Confronting Gender-Based Violence with International Instruments: Is a Solution to the Pandemic Within Reach?

Jennifer L. Ulrich
Indiana University School of Law

Follow this and additional works at: http://www.repository.law.indiana.edu/ijgls
Part of the International Law Commons, and the Law and Gender Commons

Recommended Citation
Available at: http://www.repository.law.indiana.edu/ijgls/vol7/iss2/11

This Note is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Journal of Global Legal Studies by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattrn@indiana.edu.
Confronting Gender-Based Violence With International Instruments: Is a Solution to the Pandemic Within Reach?

JENNIFER L. ULRICH*

Gender violence threatens and shapes every woman’s life even if she herself is not a victim. You see this in the choices women make: where they choose or are allowed to work, what events they feel safe attending, and where they walk on the street.1

INTRODUCTION

Within the past two decades, international actors have devoted increasing attention to the crisis of gender-based violence.2 Spurred in part by the gaining momentum of the global feminist movement, the United Nations (UN) and numerous non-governmental organizations (NGOs) have developed strategies intended to end violence against women. Perhaps most fundamental in these developments is the recognition of women’s rights as human rights.

This Note explores the present and future of the global epidemic of violence against women. Through the comparison of four international documents, never grouped together previously, this Note examines whether these instruments can accomplish an evolution in the discourse surrounding gender-based violence. After establishing that such an evolution has occurred to a limited extent, this Note considers whether these four instruments hold the key to ending gender-based violence or whether more substantive steps must be taken. Finally, this Note argues that although the discussion surrounding violence against women has matured significantly, the continued male-

* J.D., 1999, Indiana University School of Law—Bloomington. She wishes to thank Professor Julia Lamber for her insights and support.
2. The term “gender-based violence” will henceforth be used interchangeably with the term “violence against women,” although theoretically it could encompass violence against men as well.
dominated status of both international and individual State law effectively prevents the total elimination of violence against women. For violence to be eradicated completely, traditional legal power structures must be scrutinized in accordance with radical feminist principles, which teach that upon a reorganization of power, women will be able to assume equality with men.

In particular, Part I of this Note discusses the current international status of women and the prevalence of violent acts perpetrated against them. Part II considers the current status of women in international law. Part III analyzes the successes and failures of the cornerstone human rights document, the Universal Declaration of Human Rights (Universal Declaration). It then considers three instruments more specifically designed to advance the rights of women. Part IV analyzes the ground-breaking Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention or Convention) and its organization for implementation, the Committee on the Elimination of Discrimination Against Women (CEDAW or Committee). Part V examines the recent United Nations Fourth World Conference on Women held in Beijing and the extent of its treatment of gender-based violence. Part VI addresses the Declaration on the Elimination of Violence Against Women (DEVAW)—an instrument dedicated to eradicating international abuses against women. Finally, this Note concludes with an examination of the past and potential future of the aforementioned international human rights documents and a determination of whether any or all of these documents possess the ability to champion effectively women's interests and more specifically to eliminate violence against women.

These four instruments act symbiotically and enjoy a synergistic relationship. Before the drafting of these documents, women's rights, in general—and violence against women in particular—had never been considered in any significant manner by the international community. Although none of these four covenants alone have created a firestorm of change, together they represent a progression in the treatment of women's interests by international law. At the very least, the instruments indicate that women's rights can be successfully translated into the language of international law. The ultimate result of this translation is a novel approach to the creation of traditional international law.
I. A Global Perspective on Violence Against Women

Gender-based violence knows no national or cultural borders; it is instead a problem of international proportions. "Violence and the threat of violence are ubiquitous sources of death, injury, and stress in the lives of women that cross lines of culture, age, ethnicity, economic status, and national boundary." Violence against women, as perpetrated through both individual and sovereign actions, has possessed a multitude of roots, including individualized cultural attitudes and society’s lack of education about the profound harms caused by such violence.

More significantly, however, the continued persistence of gender-based violence stems from power structures heavily weighted in favor of men and, correspondingly, from millennia of perceived feminine inadequacy. "[M]ost gender-based violence against women is inextricably linked to male power, privilege and control. Culture and tradition, which are often reflected in national laws, only help to perpetuate the idea of male dominance." Violence against women, in its varied forms, sends an implicit but clear message that women must refrain from claiming the power that would make them equal or suffer adverse personal repercussions.

