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I'M A CONVENTION, HEAR ME ROAR: A CALL FOR THE UNITED STATES TO RATIFY THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

EILEEN P. WARD*

INTRODUCTION

Every year, on August 26th, the United States celebrates Women's Equality Day, commemorating the passage of the Nineteenth Amendment where women gained the right to vote. Since Congress established this holiday in 1974, several other accolades have occurred to project women's rights from an idyllic dream to something we have begun to take for granted. However, while the United States can boast about currently having twenty female senators, a former female U.S. Secretary of State, three females serving on the United States Supreme Court, and countless other women in powerful positions, the United States has not taken one of the most basic steps in promoting equality for women: ratifying the

* J.D., St. John's University School of Law, 2013; B.A., Georgetown University, 2009.
2 H.R.J. Res. 1105.
5 For a full list of Supreme Court Justices, see Members of the Supreme Court of the United States, SUPREME CT. OF U.S., http://www.supremecourt.gov/about/members.aspx (last visited Feb. 18, 2014). Currently, Ruth Bader Ginsberg, Sonia M. Sotomayor, and Elena Kagan all serve as Justices in the United States Supreme Court. See id.
Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW" or "the Convention").

Over the past thirty years, the United States has drastically heightened its fight domestically against the discrimination of women through proactive governmental endeavors, as well as increased women's reproductive rights through legislation and judicial decisions. However, despite all the steps the U.S. has taken domestically in promoting its gender-equality agenda, its failure to ratify CEDAW makes it appear to the international community as a disinterested party, frustrating the purpose of promoting women's rights throughout the world. Misconceptions regarding the impact CEDAW would have on domestic law have impeded the U.S.'s ratification. These barriers to passage include misperceptions on CEDAW's provisions regarding abortion, an equal rights amendment, and prostitution.

This Note argues that the United States should ratify CEDAW with no reservations. Part II will provide a general overview of the Convention, as well as the United States' process and history of reviewing the Convention. Part III will analyze the main arguments against ratification, including the concerns about the impact on certain issues that remain controversial in the U.S. It will examine the division among several issues including abortion, the assumed necessity for an equal rights amendment, and prostitution. Part IV will propose that the United States should ratify CEDAW without any reservations and use the new treaty as a framework for the development of domestic policy, as well as to fill the gaps where legislation does not exist but is generally agreed upon.

I. BACKGROUND OF CEDAW

Internationally, CEDAW is not fraught with rejections and withdrawals, and continues to be one of the most readily accepted treaties in international law. However, the United States engaged in a halfhearted commitment to women's rights by signing but not ratifying CEDAW. While 187 other nations have currently ratified CEDAW, the U.S. remains one of seven countries who have failed to do so. This places the United

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8 See Harold Hongju Koh, Why America Should Ratify the Women's Rights Treaty (CEDAW), 34 CASE W. RES. J. INT'L L. 263, 265 (2002) (explaining that CEDAW entered into force faster than any other human rights treaty and that, at the time of the article, 170 nations had become party to the treaty).
9 John R. Crook, Senate Judiciary Committee Subcommittee Holds Hearings on the Convention for
States in the company of Iran, Somalia, and Sudan. In order to understand why the United States allows itself to remain in this position, it is important to understand both the history of the Convention, as well as what the various provisions of CEDAW entail.

A. History of CEDAW

Although in 1948 the Universal Declaration of Human Rights declared that all humans are entitled to the rights declared there within, "without distinction of any kind, such as race, colour (or) sex . . .", it took the United Nations over forty years to acknowledge that there was no comprehensive convention that explicitly addressed women's rights. After the implementation of the International Covenant on Civil and Political Rights (ICCPR) and the 1975 First World Conference on Women in Mexico City, the General Assembly drafted a convention that addressed "women's rights within political, social, economic, cultural, and family life." In September 1981, CEDAW went into effect, doing so faster than any other human rights treaty to date. Since then, as stated before, 187 countries have ratified the convention; leaving only seven countries that have continuously declined to do so.

B. Principles and Main Provisions of CEDAW

The purpose of CEDAW, as declared in its preamble, is to eliminate gender discrimination. It defines the phrase "discrimination against...


11 Koh, supra note 8, at 264–65.

12 Id. at 265.

13 Id.


women" as:

[...]ny 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.16

The Convention consists of sixteen substantive articles for governments to focus on in order to eliminate such discriminations.17 Additionally, it contains provisions establishing a committee ("CEDAW Committee") to monitor the progress of signatory States, as well as to establish reporting requirements.18 The CEDAW Committee consists of twenty-three people who, every four years, examine and analyze the reports provided by the State parties.19 The CEDAW Committee has required a greater involvement on the part of the States in preventing gender-based violence, which, for many years, has been viewed as a particular type of discrimination.20 On October 6, 1999, the U.N. General Assembly adopted an Optional Protocol containing a communication procedure to allow groups and individuals to report complaints to the CEDAW Committee to provide them with dispute resolution.21 The Committee's power "lies in its ability to consider the reports, examine how... States are implementing their obligations under the Convention, and subject the reporting government to international scrutiny."22 These reports are also given to the Economic and Social Council, and the U.N. General Assembly.23

