GENDER BIAS IN DRAFTING INTERNATIONAL DISCRIMINATION CONVENTIONS: THE 1979 WOMEN'S CONVENTION COMPARED WITH THE 1965 RACIAL CONVENTION

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INTRODUCTION

The United Nations Charter contains general prohibitions against discrimination on the basis of both sex and race, with a directive for equality of all people.[1] Although the Charter does not distinguish between sex and race, the international community has accorded these classifications different priorities. Racial discrimination has long been admonished as evil and morally wrong by nations around the globe, but tolerance continues for actions and policies constituting discrimination against women.[2] This tolerance is furthered by the attitudes of the governments and organizations involved in international human rights law-making, which continue to treat women's rights with less concern and priority than the human rights of other groups.[3]

Nowhere is the unequal status of rights more evident than the United Nations conventions addressing racial and sex discrimination.[4] The 1965 Convention on the Elimination of All Forms of Racial Discrimination[5] ("Racial Convention") is considered by many to be the most effective international human rights instrument in existence today. The Racial Convention has been described as the "only tool for combating racial discrimination which is at one and the same time universal in reach, comprehensive in scope, legally binding in character, and equipped with

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1. U.N. CHARTER arts. 1, ¶ 3; 13, ¶ 1b; 55, ¶ c; 76 ¶ c.

2. Racial discrimination has violated customary international law for so long, it is now considered to have achieved the status of jus cogens. Only recently have scholars even acknowledged the *possibility* that the prohibition against sex discrimination may violate customary international law. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 702 cmt. a (1987).

3. "Because women have not been viewed as a discrete and insular minority in most societies, they normally have not come within the targeted groups requiring special governmental assistance to promote their rights." Margaret E. Galey, *International Enforcement of Women's Rights*, 6 HUM. RTS. Q. 463, 464 (1984).

4. For purposes of this article, references to sex or gender discrimination should be understood as limited to discrimination against women. This article, like the Convention on the Elimination of Discrimination Against Women, does not address sex discrimination against men.

5. 660 U.N.T.S. 195, *entered into force* Jan 4., 1969 [hereinafter Racial Convention].

built-in measures of implementation. . . ."[6]

Closely modeled on this successful convention is the 1979 Convention on the Elimination of All Forms of Discrimination Against Women[7] ("Women's Convention"). The Women's Convention represents an important step in the effort to end discrimination against women, but has been disappointing in its ineffectiveness.[8] Although the Women's Convention makes a significant contribution as a comprehensive statement of women's rights, it has failed to achieve comparable acceptance and respect of the Racial Convention. Creating a worthwhile and effective instrument outlawing gender discrimination constitutes an incredible challenge. Yet this task would not have been as great, nor the resulting instrument's shortcomings as obvious, had the drafters of the Women's Convention not failed to adopt many of the more powerful aspects of the Racial Convention.

Clearly discrimination on the basis of race and sex are based on different attitudes and perceptions. Any instrument aimed at eliminating discrimination must take into account these differences. For that reason, differences between the Racial and Women's Convention are permitable, even necessary, to their respective success. But different does not have to mean inferior. In creating different instruments, the drafters of the Women's Convention omitted important provisions and mechanisms that were not particular to race issues. They created a document with much less protection against discrimination aimed at women than found in its prototype, the Racial Convention.

This article will explore the weakness of the Women's Convention as compared to the Racial Convention, focussing on areas in which these two discrimination conventions differ. These variations include the respective Conventions' preambles, definitions of discrimination, implementation mechanisms, reservations regime, and provisions for state responsibilities. This article asserts that the inadequate provisions and mechanisms in the Women's Convention, especially as compared to its model the Racial Convention, reveal a lower priority for women's rights that can be attributed to the type of discrimination the Convention claims to prohibit.

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6. UNITED NATIONS CENTRE FOR HUMAN RIGHTS, MANUAL ON HUMAN RIGHTS REPORTING 127 (1991).

