



UNITED STATES SENATE  
**REPUBLICAN  
POLICY COMMITTEE**

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**U.S. “Reservations” to this Treaty May be Futile**

**CEDAW: Pro-United Nations, Not Pro-Women**

For the better part of 23 years, the United Nations’ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has sat collecting dust in the Foreign Relations Committee, deemed too controversial to see the light of day. Chairman Biden’s account, however, leaves the impression that the treaty is routine business, one that dovetails nicely with a presidential priority.

In his opening statement before a June 13 committee hearing, Chairman Biden offered reassurances about the treaty: “For the United States, the treaty will impose a minimal burden. The U.S. Constitution and existing federal law will satisfy the obligations of the treaty. The United States will need to enter a handful of reservations to the treaty where it is inconsistent with the Constitution or current federal law.”

On July 30, the day the Foreign Relations Committee passed CEDAW (12-7 vote), Chairman Biden stressed in a press release, “The Bush Administration has indicated its support for the women’s rights treaty by listing it as one of the pending international agreements that ‘are generally desirable and should be approved.’ ”

Unfortunately, Chairman Biden’s statements are both misleading and inaccurate. It is far from certain that CEDAW will impose only a “minimal burden” on the United States, and it is unclear whether *reservations* would have force under the treaty. In addition, Secretary of State Colin Powell and Assistant Attorney General Daniel Bryant oppose passage of CEDAW, believing the committee’s actions to be “premature.” Prior to the committee vote, they requested more time from the Chairman to complete their review of the treaty, and were rebuffed. Seven Republican Senators – Helms, Lugar, Hagel, Frist, Allen, Brownback, and Enzi – joined the Administration in its opposition.

**Secretary Powell Opposed to Immediate Passage**

In response to a letter from Chairman Biden in February of this year, the Bush Administration did list CEDAW in the categories of treaties considered “generally desirable and should be approved.” In July, however, the Bush Administration specifically asked Chairman Biden to delay the committee vote and identified as many as 30 other treaties currently before the committee that are higher priorities for national security and foreign policy purposes than CEDAW. Apparently, the personal appeals from

Secretary Powell and Assistant Attorney General Bryant for additional time to more thoroughly review the treaty carried little weight with the Chairman.

The Departments of State and Justice are certainly justified in taking a cautious approach. Central to their concerns is the impact CEDAW may have on U.S. sovereignty and its implications on constitutional and statutory law, as well as the manner in which the CEDAW Committee (the entity responsible for treaty administration) has been interpreting the treaty. Included among the CEDAW Committee's recommendations, for example, are such "rights" as the legalization of prostitution (China); the elimination of Mother's Day (Belarus); and the legalization of abortion (Ireland). [For details, see RPC paper titled, "*Why a Pro-Women Senate Should Not Ratify CEDAW*," 8/14/02.] As Secretary Powell noted in a July 8 letter to Chairman Biden:

"The vagueness of the text of CEDAW and the record of the official U.N. body that reviews and comments on the implementation of the Convention. . . raise a number of issues that must be addressed before the United States Senate provides its advice and consent. . . . State Parties have always retained the discretion on whether to implement any recommendations made by the Committee. The existence of this body of reports, however, has led us to review both the treaty and the Committee's comments to understand the basis, practical effect, and any possible implications of the reports. We are also examining those aspects of the treaty that address areas of law that have traditionally been left to the individual States. The complexity of this treaty raises additional important issues, and we are examining those as well."

Signed by President Carter in 1980, this treaty has failed to gain support from Democrat majorities in the Senate over the last two decades. In 1994, the only other time a Democrat majority passed a CEDAW resolution out of Foreign Relations, many of the same concerns now expressed by Secretary Powell also prevented floor consideration then. Despite this track record, Senator Biden ignored the requests of Secretary Powell and Assistant Attorney General Bryant to delay the vote. Why the sense of urgency given the amount of time that has elapsed, as well as past Democrat failures to consider CEDAW?

## **Entering "Reservations" an Exercise in Futility Under CEDAW**

Chairman Biden, as well as the Administration, has alluded to *reservations* as a means of protecting U.S. law under the treaty. While *reservations* are the typical mechanism by which a nation adopting a bilateral agreement attempts to protect its interests, it is not clear that this mechanism will have the desired effect under CEDAW.

A State enters a *reservation* to serve notice that it intends to exclude or alter the legal effect of the application of certain provisions of a treaty. (*Understandings* and *declarations* are additional tools that can be used; however, these merely clarify a State's position and do not propose to change or modify the legal effect of a treaty and are therefore less authoritative than *reservations*.) Regardless,

due to the United Nations' "impermissibility principle" adopted by the CEDAW Committee, none of these procedural steps may protect U.S. sovereignty under the treaty.

The "impermissibility principle" simply states that a "reservation incompatible with the object and purpose of the present Convention shall not be permitted" (Article 28 of CEDAW), and although reservations are not prohibited, "those which challenge the central principles of the Convention are contrary to the provisions of the Convention and to general international law. As such they may be challenged by other States parties" (General Recommendation No. 21 (13<sup>th</sup> session, 1994)).

The Committee then identifies Article 2 (which comprises the broad, overall obligation to eliminate all forms of discrimination against women under the treaty) and Article 16 (the elimination of discrimination as it relates to marriage and the family) as the core principles of CEDAW. It also states that, "Neither traditional, religious or cultural practice nor incompatible domestic laws and policies can justify violations of the Convention," (General Recommendation No. 21 (13<sup>th</sup> session, 1994)).

In other words, because Articles 2 and 16 are principles central to CEDAW and because such principles cannot be challenged by States parties, no *reservations* to these Articles are permissible – not even for religious, traditional, or cultural reasons. The impermissibility principle doesn't seem to allow much room for chance. It is simply difficult to conceive of any issue that won't fall under either Articles 2 or 16, given their breadth, as well as the manner in which the Committee has interpreted CEDAW over the last 23 years. Therefore, it appears any *reservations* the Senate attaches to ratification could simply be ruled "incompatible with the object and purpose of the present convention" and summarily dismissed.

Also of concern is the manner in which the CEDAW Committee will apply the impermissibility principle to the various parties. Will the *reservations* of all nations be ruled impermissible or will some be allowed to stand? What standard or baseline will the Committee use to make such determinations? If U.S. *reservations* were dismissed, for example, but those of Saudi Arabia or China or any other nation with a less than stellar record of honoring basic women's rights were accepted, then the Committee will have made an even greater farce of women's rights than it already has through its various rulings. Unfortunately, there seems to be no guarantee against such a scenario given the nature of the Committee's actions to date.

The Senate should not ratify CEDAW without a clear understanding of its true impact on our nation, particularly whether any U.S. *reservations* will have force under the treaty. If the United States cannot protect itself from CEDAW principles "inconsistent with the Constitution," then ratification may ultimately empower the United Nations at the expense of U.S. sovereignty. Should that happen, women in the United States and elsewhere may have to bear the "minimal burden" of a U.N. capable of defining women's rights as the legalization of prostitution and the elimination of Mother's Day.