Throughout its articles, CEDAW mandates that States who are party to the Convention condemn discrimination and agree "to pursue[,] by all appropriate means and without delay[,]" measures to eliminate gender discrimination.24 In fact, due to its strong stance against gender discrimination, CEDAW has been referred to as the "international bill of

16 CEDAW, supra note 6, at pt. I, art. 1.
17 Ernst, supra note 15, at 302.
18 Id.
19 Id. at 308.
21 See Riggin, supra note 4, at 548-49.
22 Ernst, supra note 15, at 307.
23 Id.
24 CEDAW, supra note 6, at pt. I, art. 2.
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25 Rights for women. Mechanisms provided in CEDAW articles include: adopting appropriate legislation to prohibit discrimination; establishing legal protections; refraining from engaging in acts or practices that discriminate against women; and repealing national penal provisions, regulations, customs, and practices which constitute discrimination against women. CEDAW also includes provisions that recommend ways to eliminate discrimination against women in the fields of employment, health care, and other socio-political sectors. Perhaps the most controversial issues, however, are addressed in Articles 12 and 14, Article 3, and Article 6, regarding abortion, equal rights, and prostitution, respectively.

C. The United States' History with CEDAW

The United States remains the only industrialized nation in the world, as well as the only democracy, that has failed to ratify CEDAW. The treaty was adopted by the U.N. General Assembly on December 18, 1979, and signed by President Jimmy Carter on behalf of the United States on July 17, 1980. Upon signing, President Carter noted that most of the Convention's substantive provisions were consistent with U.S. laws, recognized that there were no constitutional or legal obstacles to the U.S. ratification, and submitted it to the Senate for its advice and consent. However, the State Department asserted that Articles 2, 7, 10, 11, 12, and 14, which discuss health care, service benefits, public accommodations, and the military, would potentially conflict with domestic law. Unfortunately, the Department never made any recommendations, understandings, or declarations on how to deal with these potential conflicts, nor did it delve into what these "conflicts" would entail. After

25 Koh, supra note 8, at 266.
26 CEDAW, supra note 6, at pt. I, art. 2.
27 See id. at pts. I-IV, arts. 5-16.
28 See Riggin, supra note 4, at 542.
31 See Ernst, supra note 15, at 309.
32 Id. "Reservations note exceptions to specific provisions of the treaty; understandings clarify
President Carter, CEDAW remained "under review," meaning signed but not ratified, without congressional progress for the next eight years through the Reagan and Bush Administrations.\textsuperscript{33}

In 1993, sixty-eight members of the Senate wrote to President Clinton requesting that he take the necessary steps to ratify the Convention.\textsuperscript{34} In September 1994, President Clinton recommended to the Senate that they ratify the Convention with four reservations,\textsuperscript{35} three understandings, and two declarations; however, he himself did not execute the treaty.\textsuperscript{36} After the Hearing, the Senate did place the report on the calendar for a full vote,
but ratification was stalled until the session ended due to the need to prioritize other issues, necessitating a new hearing and restarting the entire process.\textsuperscript{37} The repetition of review, appraisal, agreement, then stalemate while other domestic issues are prioritized, has plagued the ratification of this important convention.\textsuperscript{38}

On June 13, 2002, Chairman of the Committee on Foreign Relations, Joseph R. Biden, Jr. held a Hearing before the Committee on Foreign Relations to address CEDAW.\textsuperscript{39} While support was shown for ratification, once again too much time elapsed while the Senate prioritized other items on its overloaded fall schedule, and Congress adjourned before the Senate could vote on the Convention.\textsuperscript{40}

On December 18, 2009, the State Department issued a press release stating that President Obama recognized CEDAW as a "powerful tool for making gender equality a reality" and that the State Department was "committed to U.S. ratification . . . and look[s] forward to joining the countries that have adopted it . . . to ensure that human rights are enjoyed fully and equally by all people."\textsuperscript{41} By eliminating the Mexico City Policy\textsuperscript{42} as one of his first acts as president, President Obama increased hope in Americans for yet another act of good faith to protect the rights of women.\textsuperscript{43}