7. 1249 U.N.T.S. 14, *entered into force* Sept. 3, 1981 [hereinafter Women's Convention].

8. For general discussions on the Convention's ineffectiveness, see Charlotte Bunch, *Women's Rights as Human Rights: Towards a Re-Vision of Human Rights*, 12 HUM. RTS. Q. 486, 496 (1990) ("Within the United Nations, [the Women's Convention] is not generally regarded as a convention with teeth"); WARWICK MCKEAN, EQUALITY AND DISCRIMINATION UNDER INTERNATIONAL LAW 193 (1983) ("[I]t is a much weaker and more conservative instrument than some earlier conventions."). *But see* Robert F. Drinan, CRY THE OPPRESSED: THE HISTORY AND HOPE OF THE HUMAN RIGHTS REVOLUTION 47 (1981) (describing the Women's Convention as the "Magna Carta" of the women's movement).

I. HISTORY OF THE CONVENTIONS

The process leading to the adoption of both the Racial and Women's Conventions provides insight into how each group's rights are regarded by the international community. The Racial Convention moved quickly through the United Nation's law-making machinery. The international community was anxious to create a treaty eliminating discrimination on the basis of race. In contrast, the Women's Convention faced lower levels of enthusiasm from the United Nations, with some delegates even questioning the need for a convention outlawing gender discrimination. These different approaches provide an informative backdrop for understanding why these conventions enjoy such different levels of effectiveness.

The specific movement towards the Racial Convention began as a reaction to the wave of anti-semitic behavior which occurred in many countries in the winter of 1959-60.[9] The General Assembly adopted a resolution in 1960 condemning these actions as violations of the Charter and Universal Declaration of Human Rights and ordered factual information on the events, their causes and motivations be collected in order to determine the most effective measures to prevent such acts.[10] With the information assembled, the General Assembly in 1961 requested that the Commission on Human Rights prepare a declaration on the elimination of all forms of racism.[11] On November 20, 1963, the General Assembly adopted the U.N. Declaration on Elimination of All Forms of Racial Discrimination.[12] Responding to the General Assembly's instruction that it give absolute priority to preparation of a convention on the subject, the Commission quickly prepared a draft convention by early 1964. During the 1965 session, the General Assembly unanimously adopted the Convention on the Elimination of All Forms of Racial Discrimination.[13]

The quick development and adoption of the Racial Convention can be traced to the strong political support of the African, Asian and other developing states. These nations played a decisive role in deciding which rights were given special protection in the form of United Nations conventions.

> It is certainly no accident that a convention on religious freedom—a subject dear above all to certain Western democracies—was brought before the

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9. Egon Schwelb, *The International Convention on the Elimination of All Forms of Racial Discrimination*, 15 INT'L & COMP. L.Q. 996, 997 (1966).

10. *Id.* at 997-98.

11. NATAN LERNER, THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION 3-4 (1980).

12. Schwelb, *supra* note 9, at 999.

13. *Id.* The General Assembly would have considered the Convention (and probably adopted it) in 1964 but for a financial dispute that paralyzed the General Assembly's 1964 session. The dispute was over the financing of peace-keeping operations and the application of Article 19 of the Charter. Schwelb, *supra* note 9, at 999.

> organs of the U.N. time and time again without success, whereas the Convention on Racial Discrimination and treaties on apartheid, war crimes and crimes against humanity—subjects towards which the Western attitude was distinctly lukewarm, if not downright hostile—were passed by the Assembly in no time at all.[14]

The developing nations did not have the same level of commitment to a convention outlawing sex discrimination. This lack of commitment was not surprising; it reflects a long history of discounting the right of women to equality.

