

Intrusive CEDAW Would Take Away Power to Determine Domestic Policy

by Thomas W. Jacobson (May-June 2012)

Should 23 feminists from 23 foreign countries dictate domestic policy to the United States, and all of our states, counties, cities, towns, businesses, non-profits, and churches, or should we retain the authority to govern ourselves and set our own policies? For the sake of pleasing foreigners and being politically correct, should we violate our own Constitution and systems of self-government by ratifying the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)? These are direct questions that the United States Senate and the President should deliberate with great seriousness before even looking at the many problematic provisions of CEDAW.

Within the United States, for about 100 years and many decades before the 1979 CEDAW, businesses and non-profits, local and state governments, and the federal government, have invested countless hours formulating policies and establishing laws to protect children and women, and eliminate unjust discrimination. They achieved a careful balance that allows women to pursue almost any opportunity or dream, while respecting the authority of businesses and governments to make hiring, promotion and pay decisions, though with accountability for clear discrimination. These decisions have been made and implemented by Americans.

If the United States ratifies CEDAW, then the U.S. Government must submit reports to the CEDAW Committee, which will oversee compliance with CEDAW nationwide. The U.S. could have at most one person on the 23-member Committee, if chosen by a majority of national parties, but all “experts” are independent and unaccountable to any government or nation [Article 17]. Just as the U.S. Government has extended itself far beyond its constitutional limitations to arbitrarily impose its will on every person and government within our borders, so would the CEDAW Committee do, both to and through the USG to the entire country. Consequently, Americans would lose substantial control of their domestic policies, possibly in every area and at every level.

Violates U.S. Constitution & UN Charter

CEDAW is enormously intrusive into the domestic affairs of nations. CEDAW’s articles address matters related to marriage and family, children, education, health care and family planning, human rights, women’s rights, culture and customs, economics and business, employment, banking and loans, legal and judicial, and voting and political participation. Thus imposition of CEDAW upon the states and the American people would violate the 10th Amendment:

Mr. Jacobson wrote this paper in 2012 when serving as a Visiting Fellow for Freedom Alliance in their Center for Sovereignty & Security.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

As Wendy Wright, then President of Concerned Women for America, testified before the Subcommittee on Human Rights and the Law of the U.S. Senate Committee on the Judiciary,

CEDAW's sweeping language covers nations' laws, culture, political systems, schooling, family life, personal relationships, and professional choices. Its all-encompassing scope is contrary to the U.S. Constitution's limits on government and respect for state governments to handle matters such as family law.¹

At the same hearing on 1 December 2010, attorney Steven Groves of the Heritage Foundation, observed:

Ratification of CEDAW would neither advance U.S. national interests within the international community nor enhance the rights of women in the United States. Domestically, CEDAW membership would not improve our existing comprehensive statutory framework or strengthen our enforcement system for the protection of women's rights.²

Ratification would also mean the United States would join the other 187 U.N. Member Nations who ratified CEDAW, in violating Article 2, paragraph 7, of the Charter of the United Nations:

Nothing contained in this present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any [nation] or shall require the Members to submit such matters to settlement under the present Charter.

Nearly every area within our "domestic jurisdiction" could be affected by ratification of and compliance with CEDAW.

State Party Obligations

Two of the primary obligations of nations who are State Parties to CEDAW, are:

1. During the first year after ratification, and every four years, file a nationwide "report on the legislative, judicial, administrative or other measures" adopted to implement the Convention [Art. 18], and appear before the Committee each time.
2. Create all the laws and policies necessary to achieve "full realization of the rights recognized" in CEDAW [Art. 24].

Both of the above requirements could not be fulfilled within the United States without egregious violations of the U.S. Constitution and UN Charter.

CEDAW's Flawed View of Discrimination

CEDAW's flawed cornerstone is laid right at the beginning, in Article 1, defining "discrimination against women" as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The CEDAW Committee interprets this provisions as "any distinction, exclusion or restriction" upon girls or women where they are not given the exact opportunities, positions, or outcomes as boys or men in *any* area. But that view of discrimination is erroneous and unsustainable. For example, the Committee exhorts countries to use quotas to reach 50-50 participation, even though full equal participation of women in some fields is not feasible or sustainable. As I've sat in on compliance reviews, country delegations have replied to the Committee that they can't meet the quotas because not enough women are willing to pursue professional careers that would require them to abandon or substantially neglect their families. If the U.S. ratified CEDAW, the Committee would tell our federal government to ensure that quota systems are implemented nationwide – especially in our federal, state, and local legislatures, administrations, courts, councils, etc. – and would keep harping on us to meet those quotas.

One of the founding principles of the United States is *opportunity*, not guaranteed or forced outcomes. CEDAW would change that reality as policy makers implement Article 1 and other provisions, with or without quotas. Do we really want to set up offices of government that would arbitrarily pressure mothers and grandmothers to change their lifestyles, choose new careers, and work longer hours away from their families just to fulfill CEDAW Committee wishes?