\textsuperscript{37} See Halberstam, supra note 30, at 55.
\textsuperscript{38} Former Senate Foreign Relations Committee chairperson Jesse Helms' spokesperson openly stated, "We have a lot of things to do and very little time to do them in . . . This has been sitting around since the Carter administration and if the world could live without it that long, it can live without it longer. This is not a priority." Kriston Choo, As for Equality, That's for the Rest of The World, Chi. TRIB., Aug. 2, 1998, at 2.
\textsuperscript{39} See 2002 Senate Hearing, supra note 29, at 1. Additionally, in 2002, the Bush administration determined that CEDAW was "generally desirable and should be ratified," however Secretary of State Colin Powell recommended it be reviewed against by the legislature because of its "vagueness" and "complexity." Riggin, supra note 4, at 551 (internal quotation marks omitted). After the Foreign Relations Committee voted 12-7 in support of ratification, the 107\textsuperscript{th} Congress adjourned before the Senate could vote, and at the end of his term President Bush, without explanation, revoked his support for the Convention. Id. at 552.
\textsuperscript{40} Riggin, supra note 4, at 552.
\textsuperscript{41} Id. at 554 (internal quotation marks omitted).
\textsuperscript{42} The Mexico City Policy, also known as the Global Gag rule, provided that any organization that discussed or promoted abortion would find its Federal funding withdrawn. See Global Gag Rule, CENTER FOR HEALTH & GENDER EQUALITY, http://www.genderhealth.org/the_issues/us_foreign_policy/global_gag_rule/ (last visited Feb. 20, 2014).
\textsuperscript{43} See Jake Tapper et al., Obama Overturns 'Mexico City Policy' Implemented by Reagan, ABC NEWS (Jan. 23, 2009), http://abcnews.go.com/Politics/International/story?id=6716958&page=1. The Mexico City Policy, implemented initially by Ronald Reagan in 1984, revoked by Bill Clinton 1993, and then reinstated by George W. Bush in 2001, prohibited the U.S. government from providing funding to any organization that offered "abortion-related" services overseas and barred foreign aid to any organization who advocated or condoned abortion as a method of family planning. Id.
CEDAW is currently under review by the Department of Justice.\(^4\) At present, there are sixteen states that have adopted CEDAW into their state legislation,\(^4\) and seventy-one congressmen have voiced their support for ratification.\(^4\) Former Secretary of State Hillary Clinton has stated that she will recommend to the Senate Foreign Relations Committee to consider the treaty in the upcoming months.\(^4\) Additional avid supporters, including Senator Barbara Boxer and Kim Gandy, President of the National Organization for Women, have continued to put pressure on Congress to ratify the treaty in hopes that ratification occurs as soon as possible.\(^4\)

II. MISCONCEPTIONS THAT THWART AND HARM THE RATIFICATION PROCESS

While recent administrations, including the Bush and Reagan administrations who were not outspoken advocates of CEDAW, have recognized that the ratification of CEDAW would not pose problems to domestic law, CEDAW opponents still argue that ratifying CEDAW would require the legalization of abortion, the passage of an Equal Rights Amendment, and the legalization of prostitution.\(^4\) Although the United States has already taken precautionary measures to safeguard the rights of women within their borders and, over the past decades, has expanded these protections into its international agenda, the effort is undermined by the U.S.'s inability to ratify CEDAW, which would bolster and solidify these efforts.\(^5\)

This Note will now examine the controversial issues that are the sticking


\(^{45}\) 2002 Senate Hearing, supra note 29, at 38. These states include California, Iowa, Massachusetts, New Hampshire, New York, North Carolina, South Dakota and Vermont. See id. at 21.


\(^{47}\) See Riggin, supra note 4, at 552–53.

\(^{48}\) See id. at 555–57.

\(^{49}\) See generally 2002 Senate Hearing, supra note 29 (containing discussions on all three issues and whether the ratification of CEDAW would require the passage of such legislations). It is also important to understand that most treaties are not self-executing, and require legislative action to become codified in the United States. See DUNOFF ET AL., supra note 36, at 11–17.

\(^{50}\) DUNOFF ET AL., supra note 36, at 11–17. The United States has had an active effort in its war in Afghanistan to protect women who were brutally treated under the Taliban. The United States also has also made a concerted effort to protect women in the former Bosnia-Herzegovina and Africa, including spending tremendous resources to assist women in Rwanda following the 1994. See Anita Malley, Raising the Bar: Combating Gender-Based Violence in Emergencies, US AID (Mar. 4, 2013), http://blog.usaid.gov/2013/03/raising-the-bar-combating-gender-based-violence-in-emergencies/.
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points that create opposition to the treaty, and posit that CEDAW can provide a framework for development of domestic policy without undermining the core of our nation's values, especially its Constitution. It has been over thirty years since CEDAW came into existence, and fellow superpowers including France, Germany, Japan, and the United Kingdom have all ratified it without seeing adverse effects to their legislative systems.\footnote{Reservations by the United Kingdom and Northern Ireland include the capacity to apply domestic law regarding immigration, nationality of children, employment insurance, adoption, and Social Security. Reservations are made to Articles 1, 2, 9, 11, 13, 15, and 16, not to any issues on abortion, prostitution, or an equal rights agenda. Additionally, Luxembourg, Spain, and the United Kingdom have reservations stating that succession to the monarchy shall favor males over females without regard to order of birth. Rebecca J. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women, 30 VA. J. INT'L L. 643, 680 (1990). A full list of reservations made by the States that are party to CEDAW may be found online. See CEDAW Parties, supra note 14.} It is imperative that the United States ratifies CEDAW, thus signaling to the international community that it is a serious advocate for women's rights domestically and internationally.