Concern with the elimination of sex-based discrimination is a relatively new concept in international law. The general status of women was not considered by an international body until the League of Nations took up the issue in 1935.[15] But it was not until the Charter of the United Nations and peace treaties concluded after World War II that international instruments called for equality of the sexes. To implement these mandates for equality, the United Nations created the Sub-Commission on the Status of Women in 1947. The decades that followed this initial flurry of calls for equality witnessed little progress in the area of women's rights: the treaties concluded were generally narrow is scope and not widely ratified.[16]

It was the sense of dissatisfaction with the international protection of women's rights that led to the Women's Convention. On the initiative of the Eastern Europeans, the Human Rights Commission drafted and the General Assembly adopted the 1967 Declaration on the Elimination of Discrimination Against Women.[17] This document represented the first time that the United Nations approached gender discrimination as a complex problem needing a broader, more holistic approach. Although the Declaration did not impose any legal duties, it did focus attention on the need to protect women from discrimination.

Six years passed before any international group took up the idea of creating a legally binding convention outlawing discrimination against women. In 1973, the Commission on the Status of Women called on member states to submit their views or proposals concerning an international

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14. Antonio Cassese, *The General Assembly: Historical Perspective 1945-1989, in* THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL 25, 37 (Philip Alston, ed. 1992).

15. Laura Reanda, *The Commission on the Status of Women, in* THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL 265, 265 (Philip Alston, ed. 1992).

16. The United Nations had adopted other conventions aimed at protecting women's rights, but these conventions were narrow in scope and did not enjoy widespread attention or adoption. *See, e.g.*, Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, I.L.O. Convention No. 100, June 29, 1951, 165 U.N.T.S. 303; Convention on the Political Rights of Women, Mar. 31, 1953, 27 U.N.T.S. 135; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Dec. 10, 1962, 521 U.N.T.S. 231.

17. For a full drafting history of the Women's Declaration, *see* U.N. GAOR, 22d Sess., Annex 1, U.N. Doc. A/6678 (1967).

convention prohibiting discrimination against women.[18] For the next six years, work on the Convention involved preparing drafts, considering reports, and debating amendments.[19]

The extended time it took to produce the Women's Convention resulted in part from the arguments by some organizations and delegates that a legally-binding convention was unnecessary in view of treaties already in existence which protected women's rights.[20] The International Labor Organization had serious reservations about the viability of a discrimination convention protecting women. The ILO argued that if such a treaty was to be created, it should be expressed in general terms and not overlap the conventions of other specialized agencies.[21] The Women's Convention also faced significant delay because of the long and painful debate over every article by working groups of both the Commission on the Status of Women and the General Assembly.[22]

As the end of the 1970's approached, the drafting of the Women's Convention was rushed in order that it be prepared in time for the World Conference on the U.N. Decade for Women in July 1980.[23] Those preparing the Women's Convention accepted that, although it was a far from perfect legal instrument, the Convention would constitute a significant contribution to the Conference.[24] Because of this haste and the failure to heed the need for further discussion and refinement, the Convention adopted to protect women from discrimination has serious flaws and weakness.

While both the Racial and Women's Conventions began as Declarations, they followed radically different paths to adoption. The United Nations greeted the Racial Convention with anxiousness and enthusiasm. Because of this support, the Racial Convention was adopted less than two years after the Racial Declaration. In contrast, the General Assembly did not push for the adoption of the Women's Convention. There was no sense of an urgent need to protect women from discrimination. The Women's Convention lumbered on for years in committees and working groups with some even arguing that there was no need legally binding treaty on the subject. The final push to

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18. U.N. Doc. E/CN.61/591.

19. Roberta Jacobson, *The Committee on the Elimination of Discrimination Against Women, in* THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL 444, 445 (Philip Alston, ed. 1992).

20. These treaties included coverage for political rights, discrimination in employment, and discrimination in education.

21. MCKEAN, *supra* note 8, at 189-90.

22. Jacobson, *supra* note 19, at 445.

23. MCKEAN, *supra* note 8, at 192. Note that while the General Assembly's Third Committee had 43 meetings to discuss the Racial Convention, they only spent 2 days discussing the Women's Convention before recommending adoption. Noreen Burrows, *The 1979 Convention on the Elimination of All Forms of Discrimination Against Women*, 1985 NETH. INT'L L.R. 419, 420 (1985). "Such uncharacteristic speed can be explained either by the comprehensiveness of the preparatory work or by the Third Committee's relative lack of interest in the issue or both." Jacobson, *supra* note 19, at 446.

