state and local governments comply with the Convention. Many of the specific areas covered by the Convention (such as education) are within the purview of state and local governments, rather than the federal government. Although U.S. law does not proscribe the federal government from committing its constituent units to the goal of non-discrimination, U.S. law does provide limitations on the federal role in some areas. To reflect this situation, this understanding makes clear that the United States will carry out its obligations under the Convention in a manner consistent with the federal nature of its form of government. This understanding is identical to one approved by the Senate in its resolution of advice and consent to ratification of the Convention on the Elimination of Racial Discrimination.

*2. Freedom of Speech, Expression and Association*

The Convention contains provisions requiring regulation of private conduct in a manner which is beyond the power of the government. For example, Article 5 obligates the parties to modify practices which are based on "the idea of the inferiority or the superiority of either of the sexes." The First Amendment to the Constitution guarantees individuals the right to disseminate such "ideas." Article 7 requires parties to take measures to ensure that women have the right, on equal terms with men, to participate in non-governmental organizations and associations concerned with the public and political life of the country. Such an obligation could extend beyond the scope of the government's authority or implicates rights of association protected by the First Amendment. Therefore, this understanding clarifies that the United States does not accept any obligation under the Convention to restrict freedom of speech, expression and association to the extent that they are protected by the Constitution and U.S. laws.

*3. Free Health Care Services*

Article 12, paragraph 1, obligates States Parties to take all appropriate measures to ensure equal access for women to health care services "including those related to family planning." Article 12, paragraph 2, requires Parties to ensure to women "appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary." Paragraph 1 mandates equality of access to family planning services, but does not require the affirmative provision of such services generally or of any specific services (such as contraceptive devices). Similarly, paragraph 2 does not require the provision of any particular services, but allows each State Party to decide which services are "appropriate" and whether and when it is "necessary" to make services freely available. This understanding reflects this reading of Article 12.

*4. Abortion*

As noted in the discussion of the third understanding, Article 12 contains certain obligations with regard to health care services and

services in connection with pregnancy. In 1994, the Committee approved an understanding, sponsored by Senator Helms, which states that “nothing in this Convention shall be construed to reflect or create any right to abortion and in no case should abortion be promoted as a method of family planning.” The Committee again recommends inclusion of this understanding, as it reflects the plain meaning of the text of the treaty, which does contain the word abortion.

#### 5. *CEDAW Committee*

Article 17 of the Convention creates the Committee on the Elimination of Discrimination Against Women (hereafter the “CEDAW Committee”), made up of 23 experts appointed by nations party to the Convention. These experts act in their personal capacity to consider reports submitted by parties under Article 18 (Article 18 requires parties to submit reports periodically on measures they have taken to give effect to the Convention). The Committee is required to report annually to the UN General Assembly, and, under Article 21, may “make suggestions and general recommendations based on the examination of the reports and information received” from the parties. As the State Department concedes, the CEDAW Committee has no authority to compel parties to follow its recommendations.<sup>5</sup> The understanding reiterates that point.

### DECLARATIONS

#### 1. *Non-Self-Executing*

Existing U.S. law provides extensive protections against gender-based discrimination and remedies sufficient to satisfy most of the requirements of the Convention. In addition, federal, state and local laws provide a comprehensive basis for challenging discriminatory statutes, regulations and other governmental actions, as well as certain forms of discriminatory conduct by private actors, in court. In view of this, there is no need to establish additional legal causes of action in order to enforce the requirements of the Convention. This declaration therefore states that the provisions of the Convention are not-self-executing.

The intent of such a declaration is two-fold: to indicate that the Convention will be implemented pursuant to Constitutional and statutory law, and to clarify that it will not create a new or independently enforceable private right of action in United States courts. The Senate has approved a similar declaration in giving advice and consent to other human rights treaties, such as the Convention Against Torture, the Covenant on Civil and Political Rights, and the Convention on the Elimination of Racial Discrimination.

#### 2. *Dispute Settlement*

Article 29(1) provides that any dispute between States Parties concerning the interpretation or application of the Convention, which is not settled by negotiation, shall at the request of one of them be submitted to arbitration. If the parties to the dispute are unable to agree to the organization of such arbitration within six

<sup>5</sup> Letter from Secretary Powell to Senator Biden, July 8, 2002 (“State Parties have always retained the discretion on whether to implement any recommendations made by the Committee.”)

months, any such party may refer the dispute to the International Court of Justice. Article 29(2) provides that a State Party may declare at the time of ratification that it does not consider itself bound by the provisions of Article 29(1). This declaration states that the United States does not consider itself bound by Article 29(1) and that the specific consent of the United States to the jurisdiction of the Court is required on a case-by-case basis.