According to radical feminist principles, neutrality between the sexes is a fruitless goal under a system in which equality is defined entirely by male standards. "Under the sameness standard, women are measured according to our correspondence with man, our equality judged by our proximity to his measure." Radical feminist theory dictates that all forms of discrimination against women, including gender-based violence, can only truly be eliminated after a significant reorganization of international and state power structures. In her "dominance approach," Catharine MacKinnon proposes that people abandon traditional legal categories and reevaluate equality-based law. If governments restructure legal systems to include women’s interests, a pathway to eliminate gender discrimination, and as such violence against women, will result. Thus, to deal with gender-based violence meaningfully,

4. UNITED NATIONS, FOCUS ON WOMEN: VIOLENCE AGAINST WOMEN 3 (1995) [hereinafter FOCUS ON WOMEN].
7. Id. at 40.
countries must adopt a discourse that questions the fundamental roots of such violence; those roots, however, extend deep into the international legal scheme and ironically into the instruments that specifically address violence against women.

A. Exploring Forms of Violence Against Women

Gender-based violence assumes several different forms which often vary according to cultural practices. Female genital mutilation, for example, is a traditional practice undertaken in parts of Africa and Asia and continued by some immigrants in Europe and the United States. Although this practice affects some two million women and girls per year, it remains relegated mainly to particular cultures. Additionally, “bride burning,” the Indian practice of setting a woman on fire for failing to execute fully the marriage bargain, results in the brutal murder of scores of married women. Like female genital mutilation, bride burning is an act of gender-based violence that remains contained within an individual cultural arena. As individual cultures begin to transcend traditional national borders, violent acts such as bride burning and female genital mutilation are increasingly being given international attention.

Other acts of gender-based violence, however, permeate all world cultures and, as such, possess a different global dynamic. For example, many women are victimized by “relationship abuse,” or as it is more commonly understood, “domestic violence.” Although the empirical data on the pervasiveness of relationship abuse is incomplete, there are indications of a widespread, international crisis. In Bangladesh, for example, murder of wives by husbands accounts for half of all murders nationwide. In Scotland, relationship abuse is the second most reported crime. In the United States, nearly four million women are victimized by relationship abuse annually, and wife battering is the most common cause of injuries necessitating medical attention. In Peru, relationship abuse constitutes nearly three-quarters of all

---

8. Focus on women, supra note 4, at 2.
9. Id.
10. Id.
12. Id.
13. Id. at 780.
15. Russo et al., supra note 3, at 125.
CONFRONTING GENDER-BASED VIOLENCE

One Brazilian police station reported that nearly seventy percent of all reported cases of violence against women occurred in the home. These statistics, however, only intimate the true extent of abuse worldwide because of inconvenient, complicated, and ineffective reporting procedures. Nonetheless, they are indicative of the fact that relationship abuse is not relegated to one culture, economic status, or political structure. Relationship abuse is instead a problem that has infiltrated most, if not all, cultures.

Like relationship abuse, sexual assault and rape are also crises of global proportions. In the United States, for example, it is estimated that a woman is raped every six minutes. A 1993 Canadian study of 420 women indicated that “more than 54 per cent of them had experienced some form of unwanted or intrusive sexual experience before reaching the age of 16.” Additionally, of these women, fifty-one percent expressed that they had survived a rape or attempted rape. In Fiji, Thailand, and the Phillipines, rape is considered socially acceptable, so long as the rapist consents to marrying the survivor. Rape and sexual assault are also playing increasingly destructive roles in cultural clashes. One study determined that nearly 20,000 women were raped in Bosnia during the first few months of the civil war alone. Similar practices have been reported in Cambodia, Liberia, Peru, Somalia, and Uganda. As evidenced by these limited statistics, rape and sexual assault clearly know no artificial borders but occur in most cultures worldwide. Consequently, sexual assault, like relationship abuse, is a problem of international significance.