24. MCKEAN, *supra* note 8, at 192.

adopt the Women's Convention came not from the anxiousness to have such an instrument in place, but rather from a desire to make a symbolic gesture of adopting a convention at the 1980 Women's Conference.

These contrasting approaches demonstrate the varying degrees of concern for these two groups which have long been subject to discrimination. The Racial Convention garnered the attention of the United Nations, achieving priority status. The Women's Convention was slow to be adopted, and then only after years of haggling about its need and its breadth.

II. COMPARISONS OF THE TEXT

The Women's Convention is similar to the Racial Convention,[25] with the treaties containing similarities in organization and substance. Each convention demands equality for all, with comparable definitions of discrimination, demands for state action, calls for special procedures, and establishment of implementation committees. Yet the Women's Convention departs from many of the more effective approaches taken by the Racial Convention, resulting in a much weaker instrument. The failure of the drafters of the Women's Convention to create a discrimination convention with the same strong provisions as the Racial Convention demonstrates the continuing view that women do not the require the same degree of protection against discrimination as do racial minorities.

A. Preamble

In international legal instruments, preambles state the goals and principles the document is seeking to achieve. A clear and concise preamble is important as a backdrop for the interpretation and reception of an international instrument. The Racial and Women's Conventions differ significantly in the approach and breadth of their preambles, resulting in different levels of effectiveness.

The preamble in the Racial Convention provides an expressive objective of the treaty. The preamble states that all human beings are equal before the law and are entitled to equal protection.[26] The preamble goes as far as to assert that "any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous."[27]

The Racial Convention's preamble is decidedly focused and emphatic in its demand for an end to racial discrimination. The only form of racial discrimination specifically mentioned is apartheid. The drafters of the Racial Convention rejected proposals to include condemnation of anti-semitism and

25. *Id.* at 189.
26. Racial Convention, *supra* note 5, pmbl.
27. *Id.*

nazism.[28] The explanation given for their exclusion was that apartheid was at that time the only instance of racial discrimination practiced as an official policy of a government.[29] This narrow approach concentrates attention on the elimination of all racial discrimination, not just various manifestations that have emerged at different times and places in history.

In contrast to this focussed approach, the preamble to the Women's Convention diverges further from the central issue—the elimination of discrimination against women—than does the preamble to any other international human rights instrument.[30] Not only does the Women's Convention call for equal rights for men and women, but attempts to provide a laundry list of the direct and indirect causes of the present state of inequality. These factors include the establishment of a new international economic order, apartheid, the interference of foreign governments with the domestic affairs of other states, detente, disarmament, self-determination and development.[31] As one author noted, "[i]ts language is considerably closer to that of a political declaration than that of an international treaty."[32]

The inclusion of these remote causes of sex discrimination can be traced to the official theme given the Decade of the Women: "equality, development and peace."[33] This theme recognizes the close link between issues relating to women and development and peace within the United Nations.[34]

The inappropriateness of including these causes did not go unnoticed. The United Kingdom objected that the broad references were "inappropriate and unprecedented" for a legal instrument. The rest of the delegates disagreed, asserting that these references were necessary to recognize the work done during the past few years of the Women's Decade.[35]

By including these broad goals of humanity within the specific convention relating to discrimination against women, the preamble of the Women's Convention does not further the objectives of the Convention. Instead, the call for an end to all the world's problems is distracting from the true goals of equality and fairness for women. The Women's Convention would have been more effective had the drafters followed the example of the Racial Convention and included a more directed and narrow preamble.

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28. Those opposing a specific reference to Nazism in the Convention argued that while reprehensible, historically there had been other equally repulsive and reprehensible evils. Proponents for including nazism argues that nazism was the most striking historical instance of racist doctrines. LERNER, *supra* note 11, at 24.