Some nations realized that to protect their women and respect appropriate distinctions made by the Creator based on sex, Article 1 and other provisions could not be applied in the area of their police or military forces. They understood that a proper form of discrimination – and not a violation of the true principle of equality – is to stipulate that men only, and no women, may serve in combat roles. Thus, Australia declared that it would not alter its "Defense Force policy which excludes women from combat duties." Monaco reserved its right not to recruit women into the police force.³

Principle of Equality: Affirmed but Corrupted

The principle of equality is actually properly applied in some parts of the Convention, such as guaranteeing equality of men and women "before the law," including in legal proceedings, courts, and tribunals [Article 15]. Further, if the Convention merely

stated that men and women have the same inherent human rights and fundamental freedoms, this would be true.

Yet equal rights do not mean identical outcomes, or the same exact application in all areas. Even the Convention, contrary to Article 1, affirms this truth when it declares that discrimination in some ways is right and appropriate, such as measures that protect the maternity of women [Arts. 4.2, 11.2(d), 12.2]. That is why Malta and Singapore reserved their right to prohibit or restrict women from certain work that could be dangerous to them or the babies in their wombs. Also Ireland reserved where it gives preferential treatment to women in some aspects related to children.

Eliminate Stereotypes = Inherent Differences Denied

Should our governments be forced to try to “modify the social and cultural patterns” of Americans, and eliminate any stereotypical roles of men and women, as required in Article 5? CEDAW’s goal is to make women just like men. If the U.S. ratifies CEDAW, it would be required to attempt to erase what we understand to be “male” or “female”, except for a few biological differences. Qatar wisely said that Article 5 “must not be understood as encouraging women to abandon their role as mothers and their role in child-rearing, thereby undermining the structure of the family.” Niger boldly said they would not try to modify the “social and cultural patterns of conduct of men and women.”

School textbooks across the country would have to be changed. CEDAW calls upon Party Nations to eliminate “any stereotyped concept of the roles of men and women at all levels and in all forms of education,” including by revising textbooks, programs and teaching methods [Art. 10(c)]. That means women must not be portrayed as mothers or housekeepers, but in other areas on an equal basis with men, particularly in leadership, tough, or dangerous roles traditionally held by men. If we do this, then what is to become of our boys and men once every vestige of what it means to be a man is gone?

Different roles for men and women do not mean one is superior or inferior, but rather essential and complementary. For most of our history, the American experience has proved this truth, and we’ve worked it out in our policies far better than CEDAW would dictate. Women do have equal rights in the United States, with full respect for their unique roles. Thus, CEDAW’s assertion is *false*, namely, that changing “the traditional role of men as well as of women in society and in the family is needed to achieve full equality between men and women” [Preamble].

Reservations Cannot Be Genuine?

If the United States reconsiders ratifying CEDAW, it should know that the actual treaty asserts that it cannot submit a “reservation incompatible with the object and purpose of the present Convention” [Art. 28.2]. But that denies the essential nature of a reservation, by which a country makes a “formal stipulation of an interpretation, limitation, or qualification to obligations under a treaty asserted in connection with its ratification.” A

treaty is a “solemn, formal, and mutually binding contractual agreement between two states.”⁴ In a multilateral treaty, where one nation alone cannot determine the provisions therein, reservations are critical and annunciate the provisions that a particular nation does not agree with and will not be bound by. The United States alone cannot change any provision of CEDAW. If ratified, the Committee will pressure the U.S. to comply with every provision, including those with reservations if it considers them vital to CEDAW goals.

Present Status in Senate

On 17 July 1980, during his last year in office, President Jimmy Carter signed CEDAW. The U.S. Senate Foreign Relations Committee (SFRC) did not consider the treaty until 1993, and then again in 2002. But the full Senate has wisely never given its consent for ratification. Currently, there is no discussion or movement on CEDAW by the SFRC or the Obama Administration.⁵

Conclusion

If the U.S. were to ever ratify CEDAW, that treaty would have a more intrusive and expansive effect than any treaty, and possibly any federal law, ever passed. Why? Because so many areas of law and policy would be affected. Quotas requiring 50 percent women, or comparable tactics, could be arbitrarily imposed upon businesses, non-profits, churches, elections, legislatures, local to federal offices and courts, police forces, and the various branches of our military and Coast Guard. A transformation would take place within our nation whereby we would be programmed to view women in all the roles of “men,” except for maternal. I am not ignorant of the fact that this cultural transformation is taking place even apart from CEDAW, but with CEDAW, it would be thrust and forced fully upon us, possibly negating our capacity to determine the outcomes. Further, the burdensome costs of implementing all the provisions of CEDAW nationwide are incalculable. The U.S. should never ratify this misguided treaty.

¹ “Women’s Rights Are Human Rights: U.S. Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),” Testimony of Wendy Wright, President of Concerned Women for America, for the United States Senate Committee on the Judiciary, Subcommittee on Human Rights and the Law. 1 December 2010. <http://www.cwfa.org/content.asp?id=19701>

² Ibid. (same Congressional hearing), Steven Groves, Bernard and Barbara Lomas Fellow in the Margaret Thatcher Center for Freedom, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation. <http://www.heritage.org/research/testimony/womens-rights-are-human-rights>

³ All references to country declarations or reservations are contained in the following document, after the list of countries and dates of signature or ratification: Convention on the Elimination of All Forms of Discrimination Against Women, Declarations and Reservations. http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en

⁴ Definitions from *The Diplomat’s Dictionary*, Revised Edition, by Chas. W. Freeman, Jr. (Washington, DC: United States Institute of Peace Press, 1997).

⁵ Per call to Senate Foreign Relations Committee, 5 June 2012.