Finally, the widespread problem of sex trafficking, or sexual slavery, also has global implications, as it has permeates nearly all cultures. Sexual trafficking involves “any situation[] where women or girls cannot change the immediate conditions of their existence; where, regardless of how they got into those conditions, they cannot get out; and where they are subject to sexual violence and exploitation.” Women forced into sexual slavery are often

16. Armatta, supra note 11, at 780.
17. FOCUS ON WOMEN, supra note 4, at 3.
18. Dietz, supra note 14, at 552.
19. FOCUS ON WOMEN, supra note 4, at 1.
20. Id. at 1-2.
22. FOCUS ON WOMEN, supra note 4, at 2.
23. Id.
taken from their homes at extremely young ages, either through purchase or kidnaping. Sexual slavery can take the form of forced prostitution, gang rapes perpetrated by military or other powerful figures, mail order bride markets, or international sex tourism. Often the "owners" of these young women do not permit them to leave their brothels or, in some cases, their rooms. The frequency of this form of sexual exploitation is increasing around the world and in Asiatic countries in particular. In 1993, for example, it was estimated that at least 150 girls were smuggled into China each week for the purpose of sexual exploitation. Asia, however, is not alone in its rampant sexual trafficking. An international smuggling ring involving the sale of women was recently discovered and prosecuted in the state of New York. Consequently, sexual trafficking involves a global dynamic similar to relationship abuse and sexual assault.

The international importance of gender-based violence resides not only in its deleterious effects on its female victims but also in its damaging consequences for communities and cultures worldwide. Many authors argue, for example, that all forms of gender-based violence have profound effects on both economics and public health. The Global Commission on Women's Health reports that the repercussions of gender-based violence, including depression, sexually transmitted diseases, substance abuse, and sometimes murder, situate a tremendous financial burden on health care systems. Thus, because of their injurious effects on international well-being, all forms of violence against women clearly deserve international consideration, regardless of whether the form of gender-based violence is limited to a particular culture or whether it instead permeates all cultures.

II. THE STATUS OF INTERNATIONAL LAW AND ITS CONSEQUENCES FOR WOMEN

Until recently, women's rights in general, and gender-based violence in particular, were not considered international human rights issues. International law, as well as individual national law, was within the sole province of men,

26. Id. at 268.
27. Id. at 269.
28. Id.
29. Focus on Women, supra note 4, at 4.
while women remained under-represented, if represented at all, both in the decision-making processes and in terms of addressing issues relevant to their lives.\textsuperscript{30} Even the United Nations, an ultimate arbiter of international human rights, fell prey to this antiquated structural scheme.\textsuperscript{31} Although Article 8 of the United Nations Charter allows women and men an equivalent admission to the establishment, no provision was incorporated to mandate the appointment of women to positions of power.\textsuperscript{32} Unfortunately, this failure to undertake affirmative steps to place women in influential positions resulted in the virtual exclusion of women’s voices from international discussions, including those dialogues that most directly affected their concerns. Thus, because women were effectively denied participation in United Nations’ policymaking, women’s interests traditionally have not been considered of primary importance in international law.\textsuperscript{33} That is, a suppression of women’s voices in the making of international law translated into both a generalized lack of interest in women’s issues and a failure to raise such issues for consideration. Hilary Charlesworth notes that:

Because men generally are not the victims of sex discrimination, domestic violence, and sexual degradation and violence, for example, these matters can be consigned to a separate sphere and tend to be ignored. The orthodox face of international law and politics would change dramatically if their institutions were truly human in composition.\textsuperscript{34}

For women’s rights to be safeguarded adequately within the global community, women must assume more active roles in the development of international law.

In addition to the lack of representation within international institutions, women’s interests are also hindered by the perceived role of international human rights law. Traditionally, international human rights mandates restricted the behavior of nation-States, not private individuals.\textsuperscript{35} As such, international organizations have drafted documents geared toward eradicating the abuses

\textsuperscript{31} See id.
\textsuperscript{32} See id.
\textsuperscript{33} See id. at 625.
\textsuperscript{34} Id.
\textsuperscript{35} Id.
perpetuated by States, rather than those initiated by private citizens. This seemingly neutral application of human rights law, however, adversely affects the interests of women worldwide. States, of course, do engage in forms of violence against women. In Peru, for example, military personnel systematically sexually assault their female citizens, and, in El Salvador, judges frequently dismiss charges of rape, asserting that the survivor must have provoked the crime. Nonetheless, the great majority of women endure violence within the private realm, where international law has rarely dared to reach. Since domestic life bears the most danger for women and international laws rarely regulate the private realm, most international treaties leave many women without any assistance.