#### VIII. TEXT OF RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

*Resolved (two-thirds of the Senators present concurring therein),*

##### **SECTION 1. ADVICE AND CONSENT TO RATIFICATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, SUBJECT TO RESERVATIONS, UNDERSTANDINGS AND DECLARATIONS.**

The Senate advises and consents to the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the United Nations General Assembly on December 18, 1979, and signed on behalf of the United States of America on July 17, 1980 (Treaty Doc. 96-53), subject to the reservations in section 2, the understandings in section 3, and the declarations in section 4.

##### **SECTION 2. RESERVATIONS.**

The advice and consent of the Senate is subject to the following reservations, which shall be included in the instrument of ratification:

(1) The Constitution and laws of the United States establish extensive protections against discrimination, reaching all forms of governmental activity as well as significant areas of non-governmental activity. However, individual privacy and freedom from governmental interference in private conduct are also recognized as among the fundamental values of our free and democratic society. The United States understands that by its terms the Convention requires broad regulation of private conduct, in particular under Articles 2, 3 and 5. The United States does not accept any obligation under the Convention to enact legislation or to take any other action with respect to private conduct except as mandated by the Constitution and laws of the United States.

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

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

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

### **SECTION 3. UNDERSTANDINGS.**

The advice and consent of the Senate is subject to the following understandings, which shall be included in the instrument of ratification:

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

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

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

(4) Nothing in this Convention shall be construed to reflect or create any right to abortion and in no case should abortion be promoted as a method of family planning.

(5) The United States understands that the Committee on the Elimination of Discrimination Against Women was established under Article 17 "for the purpose of considering the progress made in the implementation" of the Convention. The United States understands that the Committee on the Elimination of Discrimination Against Women, as set forth in Article 21, reports annually to the General Assembly on its activities, and "may make suggestions and general recommendations based on the examination of reports and information received from the States Parties." Accordingly, the United States understands that the Committee on the Elimination of Discrimination Against Women has no authority to compel actions by States Parties.

### **SECTION 4. DECLARATIONS.**

The advice and consent of the Senate is subject to the following declarations:

(1) The United States declares that, for purposes of its domestic law, the provisions of the Convention are non-self-executing.

(2) With reference to Article 29(2), the United States declares that it does not consider itself bound by the provisions of Article 29(1). The specific consent of the United States to the jurisdiction of the International Court of Justice concerning disputes over the interpretation or application of this Convention is required on a case-by-case basis.

## IX. MINORITY VIEWS OF SENATORS HELMS, LUGAR, HAGEL, FRIST, ALLEN, BROWNBACK, AND ENZI

### BACKGROUND

In 1994, Senators Helms, Kassebaum, Brown, Coverdell and Gregg filed Minority Views expressing their concern about the substance of the Convention on the Elimination of All Forms of Discrimination Against Women ("the Convention") when it was reported by this Committee (*see* Exec. Rept. 103-38, p. 53).

In 2002, the Convention's substance continues to generate concern for the minority, as set out below. The minority registers an additional concern over the majority's haste in ordering the Convention to be reported before receiving Executive Branch views.

### PROCEDURE

No hearings on the Convention were held between September 27, 1994 and June 13, 2002. On the latter date, the majority held a hearing on the Convention with private witnesses. The majority declined the Executive Branch's request to postpone hearings on the Convention until an Executive Branch review of the Convention has been concluded. The majority also opted against inviting U.S. Department of State witnesses eventually proffered by the Executive Branch for the June 13, 2002, hearing.

On July 8, 2002, Secretary of State Colin Powell wrote to Senator Biden, Committee Chairman, and noted that the Convention raises a number of issues that must be addressed before the Senate provides its advice and consent. Secretary Powell wrote that it is necessary for the Executive Branch to determine what reservations, understandings and declarations may be required as part of the ratification process. Secretary Powell also wrote that "a careful review is appropriate and necessary" and that the Departments of State and Justice were conducting a review "as expeditiously as possible."

On July 15, 2002, Senator Helms wrote to the Chairman to request that Committee action on the Convention be deferred until the Senator's return to Washington.

On July 19, 2002, Assistant to the President for National Security Affairs Condoleezza Rice wrote to The Honorable Joseph Pitts, a member of the U.S. House of Representatives, and set forth the importance of Executive Branch review of the Convention prior to Senate action.

