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By

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If the United States ratifies the United Nations treaty recently approved by the Senate Foreign Relations Committee, Americans will lose what remains of their right to govern themselves and define their culture. They will lose their freedom.

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) has two flaws: what it says and what it does. The “all forms of” language in CEDAW’s title is the first indication of its broad reach. The treaty, indeed, defines the “discrimination” it prohibits as “any distinction ... on the basis of sex” in “any ... field.”

That is broad coverage, going beyond the formal to the informal, beyond the public to the private. But by prohibiting not just treatment but “any distinction,” CEDAW reaches beyond actions to beliefs and values. The treaty’s preamble states that a “change in the traditional role of men [and] women in society and in the family is needed to achieve full equality between men and women.” Article 5 requires countries to “[m]odify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices ... based on ... stereotyped roles for men and women.”

Understanding CEDAW’s impact requires looking not only at what it says on paper, but what it does in practice. Anyone familiar with how American courts make law by re-defining key terms knows that whoever says what CEDAW means effectively says what CEDAW is. That someone will have enormous, and on-going, influence over the society, culture, law, and freedom of the nations that ratify it. If, as former Chief Justice Charles Evans Hughes once said, the U.S. Constitution “is whatever the judges say it is,” CEDAW is whatever the U.N.’s CEDAW Committee says it is.

Nations ratifying CEDAW agree to submit every four years a report on their efforts to comply with the treaty to a committee of 23 “experts” drawn from ratifying nations. The committee evaluates those efforts and instructs ratifying nations on further steps they must take. In short, the CEDAW Committee determines what the treaty means and what ratifying nations must do to comply with it.

CEDAW requires that committee membership reflect “different forms of civilization as well as the principal legal systems.” This guarantees that the body telling the United States what it must do to comply with the treaty will include those who not only do not share, but who absolutely oppose, the cultural and political principles underlying our form of government and the nature of our freedom. The committee currently includes representatives from China (which forces women to undergo abortions), Cuba (which kills women attempting to flee the country), and Turkey and Indonesia (named this year

by the U.S. State Department as among the world's worst offenders in the sexual trafficking of women and girls).

The CEDAW Committee has been issuing rulings for several years, providing a concrete picture of how much the treaty's meaning extends beyond its already broad language.

The committee has said that CEDAW requires legalizing prostitution, "access ... to easy and swift abortion," and "redistribution of wealth." The CEDAW Committee's rulings have intruded into the family, education, and even religion. The committee told Slovenia, for example, that 30 percent of young children in institutional daycare was not enough.

In education, the treaty requires "elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education ... by the revision of textbooks and school programs and the adaptation of teaching methods." The CEDAW Committee told Vietnam to take "wide-ranging measures, including targeted educational programs, the revision of curricula and textbooks, and mass media campaigns" to eliminate stereotypes.

In religion, the CEDAW Committee criticized Ireland for "the influence of the Church...in attitudes and stereotypes but also in official state policy," and told Libya it must re-interpret the Koran in light of the treaty's principles. It reprimanded Hong Kong for exempting "the affairs of religious denominations or orders" from the treaty's scope.

All this is startling, perhaps even alarming, but CEDAW's supporters say that the treaty lacks the kind of enforcement mechanisms that would directly interfere with American law and society. If only that were true.

Many countries ratifying CEDAW may not take their treaty obligations seriously, but America does. The U.S. Constitution, in Article VI, makes treaties the "supreme law of the land" along with the charter itself. Article VI states that "the judges in every state shall be bound" by treaties, "anything in the Constitution or laws of any State to the contrary notwithstanding." So that means state laws and constitutions must comply with the ongoing interpretation of CEDAW by the CEDAW Committee.

But what about federal statutes? In *Dickerson v. United States*, the Supreme Court held that courts may strike down federal statutes that are not inconsistent with the Constitution, but merely inconsistent with Supreme Court rulings. Since the Constitution makes no mention of Supreme Court rulings, but does make treaties the supreme law of the land, it is no stretch at all to say that courts may strike down statutes that violate CEDAW but not the Constitution. Or worse, courts may strike down statutes that are inconsistent with the CEDAW Committee's rulings.

As the "Rally for Ratification" of CEDAW at the August 2002 ABA convention made clear, feminist lawyers intend to use the treaty to force wholesale political and social change. You can bet those activist lawyers already have their arguments framed, and perhaps even sections of their legal briefs drafted, to pursue this very strategy.

CEDAW supporters also claim that the treaty's interference with American law, society, and culture can be limited by adding so-called "reservations" to its language. Most people of common sense would probably ask why the United States should ratify something at all if, to make it palatable, it requires a load of caveats and reservations and qualifications. It is, however, the language of the treaty itself that answers this question. Article 28 states that a "reservation incompatible with the object and purpose of the present Convention shall not be permitted." Guess who gets to decide whether a reservation meets this test? The same committee that determines the meaning of every other provision of the treaty.

So CEDAW's text, as interpreted by the CEDAW Committee, is broad enough to affect nearly every aspect of American society, culture, and law. Because treaties are the supreme law of the land, all state laws and most federal laws will have to be consistent with the CEDAW Committee's rulings. To ensure this ongoing revolution, the treaty itself requires ratifying nations to embody its principles "in their national constitution or other appropriate legislation." The CEDAW Committee also requires that ratifying nations "sensitize judges, lawyers and law enforcement personnel" about the treaty's mandates.

To help ensure that this revolution will indeed change America, the American Bar Association has created a "CEDAW Assessment Tool" for evaluating the treaty's impact. It asks whether the treaty is "directly applied and given effect in courts as part of national law" and whether judges are being trained "about CEDAW's precedence over national law."

In the end, the impact of ratifying this treaty goes far beyond its text. That text reaches into virtually every corner of American life and the CEDAW Committee's rulings reach what the text does not. Because of the status of treaties under the U.S. Constitution, and the intention of political activists to use CEDAW, virtually every aspect of American self-government would eventually be swept away.

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