29. *Id.* at 22.

30. Burrows, *supra* note 23, at 423.

31. Women's Convention, *supra* note 7, pmbl.

32. Reanda, *supra* note 15, at 287.

33. Burrows, *supra* note 23, at 423.

34. *Id.*

35. MCKEAN, *supra* note 8, at 192.

B. Definitions of Discrimination

Another difference between the conventions is their respective definitions of discrimination. In the Racial Convention, Article 1(1) defines racism as:

> any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The Women's Convention defines discrimination in Article 1 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 or any other field of public life.

Obviously, the Women's Convention directly modeled its definition of sex discrimination on the definition of racial discrimination in the Racial Convention. However, the drafters did deviate from the definition in one important regard.

The drafters of the Women's Convention omitted the word "preference" from the first clause indicating types of behavior outlawed by the Convention. This omission derives from a conscious decision of the drafters.[36] The result is a more limited definition of discrimination. The omission of the word "preference" gives employers the right to choose, all things being equal, a man in preference to a woman for employment.[37] In contrast, such a preference based on race would be considered within the definition of discrimination under the Racial Convention. While this difference appears minute in the text, in application the omission of the word "preference" has dire implications for women's right to equality.

C. Implementation Provisions

The Racial and Women's Conventions establish committees to supervise the implementation of their provisions. These committees are key to maintaining international accountability and reviewing of state parties progress towards implementing the Conventions' provisos. However, the Committee established by the Women's Convention possesses much weaker mandates and mechanisms than the committee created by its model, the Racial Convention.

Part II of the Racial Convention creates the Committee on the Elimina-

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36. Burrows, *supra* note 23, at 425 (citing U.N. Doc. E/5909).

37. *Id.* at 425-26.

tion of Racial Discrimination, or CERD. The Racial Convention gives CERD three basic functions. First, Article 9 empowers CERD to consider reports of the state parties as to what steps they have taken to give effect to the treaty provisions. Second, CERD is authorized by Articles 11-13 to hear complaints submitted by one state party against another alleging any violation of the Convention. Third, CERD is permitted by Article 14 to consider communications from individuals claiming to be victims of violations of the Convention. CERD meets twice a year for three weeks in Vienna or New York.[38] While CERD is not a judicial or quasi-judicial body, and thus does not have the power to absolve or condemn state parties,[39] its expansive authority over reports, state complaints, and individual communications places it in a powerful position to expose state violations of the Racial Convention.

The Women's Convention establishes a similar body, the Committee on the Elimination of Discrimination Against Women, or CEDAW, "for the purpose of considering the progress in implementation of the Convention."[40] Article 20 of the Women's Convention specifies CEDAW's main function: "to meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention."[41] The limited authority and inferior procedures as granted by the Women's Convention interfere with CEDAW's effectiveness as an international force for eliminating discrimination against women. The difficulties experienced by CEDAW can be traced to four main problems with its powers and processes.

First, CEDAW is limited by its inability to consider complaints by state parties or individual communications. The Convention only grants CEDAW the authority to examine the regular state reports and make suggestions and general recommendations.[42] This omission is a major inadequacy of the Women's Convention.[43] CEDAW cannot expand the scope of action beyond the constraints of the reporting system.[44] Some argue there was no need to give CEDAW power over individual complaints because that mechanism is already available through the Commission on the Status of Women.[45] Yet the individual petition procedures of the Commission were not established

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38. Sandra Coliver, *International Reporting Procedures, in* GUIDE TO INTERNATIONAL RIGHTS PRACTICE, SECOND EDITION 173, 176 (Hurst Hannum ed., 1992). Note that since 1986, several Racial Committee sessions have been canceled because of failure of several state parties to pay their contribution. *Id.* at 176-77.

39. UNITED NATIONS HUMAN RIGHTS CENTRE, *supra* note 6, at 140.

40. Women's Convention, *supra* note 7, arts. 17, ¶ 1.

41. *Id.* at art. 20, ¶ 1.