A. Information and Common General Arguments Against International Treaties

Although the United States has not ratified the Vienna Convention on the Law of Treaties ("VCLT"), it has historically followed the guidelines laid out by the treaty and used it, like the majority of the international community has, for interpreting treaties.\footnote{Dunoff et al., supra note 36, at 57.} Article 31 of the VCLT asserts that treaties must be interpreted using good faith, based on the ordinary meaning of the words, and taken into context.\footnote{Id.} Context includes related and subsequent agreements, as well as special meanings and defined terms included in the treaty itself.\footnote{See id.} VCLT Article 32 also acknowledges that at times, if it is difficult to interpret the meaning of a particular article or term, in which case travaux preparatoire can be used.\footnote{See id. at 57–58.} This, however, is a secondary approach. Additionally, the United States looks to its own domestic legislation to clarify key terms if they are not already made clear within the context of the treaty.\footnote{See id.} Overall, when interpreting treaties, one must consider the ordinary meaning of the words, in their context, taking into consideration the purpose of the treaty. This three-step approach will be used to analyze the various provisions and articles of CEDAW.

\footnote{Travaux preparatoires refers to the preparatory work of the treaty. Id.}
Prior to examining the specific arguments against CEDAW, there are two general arguments that plague the U.S. ratification of international treaties that will be briefly addressed: 1) whether a treaty should be signed if domestic law already covers the same concepts; and 2) lack of strong enforcement mechanisms negate the importance of treaties. These two arguments, often conflated, are unwarranted and will be briefly discussed and quashed.

a. Critics Are Incorrect in Arguing that it is Unnecessary to Ratify International Treaties that Afford the Same Principles as Domestic Law

A common argument against the ratification of any treaty, and one that has been applied to CEDAW, is that U.S. domestic policy already covers what CEDAW requires, so the United States should not incur obligations to other countries by signing the treaty. While current U.S. legislation poses no conflicts with the terms of CEDAW, CEDAW provides recommendations for methods of ensuring safeguards to women’s rights, including the ability to receive recommendations to strengthen antidiscrimination policies through the CEDAW Committee every four years. These recommendations, as well as the language used in CEDAW, can provide a framework for the development of domestic policy, but does not force a hasty or unconsidered adoption. CEDAW can fill in gaps where things that are generally agreed upon (such as anti-trafficking laws) exist, rather than having to create new federal legislation. By adopting CEDAW it merely strengthens the domestic agenda and allows for the safeguards of an international community to support the United States should any of its antidiscrimination policies need assistance.

b. Power and Prestige as Enforcement Mechanisms

Another argument against ratifying international treaties, and in turn CEDAW, is that there is no international enforcement mechanism that demands Parties comply with a treaty. Governor Brownback of Kansas, an outspoken advocate against the ratification of CEDAW, asserted that at least twelve states that are Party to CEDAW are in violation of the treaty,

57 See id. at 11–17.
58 See Ernst, supra note 15, at 341 (1995). The CEDAW Committee reviews reports from State Parties concerning the domestic status of women, and reviews the measures each State has taken to eliminate discrimination against women as well as improve the economic, legal, and social status of women. See id.
59 See DUNOFF ET AL., supra note 36, at 56–58.
thus rendering it valueless. Opponents of CEDAW argue that this shows that it would be pointless to ratify a treaty that holds no consequences for violation. However, it is through "signaling" that many international treaties are enforced, and this is done when powerful countries ratify a treaty, thus giving it the "teeth" it needs. As one of the world's superpowers, the United States has taken many steps to safeguard the rights of women both domestically and internationally, and has sanctioned countries that have committed atrocities against women. Although it is questionable whether the States that Governor Brownback references are actually in violation of the treaty, it is important to acknowledge that "it is precisely because we are not members of the treaty that we cannot force them through the treaty to enforce [it]." If you want to have a say, you have to be a player in the game. Having the world's superpowers, including the permanent members of the U.N. Security Council, validate a treaty is how international treaties gain power and are enforced. The United States has taken major steps in advocating for women's rights and has many females in prominent powerful positions. Despite this, the United States does not have the support of the international community, nor does the international community fully have the support of the U.S. in their respective agendas to protect women, while the U.S. remains a non-party to CEDAW. It is only through ratification that the United States can promote enforcement of protecting international women's rights and fully expand its international policy of rectifying atrocities against women.

60 See 2002 Senate Hearing, supra note 29, at 66.
61 See generally id. at 45-46 (discussing that human rights regimes do not have "teeth" without the backing of a more powerful nation, such as the United States). As Congresswoman Juanita Millender-McDonald acknowledged, "Ratification of the treaty for the rights of women would send a signal to perpetrators and victims alike that the United States is serious about eliminating violence at home as well as abroad." Id. at 27.
62 See id. at 92. The United States has been a supporter of women in both Afghanistan and Rwanda where notorious atrocities against women have been committed, and the United States has spent both money and resources to rectify the situations in each of these countries.
63 Id. at 69.
64 See DUNOFF ET AL., supra note 36, at 56–58.
65 See The World's 100 Most Powerful Women, FORBES, http://www.forbes.com/power-women/list/ (last updated May 2013). Currently, the United States has a very active First Lady (Michelle Obama), former female Secretary of State (Hilary Clinton), Democratic Leader for the House of Representatives (Nancy Pelosi), Secretary of Homeland Security (Janet Napolitano), Secretary of Health and Human Services (Kathleen Sebelius), and Commissioner of the Food and Drug Administration (Margaret Hamburg), all listed as politicians, as well as fifty-nine American women listed in total on Forbes' list of the 100 Most Powerful Women in the World. See id.
66 See 2002 Senate Hearing, supra note 29, at 22.
67 See id. ("We can also strengthen our support for programs that advocate for protective legislation, judicial accountability, and enforcement of existing laws relating to the prevention of violence against women and girls [by adopting CEDAW].").
B. Arguments Against the Ratification of CEDAW

