



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JUL 26 2002

The Honorable Joseph R. Biden, Jr.
Chairman
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

Dear Chairman Biden:

I write in response to your letters of June 17 and July 11, 2002 concerning the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), upon which the Foreign Relations Committee is considering voting in the near future. While the Department of State typically takes the lead in responding to correspondence from the Senate Committee of Foreign Relations, at your insistence I am responding directly on behalf of the Department of Justice.

As indicated in Secretary Powell's July 8 letter to you, the Administration is currently reviewing CEDAW to determine what reservations, understandings, and declarations (RUDs) may be required in addition to those reported out by the Committee in Exec. Rept. 103-38 in October 1994. While this review is not yet complete, the Administration is certain that the 1994 RUDs are insufficient to address the various concerns raised by CEDAW. For example, the 1994 RUDs do not address the controversial interpretations advanced by the official U.N. implementation committee after those RUDs were issued. Among other things, that committee questioned the celebration of Mother's Day in a January 2000 report to Belarus:

The Committee is concerned by the continuing prevalence of sex-role stereotypes and by the reintroduction of such symbols as a Mother's Day and a Mother's Award, which it sees as encouraging women's traditional roles.¹

And in a March 1999 report to China, it called for legalized prostitution:

¹ *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Belarus, 31/01/2000*, ¶ 361.

The Committee is concerned that prostitution, which is often a result of poverty and economic deprivation, is illegal in China The Committee recommends decriminalization of prostitution.²

These are but two examples of the instances in which this committee has exploited CEDAW's vague text to advance positions contrary to American law and sensibilities.

Nor does your recent draft resolution of ratification address these concerns. It does not, for example, address whether other interpretive bodies, whether foreign, international, or, indeed, domestic, could adopt similarly bizarre interpretations of CEDAW's vague text, or what deference, if any, these bodies would accord the official U.N. implementation committee. (As we have recently witnessed in the Pledge of Allegiance case, there are, regrettably, judges who will engage in aggressively counter-intuitive interpretations of legal texts.) The implementation committee, moreover, has now begun "[t]he process of interpreting the substantive articles of the Convention" and to "formally . . . interpret the rights guaranteed in the Convention."³ Your draft resolution, however, does not address the effect of these formal interpretations on domestic and international law. These concerns remain regardless of whether, in the words of your draft resolution, the implementation committee has the "authority to compel actions by State parties."

It is crucial, therefore, that we fully understand the implications of these rulings on parties that join CEDAW after they have been issued, as well as the consequences of any rulings that might issue after a state becomes party to the treaty. In addition, we must fully understand the numerous other issues raised by CEDAW, such as its implications on current U.S. constitutional and statutory law and areas of law traditionally regulated by the States. The complexity of this treaty raises many other important issues that are not addressed in your draft resolution, which we are examining as well.

This is not the first Administration, nor the first Senate, to recognize the magnitude of the issues raised by CEDAW. As you know, this treaty has been before the United States Senate for twenty-two years. During this time period, it has been before a Democratic Senate with a Democratic President (President Carter), a Republican Senate with a Republican President (President Reagan), a Democratic Senate with a Republican President (President Reagan), a Democratic Senate with another Republican President (President George H.W. Bush), a Democratic Senate with a Democratic President (President Clinton), and a Republican Senate with a Democratic President (President Clinton). In other words, regardless of which party controlled either the Senate or the Presidency, the Senate has declined to act on this treaty for twenty-two years. In this context, it would be imprudent to act with undue haste before we have had an opportunity to conduct a full and fair review of this treaty, particularly in light of the recent actions

² *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: China, 03/02/99*, ¶¶ 288-289.

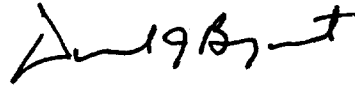
³ *Fact Sheet No. 22, Discrimination Against Women: The Convention And The Committee*, available at www.unhchr.ch/html/menu6/2/fs22.htm.

taken by the U.N. implementation committee (and the future actions that it has announced its intention to take).

As Secretary Powell explained in his July 8 letter to you, the Administration is in the process of conducting a review of CEDAW in order to determine the scope of the additional RUDs that may be required to address these issues, and will share our views with you once our review is complete. The Administration is conducting this review thoroughly and expeditiously. Any vote at this time, however, would be premature, particularly in light of the more than thirty other treaties currently before the committee that are higher priorities for our national security and foreign policy. Accordingly, we respectfully request that you await completion of the Administration's review before commencing a committee vote on CEDAW. Should you decline to do so, we respectfully urge members of the committee to vote against sending CEDAW to the full Senate until our review is complete.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Bryant", with a stylized flourish at the end.

Daniel J. Bryant
Assistant Attorney General

cc: The Honorable Jesse Helms
Ranking Minority Member

The Honorable Richard Lugar