42. *Id.* at art. 21.

43. Theodor Meron, *Enhancing the Effectiveness of the Prohibition of Discrimination Against Women*, 84 AM. J. INT'L L. 213, 216 (1990) [hereinafter Meron, *Enhancing the Effectiveness*].

44. Jacobson, *supra* note 19, at 449.

45. *Id.*

until 1982, three years after adoption of the Women's Convention.[46] In addition, the Commission began individual petitions only in response to the large number of sex discrimination cases referred to it by other United Nations bodies.[47] The body created to deal with sex discrimination should have the authority to entertain such allegations. But the limited authority granted CEDAW by the Women's Convention prevents this logical result.

Second, CEDAW suffers from a lack of information from non-governmental organizations (NGOs). Although many NGOs attend the public meetings to observe, CEDAW does not have any formal role for NGOs to provide information to the Committee.[48] Without detailed information from other sources, CEDAW must rely on the reports of the state parties, which often exaggerate or provide only selective information about the state's accomplishments. There are doubts whether CEDAW has the power to create a formal role for NGOs because of the failure to authorize such a role in the Women's Convention.[49]

Third, CEDAW faces severe time constraints. CEDAW is limited by the Convention's text to only meet 2 weeks out of the year. This provision reflects an overzealous attempt to reduce expenditures: no other human rights treaty organs have been subjected to such time constraints.[50] "The view that a committee overseeing implementation of the Women's Discrimination Convention would require considerably less time than CERD needed for its work is a reflection of the priority assigned to women's human rights."[51]

Every four years, signatory states submit reports to CEDAW on the legislative, judicial and administrative, or other measures adopted to give effect to the Convention.[52] With 111 state parties and consideration of an average of 6 reports per session, it would take about 19 years to review just one report from each party.[53] If either states or nongovernmental organizations are to take CEDAW's work seriously, it must be able to review compliance in a timely and meaningful fashion.[54] Many state parties have consistently submitted tardy reports, while other have failed to submit any reports at all. This noncompliance with the reporting requirements ironically is the only thing saving the overworked CEDAW from a complete break-

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46. *Id.*

47. *Id.*

48. Andrew C. Byrnes, *The "Other" Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination Against Women*, 14 YALE J. INT'L L. 1, 36-37 (1989).

49. Burrows, *supra* note 23, at 456.

50. Meron, *Enhancing the Effectiveness, supra* note 43, at 213. In contrast, the Racial Convention is silent on the time and frequency of meetings, allowing CERD to establish its own schedule.

51. Byrnes, *supra* note 48, at 59.

52. Women's Convention, *supra* note 7, art. 18.

53. Byrnes, *supra* note 48, at 61.

54. Coliver, *supra* note 38, at 183.

down.[55]

Finally, the fourth problem of CEDAW stems from its geographical isolation from other human rights bodies. CEDAW and the Commission on the Status of Women are the only treaty bodies not serviced by the United Nations Human Rights Center in Geneva.[56] Some observers believe the placement in Vienna was a concession to then-Secretary-General Waldheim, who wanted to enlarge the United Nations's Vienna office.[57] The relative isolation in Vienna of these organizations representing women makes even informal cooperation with other committees and staffs difficult.[58] This isolation affects CEDAW's ability to keep abreast of current human rights development and to draw on the expertise of those involved in other areas of human rights.[59] Finally, this fragmentation of human rights machinery results in inadequate attention to discrimination against women and contributes to the failure of CEDAW to benefit from innovations of the U.N. mechanisms like special rapporteurs.[60]

The committee created by the Women's Convention was crippled from the start by its weak mechanisms and procedures. Without a change in the enabling provisions of the Women's Convention, CEDAW's prospects for improved effectiveness in the fight against discrimination against women are dubious.