This Note will now acknowledge the arguments made against CEDAW regarding abortion, equal protection, and prostitution, and posits that CEDAW does not demand specific legislation regarding these hot-button issues and that the wording of the treaty poses no true conflict with current domestic legislation.

a. Critics Incorrectly Read the Term "Abortion" Into CEDAW

Senators Helms of North Carolina insisted, "[CEDAW is] a radical anti-family agenda . . . that denigrates motherhood and seeks to level out all distinctions between men and women." He, as well as many others, incorrectly argues that CEDAW not only promotes abortion, but also advocates that States adopt the unencumbered legalization of abortion. While critics claim that ratifying CEDAW would force the United States to implement pro-abortion legislation, there is, in fact, no article of the Convention that states a position on or uses the word "abortion." Upon review of the treaty, the Clinton Administration stated, "nothing in Article 12 requires State Parties to guarantee access to abortion." In fact, Article 12 requires that States:

[T]ake all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning . . . Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Additionally, Article 14 requires that states ensure women the right "[t]o have access to adequate health care facilities, including information, counselling and services in family planning."

While critics argue that the term "family planning" is code for abortion, using the guidelines of the VCLT and reading the plain meaning of the language of Articles 12 and 14, such an interpretation is unwarranted.

68 Id. at 24.
69 See id. at 24-25.
70 Ernst, supra note 15, at 332.
71 CEDAW, supra note 6, at pt. III, art. 12.
72 CEDAW, supra note 6, at III, art. 14.
"Family planning" does not necessitate access to abortions, and does not demand that abortions become legalized. Even staunch anti-abortion Americans such as Former President George W. Bush used that exact term to support the right of "every couple to plan the number and spacing of their children," not to advocate for abortions as a method included in that "planning." Based on the VCLT, if the meaning of "family planning" is unclear in the context of the treaty, the U.S. can rely on how it has interpreted the words in its domestic legislation. As mentioned, the U.S. has interpreted "family planning" to include a family's right to determine when and how to have children, and is silent on abortion. Recent U.S. history, as well as the U.S.'s choice of words in legislation and domestic policy, shows that the ratification of CEDAW would not "advocate" abortion. The language of CEDAW calls for reproductive safeguards (rather than the "abortion promoting" agenda critics contest) and, additionally, allows policies in this area to be set by signatory States. It acts neutrally towards "abortion," while it "ensur[es] equal access to family planning information for men and women alike."

More confirmation that CEDAW does not advocate for legalized abortion comes from examining other States who have ratified the Convention. Ireland, Malta, and Chile are all Parties to CEDAW, however, each of these countries have enacted legislation to make abortion illegal. None of these countries are considered in violation of the treaty, and Malta has even included a declaration to confirm, "[t]he Government of Malta does not consider itself bound by sub-paragraph (e) of paragraph (1) of article 16 in so far as the same may be interpreted as imposing an obligation on Malta to legalize abortion." By having no countries object to Malta's declaration, it means that other countries do not believe this declaration would hinder the purpose of the treaty and, in turn, accept it. Additionally, the Philippines, a country that prohibits abortion, was actually the first country to suggest that the "family planning" language be adopted into the Convention. In fact, the Philippines ratified CEDAW

73 2002 Senate Hearing, supra note 29, at 25.
74 See id.
75 Id. at 34.
76 Id.
78 See CEDAW Parties, supra note 14.
without any reservations, understandings, or declarations concerning the family planning language or abortion. This confirms that CEDAW's silence on abortion renders an understanding or reservation unnecessary.

Moreover, although CEDAW does not advocate abortion, even if its terms were to be construed as such, it would still not be in conflict with U.S. law. The U.S. currently operates under a trimester framework that, although not construed to reflect a promotion of abortion, acknowledges the need for safeguarding a woman's decision to continue or terminate a pregnancy until viability. It has been made clear that women must have access to all available information regarding a woman's legal rights and health options. Articles 12 and 14 of CEDAW advocate for the exact same precautions. The Convention demands that women are afforded an opportunity to have "access to health care services," and "ensure to women appropriate services in connection with pregnancy." Ratifying this Convention would strengthen the position the U.S. justice system has taken, as well as provide it with safeguards from an international community. This could potentially expand the ability for women to access more information regarding health and reproduction, rather than limiting assistance to the U.S.'s own borders. CEDAW should not be seen as a negative or radical treaty, but rather as an opportunity for the U.S. to supplement its domestic policies, legislation, and endeavors.