If, however, organizations abandon restrictive notions of the proper scope of international law, it is possible to protect women from private gender-based violence through the vehicle of international instruments. Under current international law, there must be action or complicity by the State for an act of violence to be prohibited expressly. By recognizing that a significant amount of violence against women is conducted entirely without punishment by State governments, international organizations can include most violence against women within the traditional conception of human rights abuses. "Where a government offers no protection from gender-based violence, a woman’s home and country become her prison and the violence is the persecution." Although the State may not technically be the purveyor of violence against women, its complicity in failing to punish those who engage in the violence could be legitimately considered a human rights abuse. Recently, some international instruments have made tentative steps toward this conception of human rights abuses against women, although these advances have been accompanied by some difficulties. Consequently, the attempt to convince the international community that women’s rights are human rights, and that abuses

36. See id.
37. See id.
39. See Charlesworth et al., supra note 30, at 625.
40. Arnatta, supra note 11, at 775.
41. Bower, supra note 38, at 184.
42. Id. at 183.
43. Id. at 188.
44. Id.
45. Dietz, supra note 14, at 588.
suffered by women collectively damage humanity, has been moderately successful.

Finally, the broad-based dilemma of enforcing international law also has negative implications for the attempt to eliminate gender-based violence. A long-standing debate among international legal scholars exists about whether international law constitutes law at all, or whether such law is little more than grandiose policymaking. Notably, many, and perhaps most, nations consistently conform their conduct to international law. Not only do countries daily respect the legal limits on the extent of their territorial jurisdiction and the authority of other governments, but there is also a mass of routine contact and intercourse among nations that is governed by norms which the governments call international and to which they openly adhere.46

Nonetheless, some countries consistently fail to meet requirements established in international laws. Some legal scholars argue that this failure is because of the lack of an international policing force that demands compliance with international edicts. According to this view, international law cannot be enforced as readily as traditional law. “Most people hold a view of international law which runs somewhat as follows: There is a great difference between positive law—law with a policeman behind it—and so-called international law.”47 These scholars believe that nations cannot be effectively compelled to comply with international law without the presence of a universal positivist enforcement scheme. In contrast, other scholars believe that self-interest is what drives compliance with international laws.48 Although countries routinely adhere to traditional international law even in the absence of a positivist enforcement scheme,49 noncompliance continues to be a frequent occurrence probably because authorities are not endowed with enough power to proscribe or to punish defiant conduct. For example, administrative agencies that are intended to govern particular areas of international law wield little to no actual legal authority.50 The treaties establishing these international agencies provide that decisions rendered by them have only recommendatory effect.51 There are also no international arenas to which appeals may be launched if nations fail to protect what are

46. ROGER FISHER, IMPROVING COMPLIANCE WITH INTERNATIONAL LAW 12 (1981).
47. Id. at 11.
48. See id. at 126-40.
49. Id. at 12.
50. Id. at 236.
51. Id.
widely considered to be international rights. Clearly, difficulties of enforcement substantially hinder the status of traditional international law.

These problems are magnified in the context of human rights instruments and, in particular, in treaties addressing the rights of women. Because of the public-private dichotomy implicit in this area, drafters of international human rights treaties have struggled with the issue of how to protect a person’s fundamental rights without invading the province and sovereignty of individual nations. In consideration of this dichotomy, this Note now turns to a discussion of the effectiveness of human and women’s rights documents and an examination of the evolution of the international community’s consideration of violence against women. Such a discussion must necessarily begin with an analysis of the preeminent and foundational human rights agreement, the Universal Declaration of Human Rights.

III. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Human rights, loosely defined as those “inherent in our nature and without which we cannot live as human beings,” have been of increasing concern in twentieth-century society. In order to address this concern, the United Nations drafted a basic international treaty to protect fundamental human rights. The Universal Declaration of Human Rights was adopted by the United Nations on December 10, 1948, and has from that day forward provided the standard by which nations can judge the treatment of their citizens’ civil, political, economic, social, and cultural rights.