On July 26, 2002, Assistant Attorney General for Legislative Affairs Daniel J. Bryant wrote to the Chairman, referencing Secretary Powell's July 8 letter, to request that the Chairman await completion of the Administration's review [of the Convention] "before commencing a committee vote on CEDAW." In the alternative,

Assistant Attorney General Bryant urged Committee members to vote against ordering the Convention reported until completion of the review.

The full texts of the Powell and Bryant letters are included as attachments to this section.

On July 30, 2002, the majority took up the Convention at the Committee's Business Meeting and ordered it reported by a vote of 12-7. The State Department-Justice Department review of the Convention had not been completed at the time of the vote, and the minority understands that, as of the date of filing of this Report, the Executive Branch review had not been completed.

The minority's strong preference was to defer Committee action on the Convention until after completion of the Executive Branch review and Senator Helms' return. Instead, the majority ordered the Convention reported without hearing Executive Branch witnesses, and without an updated Executive Branch legal analysis reflecting domestic and international legal developments since 1994 which could affect the Convention's application in the United States.

The Convention is the most ambitious multilateral convention on women ever undertaken by the international community. The minority feels that the current Administration's legal analysis, together with the Administration's views about whether a package of reservations, understandings and declarations can be crafted that would permit United States adherence to the Convention, would have been—and remain—critical to a thorough understanding of the Convention's potential impact on the American people and their institutions.

The minority recommends that the Senate defer action on the Convention until the Administration's analysis and views are available.

#### SUBSTANCE

As the Carter Administration indicated in 1980 when it submitted the Convention to the Senate for advice and consent, important issues concerning division of Federal-State powers are presented by several of its provisions. The Convention has also generated vigorous debate about the implications of U.S. compliance with regard to important social issues such as abortion on demand (including restrictions on Federal funding), comparable worth salary laws, women in the military, same-sex marriage, health care, single-sex education and potential government intrusion into areas traditionally within the scope of family privacy. That debate perforce must continue, given that these issues have not, unfortunately, been laid to rest by Committee action on the Convention.

As stated above, in 1994 the minority of Committee members voting against reporting the Convention included Senators Helms, Kassebaum, Brown, Coverdell and Gregg. The 1994 minority felt that the Convention represented yet another set of unenforceable international standards that would further dilute—not strengthen—international human rights standards for women around the world. The 1994 minority also noted that many parties to the Con-

vention had abysmal human rights records, especially for women. Some were even designated by the U.S. Department of State as state sponsors of terrorism.

The minority in 1994 noted that the United States has the strongest record on opportunities and rights for women in the world, and that ratification of the Convention, rather than improving that record, would raise divisive social issues such as those noted above. Moreover, the 1994 minority felt that the Convention's definition of "discrimination against women" is so broad that it would apply to private organizations and areas of personal conduct not covered by U.S. law.

In 2002, the minority feels that the Convention raises a number of complex and important issues which should have been explored further in one or more hearings with the current Administration's witnesses, and—assuming an Administration desire to go forward with the Convention following its review—which should be addressed in an appropriate resolution of ratification.

JESSE HELMS. RICHARD G.  
LUGAR. CHUCK HAGEL. BILL  
FRIST. GEORGE ALLEN. SAM  
BROWNBACK. MICHAEL B.  
ENZI.

[The letters referred to above follow:]

THE SECRETARY OF STATE,  
*Washington, July 8, 2002.*

Hon. JOSEPH R. BIDEN, JR., *Chairman,*  
*Committee on Foreign Relations,*  
*U.S. Senate.*

Dear Mr. Chairman:

Thank you for your letters of June 17 to Attorney General Ashcroft and me regarding the Foreign Relations Committee's June 1 hearing concerning the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This replies to both letters.

Addressing the issues confronting women—from suffrage to gender-based violence—is a priority of this Administration. We are committed to ensuring that promotion of the rights of women is fully integrated into American foreign policy. Our recent actions in Afghanistan underscore this commitment to promote the rights of girls and women who suffered under the draconian Taliban rule, including in education, employment, healthcare, and other areas. It is for these and other reasons that the Administration supports CEDAW's general goal of eradicating invidious discrimination against women across the globe.

The vagueness of the text of CEDAW and the record of the official U.N. body that reviews and comments on the implementation of the Convention, on the other hand, raise a number of issues that must be addressed before the United States Senate provides its advice and consent. We believe consideration of these issues is particularly necessary to determine what reservations, understandings and declarations may be required as part of the ratification process.