D. Reservations

Another important difference between the two discrimination conventions is their respective approaches to reservations. According to the Vienna Convention on the Law of Treaties, a reservation is "a unilateral statement . . . made by a State, when signing, ratifying . . . or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State."[61] The extent and scope of reservations significantly alter the legal effect of an international convention.

The Racial Convention contains very strict rules about the type of reservations state parties can adopt. Article 20 of the Convention provides that reservations that are incompatible with the object and purpose of the

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55. Byrnes, *supra* note 48, at 27.

56. Coliver, *supra* note 38, at 180; *see also* Sandra Coliver, *United Nations Commission on the Status of Women: Suggestions For Enhancing its Effectiveness*, 9 WHITTIER L.R. 435, 437 (1987) [hereinafter Coliver, *United Nations Commission*].

57. Coliver, *United Nations Commission*, *supra* note 56, at 437-38.

58. Coliver, *supra* note 38, at 180.

59. Byrnes, *supra* note 48, at 60.

60. Meron, *Enhancing the Effectiveness*, *supra* note 43, at 215.

61. Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331.

convention shall not be allowed.[62] The Racial Convention goes on to declare that reservations will be considered incompatible if at least two-thirds of the state parties to the Convention object to it.[63]

This mechanism for regulating reservations has been extremely effective. With 128 state parties, there are only four reservations that are purported modifications or exclusions of the obligations assumed under the treaty.[64] In proposing the clause determining incompatibility, the delegate from Ghana noted that the absence of such a clause "could conceivably nullify the effect of the Convention *ab initio*."[65]

In contrast, the Women's Convention does not contain any similar enforceable restrictions on reservations. Although Article 28 provides that a "reservation incompatible with the object and purposes of the present Convention shall not be permitted,"[66] this provision does not provide any standards for determining incompatibility. In fact, the Legal Advisor to United Nations opined that not even the Women's Committee is authorized to determine the incompatibility of reservations.[67]

This lack of enforceable limits has resulted in the Women's Convention being one of the most reserved of all human rights instruments.[68] 23 out of the 100 states parties made a total of 88 substantive reservations, with an additional 25 reservations to the provisions covering dispute settlement.[69]

In response to this high number and the broad nature of reservations to the Women's Convention, state parties in 1984 sought to incorporate a call for other state parties views on reservations that would be incompatible with the text of the ECOSOC resolution on the status of CEDAW.[70] This effort created considerable tension and contributed to the increased level of division between state parties to the Women's Convention. The vehemence with which nations delegations have asserted their right to make reservations has

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62. Racial Convention, *supra* note 5, art. 20, ¶ 1. The "object and purpose" criteria derived from Advisory Opinion on Reservations to the Genocide Convention. "The International Court of Justice used the 'compatibility with the object and purpose of the Convention' as the criterion for the admissibility of reservations to a Convention which was silent on the question of reservation." Schwelb, *supra* note 9, at 1055-56.

63. Racial Convention, *supra* note 5, art. 20, ¶ 2.

64. Belinda Clark, *The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women*, 85 AM. J. INT'L L. 281, 283 (1991). There are an additional 35 reservations to the dispute resolution provisions. *Id.*

65. LERNER, *supra* note 11, at 96. Referring to U.N. Doc. A/Pr.1406, p. 6. *Id.*

66. Women's Convention, *supra* note 7, art. 28, ¶ 2.

67. The Women's Committee might, however, "have to comment thereon in its reports in this context." THEODOR MERON, HUMAN RIGHTS LAW-MAKING IN THE UNITED NATIONS 80 (1986).

68. Rebecca Cook, *Reservations to the Convention on the Eliminations of All Forms of Discrimination Against Women*, 30 VA. J. INT'L L. 643, 644 (1990).