80 Id.
81 Ann Elizabeth Mayer, Reflections on the Proposed United States Reservations to CEDAW: Should the Constitution Be an Obstacle to Human Rights?, 23 Hastings Const. L.Q. 727, 807 (1996) (noting, with regard to having the U.S. include an understanding on Article 16 of CEDAW, "Since abortion was not mentioned in CEDAW, this understanding was unnecessary and most likely proposed to appease adamant foes of abortion and please the conservative Senator's domestic constituency.

82 While within the United States there is no fundamental right to abortion, judicial interpretation of the Constitution has supported a legal right to abortion based on a trimester system. See generally, Roe v. Wade, 410 U.S. 113 (1973). The Court reaffirmed this logic in Planned Parenthood v. Casey, where it was held that a woman has a right to choose to have an abortion before the viability of the fetus without undue interference from the state, and the state has the power to restrict abortion after the viability of the fetus, so long as it provides an exception to protect the mother's health and life. See generally Planned Parenthood v. Casey, 505 U.S. 833 (1992).

83 See generally Planned Parenthood, 505 U.S. 833. States' interest in the health of the mother become compelling at approximately the end of the first trimester, prior to which mortality in abortion is less than mortality in normal child birth. Only from this point forward may the state regulate the abortion procedure as needed to preserve and protect maternal health. No regulation is allowed by any state within the first trimester because state has no compelling interest, and it is a woman's choice in conjunction with her physician. Within the second trimester a state can regulate the decision because state has interest in regulating the medical process in order to protect mother's health; however, the state must make exceptions for the health and safety of the mother. See generally id.; see generally Planned Parenthood v. Taft, 444 F.3d 502 (6th Cir. 2006).

84 CEDAW, supra note 6, at pt. III, art. 12.
b. Opponents Incorrectly Assert That CEDAW Necessitates an Equal Rights Amendment

The Equal Rights Amendment ("ERA") was introduced into every session of Congress from 1923 and 1972, when it was then passed and sent to the states for ratification (with an expiration of seven years).\textsuperscript{85} Congress extended the time limit to June 30, 1982; however, at the deadline, the ERA had only been ratified by 35 states, leaving it three states short of the 38 required for ratification.\textsuperscript{86} It has been reintroduced into every Congress since 1982, but has never been passed.\textsuperscript{87} Whether or not the U.S. enacts an ERA should not be an obstacle to the U.S. ratification of CEDAW.

In an attempt to assert that CEDAW's "directives amount[] to a blitz on women," opponents of CEDAW incorrectly insist that advocating for a convention that promotes equality for women would force the U.S. to pass an ERA, and would "deny the differences between mothers and fathers, men and women."\textsuperscript{88} Out of this fear, opponents posit that ratification would "lead to the legalization of same-sex marriage, the abolition of single-sex schools, and create a nation of androgynous children."\textsuperscript{89} Some opponents have gone so far as to say that this would necessitate the abolishment of Mother's Day.\textsuperscript{90} However, using the standards set forth by the VCLT, reading the plain meaning of CEDAW eliminates this fear and shows that this apprehension is based on false assumptions.\textsuperscript{91} Article 3 of CEDAW states that Parties:

[S]hall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis

\textsuperscript{86} \textit{id.}
\textsuperscript{87} \textit{id.}
\textsuperscript{88} 2002 Senate Hearing, \textit{supra} note 29, at 123.
\textsuperscript{90} 2002 Senate Hearing, \textit{supra} note 29, at 20. In opposition of the American Life League, the Family Research Council, and Women for Faith and Family's stance on CEDAW is the American Bar Association, the American Association of University Women, the International Association of Women Judges/International Women Judges Foundation, the League of Women Voters, and the National Organization for Women. See generally \textit{id.}
\textsuperscript{91} See Cohn, \textit{supra} note 89, at 17; see also 2002 Senate Hearing, \textit{supra} note 29, at 38 (describing the false suggestion that ratifying CEDAW would require decriminalization of prostitution, which is plainly incorrect based on the text of the treaty).
of equality with men.92

While it may seem necessary for some to leap to the conclusion that the only appropriate measure to guarantee freedoms on a basis of equality of men is by treating women the same exact way as men are treated, thus mandating an ERA, that is simply not the case.

The United States has considered adopting an ERA for years; however, instead of enacting such an amendment, it has enacted other pieces of legislation that, rather than eliminate distinctions between the genders, celebrate the differences between men and women. One of the most noteworthy examples of such legislation is Title IX.93 Title IX is a federal statute that prohibits discrimination in education on the basis of sex, subjecting any organization that does so to have any federal financial assistance revoked.94 This language mirrors the principles and language of Article 3 of CEDAW. However, in promoting these rights, Title IX still allows for recognition of the differences between men and women, and makes exceptions that do not contradict the inherent meaning of the statute. These exceptions include the allowance of single-sex vocational schools, social fraternities and sororities, and other various exceptions that do not hinder or impede the significance of the statute.95 Furthermore, these exceptions do not diminish the effectiveness, nor inhibit the purpose of Title IX, which is to eliminate sex discrimination in education.