As you are aware, the Committee on the Elimination of Discrimination Against Women prepares reports and recommendations to State Parties. Portions of some of these reports and recommendations have addressed serious problems in useful and positive ways, such as women and girls who are victims of terrorism (Algeria)<sup>1</sup>

<sup>1</sup> Concluding Observations on the Committee on the Elimination of Discrimination Against Women: Algeria, 27/01/99, paragraphs 77–78.



and trafficking in women and girls (Burma).<sup>2</sup> However, other reports and recommendations have raised troubling questions in their substance and analysis, such as the Committee's reports on Belarus (addressing Mother's Day),<sup>3</sup> China (legalized prostitution),<sup>4</sup> and Croatia (abortion).<sup>5</sup>

State Parties have always retained the discretion on whether to implement any recommendations made by the Committee. The existence of this body of reports, however, has led us to review both the treaty and the Committee's comments to understand the basis, practical effect, and any possible implications of the reports. We are also examining those aspects of the treaty that address areas of law that have traditionally been left to the individual States. The complexity of this treaty raises additional important issues, and we are examining those as well.

In mid-April, when the Administration learned that the Committee had set a hearing date for consideration of CEDAW, the Departments of State and Justice began a review of this Convention to assess the need for reservations, understandings, and declarations different from or in addition to those reported out by the Committee in Exec. Rept. 103-38 in October, 1994. Given the passage of time since the last Senate hearing and the breadth of the issues touched upon by the Convention, we believe that a careful review is appropriate and necessary. This review is proceeding as expeditiously as possible.

Although the Administration supports CEDAW's general goals, it believes that eighteen other treaties are either in urgent need of Senate approval or of a very high priority. In addition to the seventeen treaties listed in higher categories on the treaty priority list that are still pending, the Moscow Treaty on the reduction of strategic arms, which was transmitted to the Senate in June, is among our most pressing national security needs and foreign policy interests. At the same time as the Administration is carrying out its review of CEDAW, we hope we can work with the Committee on these high priority treaties. Once our review of CEDAW is complete, we look forward to presenting our views to your Committee.

I would like to take this opportunity to thank you for recently guiding the two Protocols to the Rights of the Child Convention through the advice and consent process at the U.S. Senate. This is a good example of successful cooperation between your Committee and the Administration to advance treaties that are high priorities for our Nation's foreign policy.

Sincerely,

COLIN L. POWELL,  
*Secretary of State.*

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U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF LEGISLATIVE AFFAIRS,  
OFFICE OF THE ASSISTANT ATTORNEY GENERAL,  
*Washington, July 26, 2002.*

Hon. JOSEPH R. BIDEN, JR., *Chairman,*  
*Committee on Foreign Relations,*  
*U.S. Senate.*

Dear Chairman Biden:

I write in response to your letters of June 17 and July 11, 2002 concerning the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), upon which the Foreign Relations Committee is considering voting in the near future. While the Department of State typically takes the lead in responding to correspondence from the Senate Committee of Foreign Relations, at your insistence I am responding directly on behalf of the Department of Justice.

As indicated in Secretary Powell's July 8 letter to you, the Administration is currently reviewing CEDAW to determine what reservations, understandings, and declarations (RUDs) may be required in addition to those reported out by the Com-

<sup>2</sup>Concluding Observations on the Committee on the Elimination of Discrimination Against Women: Myanmar, 28/01/2000, paragraphs 119-120.

<sup>3</sup>Concluding Observations on the Committee on the Elimination of Discrimination Against Women: Belarus, 31/0-1/2000, paragraph 361.

<sup>4</sup>Concluding Observations on the Committee on the Elimination of Discrimination Against Women: China, 03/02/99, paragraphs 288-289.

<sup>5</sup>Concluding Observations on the Committee on the Elimination of Discrimination Against Women: Croatia, 14/05/98, paragraphs 109, 117.

mittee in Exec. Rept. 103–38 in October 1994. While this review is not yet complete, the Administration is certain that the 1994 RUDs are insufficient to address the various concerns raised by CEDAW. For example, the 1994 RUDs do not address the controversial interpretations advanced by the official U.N. implementation committee after those RUDs were issued. Among other things, that committee questioned the celebration of Mother's Day in a January 2000 report to Belarus:

The Committee is concerned by the continuing prevalence of sex-role stereotypes and by the reintroduction of such symbols as a Mother's Day and a Mother's Award, which it sees as encouraging women's traditional roles.<sup>1</sup>

And in a March 1999 report to China, it called for legalized prostitution:

The Committee is concerned that prostitution, which is often a result of poverty and economic deprivation, is illegal in China. ... The Committee recommends decriminalization of prostitution.<sup>2</sup>

These are but two examples of the instances in which this committee has exploited CEDAW'S vague text to advance positions contrary to American law and sensibilities.

