Does CEDAW Promote Abortion?

Briefing for Senate Judiciary Committee, Subcommittee on Human Rights and the Law

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I submit this testimony as an expert on CEDAW having followed the treaty for many years and personally witnessed many CEDAW committee country reviews.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is not just a document declaring the equal rights of women, it is a binding treaty that if ratified would be the law of the land. It is prudent to take a hard look at the work of the treaty monitoring body, the CEDAW committee, since they will be reviewing and recommending American social law and policy if the treaty is ratified.

CEDAW’s advocates dismiss criticisms that CEDAW promotes abortion, saying the treaty is silent on abortion. They are right.

At the same time, both the pro-choice Human Rights Watch and pro-life Focus on the Family have documented the fact that the CEDAW committee has directed more than 80 nations to change their laws on abortion even though the treaty is silent on abortion.1 What explains this?

The answer is that the CEDAW committee routinely oversteps its mandate and misinterprets the treaty by reading abortion and other controversial policies into the document as “rights.” This despite the fact that the treaty never mentions abortion.

Some say the work of the committees is meaningless, with no effect on sovereign states. This is false. In Colombia, the constitutional court struck down that nation’s laws

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against abortion citing the CEDAW committee’s views. When the high court of Mexico upheld the new liberal abortion laws of Mexico City, two judges writing in accordance with the ruling also cited treaty obligations under CEDAW.

Thus it is disingenuous to say that even if the U.S. ratifies CEDAW it will not affect any U.S. laws. If ratified, CEDAW will become adjudicable and be subject to myriad lawsuits.

Passage of CEDAW by the United States will ensure that CEDAW is referenced when Roe v. Wade is revisited by the Supreme Court. The treaty will either be referenced by the majority upholding Roe or by the minority when Roe is overturned. The Supreme Court of the United States has already begun referencing international instruments, so CEDAW will likely be referenced the same way.2

I addressed U.S. ratification with the CEDAW committee, and asked committee member Shanthi Dairian what the committee’s position would be regarding U.S. abortion law. Specifically, I asked her whether she believed the American Bar Association’s fact sheet stating that abortion rights are not part of the treaty was accurate. She responded by saying “abortion rights are in the spirit of the treaty.”3 She explained that abortion rights are implicit in the treaty’s non-discrimination article, and in other places, including article 12 on health.

Why would a committee member feel so emboldened as to state for the record that CEDAW would hold the United States to such an obligation? What explains such overconfidence? The committee has grown so accustomed to pressuring states parties to liberalize abortion, that they have no qualms speaking openly about the treaty’s implicit right to abortion.

This was not the case before 1996. That year a group of UN staff, abortion rights groups, and members of the six UN human rights treaty bodies met at Glen Cove, New York and set forth a strategem for creating an international right to abortion through the treaty monitoring bodies.4 In 1998, the CEDAW committee welcomed the outcome document from that meeting, called the Roundtable Report.5

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2 See Roper v. Simmons, 543 U.S. 551 (2005), which references article 37 of the Convention on the Rights of the Child to support the holding that the death penalty for juveniles constitutes “cruel or unusual punishment” under the 8th Amendment of the U.S. Constitution. The United States has not ratified the Convention on the Rights of the Child; See also Lawrence v. Texas, 539 U.S. 558 (2003). The majority cited an amicus brief by former Irish president Mary Robinson urging the justices to consider international law when they overturned Texas’ sodomy laws.

3 Shanthi Dairian, CEDAW committee expert, statement at the Commission on the Status of Women, March 5, 2007.


The next year, the committee created its own interpretation of the articles of the treaty to find a right to abortion. Most pertinent is the committee’s “general recommendation 24” by which it interprets the health article. That interpretation states that, “When possible, legislation criminalizing abortion should be amended.” The interpretation promotes judicial activism to promote abortion, warning states that they “must also put in place a system that ensures effective judicial action. Failure to do so will constitute a violation of article 12.”

If the states that negotiated the treaty had thought that the health article might be interpreted to include abortion, they would have made reservations or statements at the time they adopted or ratified the treaty. But not a single one of the 185 countries that ratified the treaty has made a reservation to article 12, even those with restrictive laws against abortion. This is true even though states made far more reservations to CEDAW than they did to similar treaties. Yet the CEDAW committee continues to say that the “spirit of the treaty” includes a right to abortion.

In addition to abortion, litigious activists will use a ratified CEDAW to change other American laws. For instance, the CEDAW committee regularly misinterprets the treaty to pressure states to impose a quota system called “gender balancing,” insisting that national and local governments should be half male and half female. If the United States ratifies CEDAW, it would be used in attempts to impose a quota system for federal and state political office holders.

Legal activists are already preparing for this. Janet Benshoof said that U.S. ratification of CEDAW would bring “radical transformation of American law.” Benshoof, the founder of the abortion advocacy law firm Center for Reproductive Rights, and two UN officials stated recently that the United States would need to impose the “temporary special measures” of CEDAW article 4 to bring about equal participation of women in all areas of society.

The Obama administration recently said it “views CEDAW as a powerful tool for making gender equality a reality.” The style of gender equality in the treaty is based upon outcomes and not opportunities, and thus is incompatible with American law. As CEDAW committee member Hanna Beate Schopp-Schilling recently said, the treaty “defines discrimination both as an intentional and an unintentional act, the latter being discriminatory in its effect.” It appears that the Obama administration welcomes the

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7 General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), resolution 34/180 (December 18, 1979), General Recommendation 24.
committee’s definition of gender equality, since in referencing the need for ratification it said that “gender equality does not yet exist in any country,” including the United States.