69. *Id.* at 644. The reservations to the dispute settlement provisions are expressly approved by Article 29 of the Women's Convention. There is no such provision in the Racial Convention. *Id.*

70. John Quinn, *The General Assembly into the 1990's*, *in* THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL 55, 70 (Philip Alston, ed. 1992).

been particularly acute in relation to the Women's Convention.[71] "Some Islamic delegations have displayed sensitivity to criticism of reservations lodged by their countries upon ratifying human rights treaties, asserting the sovereign right to make whatever reservations they regard as appropriate."[72]

In sum, the weak provisions governing the reservations regime in the Women's Convention caused not only a high number of states to adopt expansive reservations, but contributed to the sense of disagreement and conflict over the meaning and purpose of the Convention. Controversies over the reservations provisions are distracting from the proper focus of the state parties—how they can work towards ending discrimination against women.

E. Obligations of State Parties to Prevent Discrimination

Under the Women's and Racial Conventions, state parties oblige themselves to take action to prevent discrimination. However, the extent and explicitness of the obligation is different.

Article 7 of the Racial Convention requires state parties to undertake "immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination."[73] This article specifies the object and purposes of taking state action, as well as the type of activities that should be utilized to achieve that goal.

In its comparable provision, the Women's Convention calls on states "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices . . . which are based on the idea of inferiority or superiority of either of the sexes."[74] The article does not define the measures to be taken or the extent to which behavior patterns should be changed.[75] "To the lawyer this must be the most problematic of all the articles of the Convention for it defies analysis."[76] The article implies that states must actively engage in social engineering of both behavior and attitudes, but provides no guidance on the extent or nature of these efforts.

In addition to the obligation to modify their population's attitudes, the Racial Convention includes an extensive provision outlining measures state parties must take to eradicate incitement and prohibit racist organizations. Article 4 provides that states must: (1) condemn all propaganda and

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71. In 1987, "Egypt and Tunisia expressed disquiet about operative paragraph 11 of General Assembly reservation 42/103 which contained a general exhortation to state parties to lift reservations to international covenants." *Id.* at 71 n.42.

72. *Id.* at 71.

73. Racial Convention, *supra* note 5, art. 7.

74. Women's Convention, *supra* note 7, art. 5, ¶ a.

75. Burrows, *supra* note 23, at 428.

76. *Id.*

organizations based on theories of racial superiority; (2) undertake measures to eradicate incitement to and acts of discrimination; (3) declare the dissemination of ideas of racial superiority or hatred illegal; (4) declare illegal organizations which promote or incite racial discrimination; and (5) not permit public institutions to promote or incite racial discrimination.[77] The reason for the inclusion of this provision can be traced to the tangible damage suffered because of racial propaganda.[78]

Despite the breadth of the provision covering propaganda in the Racial Convention, the Women's Convention contains no references to outlawing sexist speech or organizations. The failure to include such a provision may be because the definition of the type of proscribed organization would be too difficult.[79] Yet, to some degree this same problem is faced by states parties implementing the Racial Discrimination. Therefore state parties are not obliged to make groups that advocate discrimination against women illegal.

CONCLUSION

In outlining the differences between these two discrimination conventions, the inadequacies of the Women's Convention are painfully obvious. The Women's Convention is the only comprehensive international instrument aimed at bringing about equality for women, but it lacks force and respect. Improvements must be made in the level of protection given to women by international human rights instruments.

Discrimination is wrong no matter who is the victim. Women deserve the same level of protection from international human rights instruments as racial minorities. The adoption of the Women's Convention has been used by some human rights bodies to justify ignoring the needs of women.[80] They assure themselves that because the issue of eliminating discrimination against women is already addressed in a convention and by a treaty body, there is less of a need to focus on issues relating to women's equality. But the international community cannot sit back and dismiss the need for improvements in its instruments and mechanisms covering the rights of women. The Convention on the Elimination of All Forms of Discrimination Against Women represents an important achievement in the area of women's human rights. But it is important to recognize the nature and causes of its inadequacies so that the international community can take action in order to improve and enhance women's rights.

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77. Racial Convention, *supra* note 5, art. 4.

78. Theodor Meron, *The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination*, 79 AM. J. INT'L L. 283, 296 (1985).

79. Burrows, *supra* note 23, at 429.

80. Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613, 632 (1991).