Nor does your recent draft resolution of ratification address these concerns. It does not, for example, address whether other interpretive bodies, whether foreign, international, or, indeed, domestic, could adopt similarly bizarre interpretations of CEDAW's vague text, or what deference, if any, these bodies would accord the official U.N. implementation committee. (As we have recently witnessed in the Pledge of Allegiance case, there are, regrettably, judges who will engage in aggressively counterintuitive interpretations of legal texts.) The implementation committee, moreover, has now begun "[t]he process of interpreting the substantive articles of the Convention" and to "formally ... interpret the rights guaranteed in the Convention."<sup>3</sup> Your draft resolution, however, does not address the effect of these formal interpretations on domestic and international law. These concerns remain, regardless of whether, in the words of your draft resolution, the implementation committee has the "authority to compel actions by State parties."

It is crucial, therefore, that we fully understand the implications of these rulings on parties that join CEDAW after they have been issued, as well as the consequences of any rulings that might issue after a state becomes party to the treaty. In addition, we must fully understand the numerous other issues raised by CEDAW, such as its implications on current U.S. constitutional and statutory law and areas of law traditionally regulated by the States. The complexity of this treaty raises many other important issues that are not addressed in your draft resolution, which we are examining as well.

This is not the first Administration, nor the first Senate, to recognize the magnitude of the issues raised by CEDAW. As you know, this treaty has been before the United States Senate for twenty-two years. During this time period, it has been before a Democratic Senate with a Democratic President (President Carter), a Republican Senate with a Republican President (President Reagan), a Democratic Senate with a Republican President (President Reagan), a Democratic Senate with another Republican President (President George H.W. Bush), a Democratic Senate with a Democratic President (President Clinton), and a Republican Senate with a Democratic President (President Clinton). In other words, regardless of which party controlled either the Senate or the Presidency, the Senate has declined to act on this treaty for twenty-two years. In this context, it would be imprudent to act with undue haste before we have had an opportunity to conduct a full and fair review of this treaty, particularly in light of the recent actions taken by the U.N. implementation committee (and the future actions that it has announced its intention to take).

As Secretary Powell explained in his July 8 letter to you, the Administration is in the process of conducting a review of CEDAW in order to determine the scope of the additional RUDs that may be required to address these issues, and will share our views with you once our review is complete. The Administration is conducting this review thoroughly and expeditiously. Any vote at this time, however, would be premature, particularly in light of the more than thirty other treaties currently be-

<sup>1</sup>Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Belarus, 31/01/2000, paragraph 361.

<sup>2</sup>Concluding Observations of the Committee on the Elimination of Discrimination Against Women: China, 03/02/99, paragraphs 288–289.

<sup>3</sup>Fact Sheet No. 22, Discrimination Against Women: The Convention And The Committee, available at [[www.unhcr.ch/html/menu6/2/fs22.htm](http://www.unhcr.ch/html/menu6/2/fs22.htm)].

fore the committee that are higher priorities for our national security and foreign policy. Accordingly, we respectfully request that you await completion of the Administration's review before commencing a committee vote on CEDAW. Should you decline to do so, we respectfully urge members of the committee to vote against sending CEDAW to the full Senate until our review is complete.

Thank you for your attention to this matter.

Sincerely,

DANIEL J. BRYANT,  
*Assistant Attorney General.*

cc: The Honorable Jesse Helms, *Ranking Minority Member*,  
The Honorable Richard Lugar.

#### X. ADDITIONAL VIEWS OF SENATORS HELMS, BROWNBACK, AND ENZI

This Foreign Relations Committee Report should not be relied on by any U.S. federal, state, or local authority, including courts, as Senate legislative history for the United Nations Convention on the Elimination of All Forms of Discrimination Against Women.

This Report is not reliable for the following reasons.

First, it does not reflect the views of the present Administration. The majority declined to honor requests from the Departments of State and Justice, and from Senator Helms, to defer action on the Convention until the Administration's views could be presented to the Committee.

Second, the draft resolution of ratification included in this Report is not supported by the Executive Branch. At the time of the Committee's action on this Report, the Executive Branch had informed the Committee that an indispensable review was underway of alternative measures necessary in any CEDAW resolution of ratification. Yet the majority declined to defer action on CEDAW until that review had been completed and the results made available to the Committee. As a result, the Committee has recommended ratification of a treaty without knowledge or identification of the protective measures necessary to avoid a potentially massive disruption of well-settled U.S. domestic law. Such an act is an unfortunate failure to fulfill Committee responsibilities to the Senate and the nation.