CEDAW should be read as promoting equality for women in all aspects of society, and providing women with the same opportunities that have been afforded to men. Nowhere in the language of Article 3 does CEDAW prohibit the distinctions and exceptions that Title IX makes. The "advancement of women," as demanded by Article 3, cannot, through plain meaning, travaux préparatoires, or interpretation through a domestic-policy lens, mean that women must be treated in the exact same way as men. Not only is it unnecessary to create an ERA upon ratification of CEDAW, it is not even suggested.96 Reading the plain meaning of the statute, as well as reading it in comparison to U.S. statutes that assert the same purpose (Title IX), insists that CEDAW advocates for equal rights for women without eliminating the commonly recognized distinctions between the sexes.97

92 CEDAW, supra note 6, at pt. 1, art. 3.
94 Id.
95 Id.
96 See 2002 Senate Hearing, supra note 29, at 24.
97 Mayer asserts that upon ratification, "the United States commit[s] itself to nothing more than
As with the arguments that CEDAW would legalize abortions, by looking at how other countries that are devoted to CEDAW interpret Article 3, the arguments that CEDAW would necessitate an ERA are of no consequence. Other democratic nations that have ratified CEDAW (without reservations to Article 3) include Canada and Australia, both of which are committed fully to eliminating discrimination against women.\textsuperscript{98} Neither country has an ERA, thus strengthening the argument that Article 3 should not be construed to mean parties to the Convention must establish an ERA.\textsuperscript{99} Further, it is not just foreign countries that have adopted these provisions, but additionally, some U.S. municipalities including New York and the city of San Francisco have adopted CEDAW into their state/city constitutions, including provisions identical to Article 3.\textsuperscript{100} To date, there have been no claims or cases that the adaptation of these provisions are in conflict with any domestic federal law.

c. Opponents Inaccurately Argue that CEDAW Mandates the Legalization of Prostitution

Another argument presented by CEDAW opponents is that "[a] review of CEDAW committee recommendations makes clear that the U.N. implementing committees want to elevate the status of prostitution to that of a profession" and therefore "afford it the full protection of labor law" through legalization.\textsuperscript{101} Again, it is important to read the language of the treaty and take its plain meaning if possible, as well as take into consideration the way it has been interpreted by the CEDAW Committee and States Parties. Article 6 of CEDAW articulates, "State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."\textsuperscript{102} Senator following existing U.S. law," when it comes to Article 6 and an Equal Rights Amendment. Mayer, \textit{supra} note 81, at 812.

\textsuperscript{98} See CEDAW Parties, \textit{supra} note 14.


\textsuperscript{101} 2002 Senate Hearing, \textit{supra} note 29, at 135.

\textsuperscript{102} CEDAW, \textit{supra} note 6, at pt. 1, art. 6.
Barbara Boxer addressed the issue of prostitution head-on in the June 2002 Senate Hearing on CEDAW, acknowledging that "[t]he Government is . . . urged to take measures for the rehabilitation and reintegration of prostitutes into society, and the decriminalization of prostitution. It does not call for the legalization."103 Although there is no federal law that criminalizes prostitution in the U.S., all states except Nevada currently have anti-prostitution statutes in place.104 By affording protections to prostitutes, CEDAW does not mandate that States legalize prostitution as a profession. Rather, it insists that States that have legalized prostitution establish protections to ensure that these men and women are not exploited. It ensures that if prostitution is considered a valid profession, then prostitutes are afforded the same employment rights as any other legitimate profession. The CEDAW Committee expressly told Mexico that, "new legislation should not discriminate against prostitutes but should punish pimps and procurers."105 Additionally, it is true that the CEDAW Committee recommended to China that they legalize prostitution (which, on its own, shows that legalization is not something already demanded by the Convention), because it recognized that in China prostitution is the direct result of poverty and economic depravation, and was leading to widespread human trafficking both within the borders of the country as well as internationally.106 CEDAW is more concerned with the connection between prostitution and human trafficking than with the legalization of prostitution, which the United States also links and distinguishes.107

The main difference between opponents, who believe that CEDAW insists on the legalization of prostitution, and proponents of CEDAW, who believe that CEDAW ensures that prostitutes enjoy the protection of labor and social law, is that proponents follow the VCLT's process of interpreting words and meaning of the Convention. While opponents are correct in that

107 See generally, Rebecca L. Wharton, A New Paradigm for Human Trafficking: Shifting the Focus from Prostitution to Exploitation in the Trafficking Victims Protection Act, 16 WM. & MARY J. WOMEN & L. 753 (2010).
the Committee has made suggestions to some countries, specifically China, that legalization of prostitution would assist in allowing women who fall victim to trafficking and sexual slavery to seek help from authorities, the treaty does not require the legalization of prostitution. However, in general, CEDAW leaves it up to the State to decide whether or not prostitution is legalized, and demands that where it is legal, the State protects the women in the profession. This is evident by the vast array of States party to CEDAW that have not legalized prostitution, such as the United Kingdom, and States that have legalized it, such as France.