I have personally witnessed dozens of CEDAW committee country review sessions and have heard committee members routinely badger states parties in attempts to promote radical social policies. I heard committee member Tiziana Miaolo congratulate the Netherlands for legalizing prostitution “just like any other profession” and tell national officials they needed to document the amount of time Dutch men spend doing household chores. I heard committee member Glenda Simms warn an Indonesian official that he must instruct men how to treat their wives who had immigrated from more progressive societies.

I can recount numerous other examples of the committee using its valuable time to press for social policies not even addressed in the convention, rather than promote genuine needs of women who still need basic civil rights. Imagine the committee humiliating U.S. officials with such overbearing attitudes. What would the American people think about having an elite UN committee like CEDAW bypass their national, state, and local elected officials in dictating social policy?

One reason the committee oversteps its mandate is that members act in their personal capacity and do not report to any elected official. In effect, they are unaccountable. A second reason is that nearly half come from activist non-governmental organizations (NGOs) and promote their own agenda. For example, Silvia Pimentel, one of the longest serving CEDAW members, was the founder of CLADEM, a Latin American abortion advocacy group.

Third, committee members remain closely linked to other activist NGOs. In fact, in the last two years the committee increased the amount of time they allow NGOs to lobby the committee with “shadow reports” in the weeks before country review sessions. The abortion rights law firm Center for Reproductive Rights routinely submits such reports while simultaneously bringing lawsuits against abortion laws in the countries under review which, in turn, cite CEDAW committee pronouncements. In the case of Colombia, this interlocking stratagem was successful in getting that nation’s constitutional court to liberalize abortion. The same stratagem is in play in numerous other nations and would be used in U.S. courts.

Fourth, many of the committee members retain virtually permanent appointments. Rosario Manalo served on the CEDAW committee for seventeen years, and between 1997 and 2006 led the committee’s pressuring of Australia, Chile, Colombia, the Dominican Republic, Ecuador, Ethiopia, Ireland, Italy, Jordan, Lebanon, Luxembourg, Mexico, Nepal, Northern Ireland (UK), Paraguay, Portugal, Togo, and Zimbabwe to liberalize their abortion laws or policies.

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Fifth, in the words of CEDAW expert Ferdous Ara Begum, the committee sees the treaty as a “living instrument.”\(^{12}\) The problem with this is that if the committee can reinterpret the treaty at will, then nations do not know what they are obligated to do from year to year. This erodes consent, the very foundation of international law.

Committee members have taken it upon themselves to interpret the treaty as though they were jurists with the authority to interpret the law. The fact is that most of the 23 members of the committee have no law degree or any legal background at all. Legal activists then cite the committee’s recommendations and interpretations as high legal authorities in order to press their cases for new “rights” in domestic courts.

Indeed, the committee has no mandate to interpret the treaty. Article 17 of the treaty states that the committee was established “For the purpose of considering the progress made in the implementation of the present Convention.”\(^ {13}\) Committee member Hanna Beate Schopp-Schilling has admitted to a gross overstepping of the committee mandate: “The Committee addresses its general recommendations, through which it interprets the meaning of the Convention’s articles, to States Parties. Such interpretations proved contentious in the early years due to political and legal differences among experts. Committee members disagreed about whether the Committee had a mandate to interpret the Convention.”\(^ {14}\)

It is remarkable that committee members speak so openly about their overreach and their disregard for the will of sovereign states. It is even more remarkable that the United States might subject itself to review by such a committee.

The Obama State Department says that “no other document comprehensively provided protection for the rights of women.”\(^ {15}\) But the fact is that the U.S. Constitution protects Americans to a far greater degree than this controversial treaty. After 30 years, there is little evidence that the CEDAW treaty or committee has done as much for women.

The just-released UN Human Development Report finds that the highest gender inequality in the world is found in states that ratified CEDAW decades ago.\(^ {16}\) UN Secretary General Ban Ki-Moon recently admitted that violence against women is “severe and pervasive” around the world despite UN efforts and despite the fact that 186 nations have ratified CEDAW.\(^ {17}\) Does anyone think, as some witnesses before this committee


\(^{15}\) Ibid.


asserted, that if the United States ratified CEDAW that the Taliban would stop throwing acid in women’s faces?

Ratifying CEDAW will not enhance the moral standing of Americans on the issue of women’s rights. The fact that the United States ratified the International Covenant on Civil and Political Rights (ICCPR) and other international instruments has not stopped human rights violations across the globe, mostly by parties to the same treaties.

The world measures U.S. moral leadership not by what treaties it has ratified but by what it does for women everyday, at home and abroad: delivering security, civil rights, good governance, access to clean water, basic health care, and better education. Not only must the U.S. reject ratifying CEDAW, it should call on states parties to defy the CEDAW committee when it pressures them to liberalize abortion, legalize prostitution, and when it otherwise abuses its elite UN position to exploit the hopes of women in order to push a radical social agenda.

Rejecting the controversial CEDAW treaty and its discredited version of women’s rights is an important step for advancing American credibility on human rights and restoring a proper understanding of international law and human rights.