Third, this Report was approved without benefit of the testimony of a single Bush Administration witness. The majority declined to accept the Executive Branch witnesses offered for the June 13, 2002, hearing, and further declined to defer action on CEDAW to provide an opportunity for a Bush Administration witness to appear after that date. The Committee thus declined to consider the most relevant and expert testimony available on the subject.

Fourth, neither the draft resolution of ratification included in this Report nor the explanation of CEDAW's provisions reflects the state of relevant U.S. law on the date of the Committee's vote to report CEDAW. Eight years of U.S. federal and state jurisprudence were not taken into account in preparation of the draft resolution of ratification. Precipitous action by the Senate, as recommended by the majority, will lead to unnecessary litigation in the United States of unknown proportions because the majority has no knowledge of the present vulnerability of U.S. domestic law to unintentional displacement. Even worse, the majority refused to wait for the Administration's legal review to be completed and presented, thus turning its back on the only mechanism available to predict the severity of CEDAW's disruptive impact and the protective measures necessary to avoid it.

When CEDAW was reported by the Committee in 1994, Senators Helms, Kassebaum, Brown, Coverdell, and Gregg filed Minority Views.

While recognizing the unfortunate prevalence of violence and human rights abuse against women around the world, and a shared desire to eliminate discrimination against women, the indicated Senators expressed concerns that CEDAW and treaties like it lead to dilution of moral suasion undergirding existing covenants on fundamental human rights, which, to be effective, are necessarily restricted in scope. The Senators also registered concern over CEDAW as an example of a disturbing trend among executive branch officials and non-governmental organizations to devote resources, energy, and political will to the ratification of multilateral treaties rather than to promotion of the norms represented by those treaties in the countries where they are under attack.

In 2002, it is apparent that nothing has occurred since 1994 to justify changing the views described above. On the contrary much has occurred since 1994 to underscore the wisdom of those views.

Today, as in 1994, many Senators in the minority and several in the majority agree that nowhere are women better protected from discrimination than in the United States. CEDAW proponents often argue that U.S. ratification of CEDAW is essential to ensuring its protections outside our borders. This is a non sequitur, and an argument not borne out by experience with other multilateral agreements. Moreover, it conflicts with the constitutional standard for Senate action, namely, whether the contemplated action is good for the American people.

Insofar as the level of our country's commitment to the protection of human rights abroad is concerned, we feel it is enough to note that as these lines were being drafted American forces were deployed in combat conditions in Afghanistan. It is through their personal heroism and sacrifice, not a multilateral treaty, that Afghan women have been relieved of the burden of an oppressive, anti-woman government whose equally lawless predecessor signed CEDAW in 1980.

CEDAW proponents who lump the United States with oppressive dictatorships which have not ratified this treaty rob themselves of credibility by ignoring the fact that in ratifying CEDAW our country would find itself in the company of regimes like North Korea. They and their ilk have embraced CEDAW as a fig leaf for many years.

CEDAW plainly represents a disturbing international trend exalting international law over constitutionally-based domestic law and local self-government. This trend gathered momentum during the Clinton Administration. It is illustrated by the Kyoto Protocol to the United Nations Framework Convention on Climate Change, the United Nations Convention on the Rights of the Child, and the Rome Statute Establishing a Permanent International Criminal Court. All of these instruments were opened for signature after the

Senate acted on CEDAW in 1994. The trend is in conflict with U.S. constitutional traditions of self-government. To undermine these traditions is to undermine the foundation of American federalism, which cost many years to establish and thousands of lives in a fratricidal civil war.

Ratification of CEDAW will help lawyers and other pro-abortion advocates reach the goal of enshrining unrestricted access to abortion in the United States. Recently a lawsuit entitled *Center for Reproductive Law and Policy (CRLP) vs. Bush* was filed in the United States District Court for the Southern District of New York (2001 U.S. Dist. LEXIS 10903). (N.B. In 2002, CRLP opposed the efforts of a Pennsylvania man to prevent abortion of the unborn child he fathered with a Pennsylvania woman.)