Overall, it is the purpose of Article 6 to protect women in the profession, where the profession is recognized.

III. RECOMMENDATIONS

The United States should ratify CEDAW without reservation, and allow its ratification to rectify the disloyalty the United States is showing its female citizens. Our current stance as a signatory but not State Party to CEDAW is in contradiction with the purpose of our domestic policies, including Title IX, as well as in our international agenda. The public policy behind Title VII, Title IX, the Nineteenth Amendment, and all other domestic anti-gender-discrimination laws is to promote opportunities for women, safeguarded with legislation and active anti-discrimination policies. Not only do these statutes and laws insist upon the promotion of women's rights, each affords specific requirements that every state must take in order to ensure these protections (equal opportunities in the workplace, in education, and in voting).

Our domestic policy should be directly reflected in our international disposition, and before we can insist upon promoting women's rights in Afghanistan and other countries, we must show that we are strong in our convictions to promote these rights at home. Lack of ratification is a blatant betrayal to women in the United States, and casts a shadow of doubt to other nations who are encouraged by the United States to treat men and women on an even keel. "Our nonratification has led our allies and adversaries alike to challenge our claim of moral leadership in international human rights." It would not strain our domestic legislation, but rather

109 Riggin, supra note 4, at note 72.
110 See CEDAW Parties, supra note 14.
111 Koh, supra note 8, at 269.
would strengthen our international credibility, as well as show our devotion to our female citizens.

Furthermore, the United States should ratify CEDAW without reservations.112 As discussed, ratifying CEDAW does not necessitate changes in domestic law, but affords women additional protections that have already been federally codified. Ratification would also fill in the gaps where issues that are generally agreed upon have yet to be federally codified (such as anti-trafficking and prostitution laws).113 Although domestic policy does not need to be modified to reflect ratification, the United States should acknowledge the explicit protection the Convention affords women regarding anti-labor discrimination issues, including prostitution.114 Like San Francisco and New York, CEDAW can be an effective supplemental tool for the U.S. to strengthen its fight against gender discrimination.

Upon ratification, the United States should insist on having a citizen become a member of the CEDAW Committee to provide itself a stronger platform to promote women's rights.115 Our continual failure to ratify CEDAW has "hamper[ed] and undermine[d] our efforts to fight for democracy and human rights at home and around the world."116 The United States should seize the opportunity to encourage active anti-gender-discrimination legislation and practices in all countries, and strengthen its domestic policies through CEDAW. The United States currently presents itself as a halfhearted advocate of women's rights, which can be eradicated by ratification of CEDAW and membership within the CEDAW Committee.

CONCLUSION

Congresswoman Juanita Millender-McDonald noted in her speech to the

112 The United States insists on including a reservation to all international treaties that the treaty is not self-executing, as to ensure the proper and adequate separation of powers within the government. See DUNOFF ET AL., supra note 36, at 277.

113 When Brazil and Costa Rice reformed their constitutions, both countries used the treaty as a guide for including guarantees of human rights to women, and to assist in developing property rights and political participation for women. See 2002 Senate Hearing, supra note 29, at 6.

114 This is not advocating for decriminalization or legalization of prostitution, rather for employment safeguards for prostitutes where prostitution has been legalized.

115 The Committee is made up of twenty-three independent experts elected by parties to the Convention by secret ballot. In order to be eligible for service, candidates must "have high moral standing and competence" and "represent different forms of civilization as well as principal legal systems." Each party to CEDAW may nominate one expert, who will serve a four-year term if elected. Riggin, supra note 4, at 547–48.

116 Koh, supra note 8, at 276.
Senate Committee on Foreign Relations:

Around the world at least one in every three women has been beaten, coerced into sex, or otherwise abused in her lifetime. . . . One out of every five healthy years of life are lost to women ages 15 to 44 as a result of violence. This loss of productivity impairs women's economic development and overall growth in their respective national economies.117

Additionally, McDonald stated, "[r]atification of the treaty for the rights of women would send a signal to perpetrators and victims alike that the United States is serious about eliminating violence at home as well as abroad."118

While the United States can mark August 26th as Women's Equality Day on calendars throughout the country, it cannot save face in the international community while it sits in the company of Iran, Sudan, Somalia, and other countries who have yet to ratify CEDAW.119 The time is ripe for the United States to reinvigorate itself as a staunch advocate of women's rights, and reaffirm to women both domestically and internationally that it believes in equality of opportunity for women and men alike. Our country would only benefit from becoming a Party to CEDAW – our domestic legislation would be augmented and our international fight against gender-discrimination would be strengthened.

Our inability to ratify this treaty frustrates the purpose of our active domestic, as well as international, agenda. It has been over thirty years since CEDAW came into existence, and now is the time to allow the Convention to protect women in the same way the U.S. asserts it protects its own citizens. It is only through acceptance and ratification of CEDAW that the United States can bolster its policies, and truly ensure the safety of women both internationally and domestically.

117 2002 Senate Hearing, supra note 29, at 22.
118 Id. at 27.
119 See supra note 10 and accompanying text.