Although the New York case was dismissed, it illustrates pro-abortion strategy. Plaintiff CRLP stated in its complaint that “[i]n order to prepare for the eventuality that [*Roe v. Wade*] may be overruled by the United States Supreme Court and that, consequently, the United States Constitution no longer protects women’s right to choose abortion, CRLP has worked and will continue to work to guarantee that the right to abortion be protected as an internationally recognized human right . . . [under] customary international law . . . *Customary international law also preempts inconsistent state statutes and policies* (emphasis added). Thus, by working to establish the right of abortion as a human right in customary international law, CRLP fulfills its mission of protecting women’s access to abortion [in the United States] from interference or prohibition by the States.” (Complaint, paragraphs 76, 78).

Julia Ernst, a plaintiff in this case, has written about CEDAW: “Commentators are calling upon the United States judiciary to *utilize international law as a guide to interpreting the U.S. Constitution* (emphasis added), and domestic courts are increasingly taking international human rights law into account in their decisions. The United States should not deprive itself of the opportunity to participate in the formulation of these international legal principles. *One of these opportunities entails participation in [CEDAW].*” (emphasis added) (3 Mich. J. Gender & L.299, 317).

The CRLP case and views of one of its plaintiffs leave no doubt that despite assurances from CEDAW backers that the treaty is “neutral” on abortion, CEDAW proponents are not. Abortion activists will work to use CEDAW to neutralize the democratic will of federal and state legislators. The treaty will also be used to erode other traditional prerogatives of the states by intruding in issues like marriage and child-rearing.

Ratification of CEDAW will invite meddling in all of these areas by the CEDAW-established compliance “Committee.” The Committee, which is composed in part of gender activists sent by dictatorships which oppress women, has issued bizarre recommendations against Mothers Day in Belarus and in favor of legalization of prostitution in China. Using such recommendations, CEDAW

backers will press federal and state judges to adopt completely unforeseen and unintended interpretations of the treaty in order to force changes in well-settled U.S. law and policy.

Finally, the minority opposes assumption by the United States of yet another financial burden on behalf of a growing United Nations bureaucracy.

The Senate should decline to proceed to consideration of CEDAW.

JESSE HELMS. SAM BROWNBACK.  
MICHAEL B. ENZI.

## XI. ADDITIONAL VIEWS OF SENATOR FRIST

I agree with my colleagues that there is no nation more committed to upholding the human dignity of women than the United States. And like my colleagues and the Administration, I am committed to furthering the rights of women both at home and abroad. But I cannot support ratification of this Treaty as reported by this Committee.

Many issues with respect to this Treaty remain unaddressed. Our Constitutional prerogative of Advice and Consent under Article II, section 2, is not only a right but a responsibility and I regret that we could not hear from the Administration on its concerns and recommendations before proceeding to its consideration in Committee.

Like my colleagues, I am troubled by the vagueness of the text of this Treaty. Nor is there anything clear or predictive about the evolving opinions of the Committee on the Elimination Against Discrimination Against Women (the Convention Committee), the official UN body charged with this Convention's interpretation. I do not believe that it makes sense to dismiss lightly the weight of authority given to these interpretations.

As Senator Helms, my colleagues, and numerous legal scholars have pointed out, policy norms, interpreted by such official bodies, have increasingly entered the U.S. judicial system as customary international law. Some proponents of vaguely worded treaties have advanced the concept that modern interpretation of international law requires the incorporation of such interpretations into the U.S. legal system. Such a development would create an unwarranted loophole through which purported customary international law—such as pronouncements by official UN committees—would be held binding under U.S. domestic law with little or no scrutiny by our nation's lawmakers.

CEDAW supporters have claimed that the treaty, as interpreted by the CEDAW Committee, represents customary international law. While such a claim would be widely presumptive and premature, it cannot be ignored. As a general rule, customary international law is treated as having the same supremacy as federal statutes over conflicting state and municipal law in the U.S. legal system. Under the Supremacy Clause and the doctrine of preemption, if a conflict arises between state law or previously enacted federal statute and a treaty provision, the treaty, the treaty will prevail.

I find troubling the notion that UN committees, unaccountable to the U.S. political system could be empowered to proscribe enforceable rules of law under the guise of customary international law that claim sovereignty over the laws of our elected officials. Such a proposition is antithetical to the U.S. Constitution and America's



most cherished ideas of due process, separation of powers in government, and the guarantee that legislators will be held accountable through the elective process.

Furthermore, the text of the Convention itself purports to limit the Senate's constitutional right of Advice and Consent. Article 28, section 2 of the Convention states that "a reservation incompatible with the object and purpose of the present Convention *shall not* be permitted." (Emphasis added) The scope and parameters of this Article are not, to me, self-evident. I can only presume the interpretation of this Article would be subject to the Convention Committee. In my opinion, this Article conflicts with the constitutional role of the Senate to provide Advice and Consent, which includes making reservations which this Body may deem necessary to make the Convention consistent with the laws of this nation. Indeed, for that matter, that power must encompass any reservation that falls within our constitutional authority to mandate.

I am not persuaded by the argument that we must ratify this Treaty because other nations have or have not ratified it. We must base our consent to this Treaty upon its merits or deficiencies. I would point out, however, that much of the world still lives in societies that do not honor basic democratic civil liberties. Many of the nations that have ratified this Convention continue to build records that catalogue some of the worst human rights violations ever committed against women.

It is my hope that the Senate will not proceed with consideration of this Treaty unless and until we have the benefit of the Administration's views and recommendations on how best to address these issues of fundamental importance.

BILL FRIST.

## XII. ADDITIONAL VIEWS OF SENATOR ALLEN

I am fully committed to ensuring that promotion of the rights of women is fully integrated into U.S. foreign and domestic policy and I support the general goal of eradicating discrimination against women in the U.S. and across the globe. However, I did not vote to send this treaty to the floor for full Senate consideration.

First, the President's senior cabinet members—the Secretary of State and the Attorney General—have requested more time to consider the Convention and to propose an appropriate ratification package containing reservations, understandings, and declarations. The Senate should honor that request.

The Constitutional role of the Senate in these matters is that of advice and consent, not initiation. The President has deferred his request for advice and consent until the Justice Department review is completed. The Senate should await that review before considering this Convention.

There need be no rush to ratification. There is no emergency. This Convention has been on the Committee calendar for 22 years.

Second, the vagueness of the text of the Convention, and the record of the official UN body that reviews and comments on the implementation of the Convention, raise a number of issues that must be addressed before the United States Senate provides its advice and consent.

I believe consideration of these issues is particularly necessary to determine what reservations, understandings and declarations may be required as part of the ratification process.

The Committee on the Elimination of Discrimination Against Women prepares reports and recommendations to State Parties. The existence of this body of reports should lead us to review both the Convention and the Committee's comments to understand the basis, practical effect, and any possible implications of the reports.

We should also examine those aspects of the Convention that address areas of law that, in the United States, have traditionally been left to the individual States.

For example, in a March 1999 report to China, the Committee called for legalized prostitution, saying: "The Committee is concerned that prostitution, which is often a result of poverty and economic deprivation, is illegal in China . . . . The Committee recommends decriminalization of prostitution."

If the Senate ratifies this Convention, the United States would subject itself to criticism and condemnation by this Committee, which is composed of representatives of countries that are signatories of the Convention.

To provide a preview of what the United States may expect, I give you a brief list of member states and signatories of the Con-

vention that, potentially, will sit in judgment on United States' practices and conditions concerning women:

- Afghanistan signed the Convention in 1980. Until the United States and allied forces recently liberated Afghanistan, its women were oppressed by a series of governments, denying them basic freedoms and education opportunities.
- The Peoples' Republic of China signed the Convention in 1980. It has an official policy of forced abortion and sterilizations for the women of the country who dare have more than one child.
- Cuba signed the Convention in 1980. In 1994 Castro murdered 41 women, girls and others who attempted to escape the tyrannical and repressive Castro regime aboard the tugboat *13 de Marzo*.
- Saudi Arabia signed the Convention in 2000. Yet it treats its women as second-class citizens.

These are not examples of enlightened thought. Indeed, our nation with its Constitutional foundation of freedom and opportunity for all her citizens—regardless of race, ethnicity, religion or gender—is the beacon of hope for the entire world. Our goal must be to lift the human rights of women, and indeed all our people to this standard, not lower the bar to that of repressive regimes.

It is important that we fully understand the implications of the Committee, rulings on parties that join the Convention after they have been issued, as well as the consequences of any ruling that might result after a nation becomes party to the Convention.

In addition, we must fully understand the numerous other issues raised by the Convention, such as its implication on current U.S. constitutional and statutory law and areas of law traditionally the prerogatives of the people in the States.

As indicated in a July 8, 2002 letter from Secretary Powell, a July 26, 2002 letter from the Assistant Attorney General, and a July 19, 2002 letter from Condoleezza Rice, the Assistant to the President for National Security Affairs, the Administration is conducting a thorough and expeditious review of this Convention. The vote to order CEDAW reported was premature, particularly in light of the more than thirty other treaties currently before the Foreign Relations Committee that are higher priorities for our national security and foreign policy.

GEORGE ALLEN.