In spite of its noble aspirations, the Universal Declaration has been widely criticized by those who advocate swift and tangible repercussions for those nations that violate international law. Although the Universal Declaration carries the weight of law in countries that choose to adopt it, the International Human Rights Commission (established to review violations of this and other human rights treaties) carries little more than persuasive power.

The United Nations has no way of forcing Governments to change their practices or policy. Persuasion is the only tool available to the Organization to bring about improvements in

52. Id. at 241.
54. Id.
55. Id. at 12.
respect for human rights. All United Nations procedures are therefore aimed at focusing the persuasive weight of the opinion of the international community on the Government concerned.\textsuperscript{56}

The Human Rights Commission (Commission) holds a broad range of powers, including "mak[ing] studies on human rights problems, prepar[ing] recommendations for action, and draft[ing] United Nations instruments relating to human rights" and also inquiring into allegations of human rights violations?\textsuperscript{57} However, the Commission possesses no ability to enforce positively the Universal Declaration against noncompliant nations. The Universal Declaration thus exhibits the same problems of enforcement as do most international laws. Nonetheless, decisions rendered by the Commission carry great weight in the international community, and the Commission often intervenes to stop human rights violations. Although the Universal Declaration articulates no positivist power for the implementation of its tenets, the treaty is still relatively enforceable because of the substantial persuasive power of its governing body.

The Universal Declaration has also been critiqued by various feminist scholars. These criticisms primarily surround the Universal Declaration’s use of the word “man” as a generic term for human.\textsuperscript{58} In such circumstances, a man is certainly intended to be included in the document, but “a woman is uncertain.”\textsuperscript{59} Women are clearly acknowledged in the Universal Declaration but only in limited ways. Although there was concern for women’s rights at the time of the Universal Declaration’s drafting, there is a striking absence of protections for women, except in their roles as mothers and wives. For example, the few direct references to women appear in Article 16’s protection of the right of men and women to marry and have a family\textsuperscript{60} and Article 25’s acknowledgment that motherhood deserves special care and assistance.\textsuperscript{61} “The Universal Declaration depicts women as wives and mothers and, in the

\textsuperscript{56} Id. at 19.
\textsuperscript{57} Id. at 17.
\textsuperscript{59} Helen Bequaert Holmes, A Feminist Analysis of the Universal Declaration of Human Rights, in BEYOND DOMINATION: NEW PERSPECTIVES ON WOMEN AND PHILOSOPHY 250, 259 (Carol C. Gould ed., 1983).
\textsuperscript{61} Id. art. 25.
latter capacity, as particularly vulnerable individuals. The constant references to the family in the Universal Declaration reinforce the restricted image of women."^\text{62}

The Universal Declaration reflects a masculine notion of human rights protection with little consideration for the broad range of concerns for women. It is only with the drafting and adoption of the Convention on the Elimination of All Forms of Discrimination Against Women that women’s rights are addressed in a meaningful way by the international community. The Women’s Convention, however, is hindered by the same enforcement difficulties that limit the effectiveness of the Universal Declaration. Indeed, the Women’s Convention perhaps suffers from even more problems of enforcement than its general international law and human rights law compatriots.

IV. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

A. The Legislative History of the Women’s Convention

The Women’s Convention was the first universal agreement to specify that women’s rights are human rights.\text{63} This instrument set the standard for international women’s rights on which many human rights instruments currently rely.\text{64} In form, the Women’s Convention is a comprehensive and legally binding instrument that compels acknowledgment of the rights of women worldwide.\text{65} Notably, the Women’s Convention originated because the United Nation’s policies toward women’s issues were fragmentary and somewhat ineffective.\text{66} The UN drafted the Convention in order to define the international standards by which discrimination against women is to be judged.\text{67}

\begin{itemize}
\item \text{62. Charlesworth, supra note 58, at 784.}
\item \text{63. Elizabeth M. Misiaveg, Important Steps and Instructive Models in the Fight to Eliminate Violence Against Women, 52 WASH. & LEE L. REV. 1109, 1118 (1995).}
\item \text{64. Dietz, supra note 14, at 558.}
\item \text{65. Rebecca J. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women, 30 VA. J. INT’L L. 643, 643 (1990).}
\item \text{66. Margaret Plattner, The Status of Women Under International Human Rights Law and the 1995 UN World Conference on Women, Beijing, China, 84 KY. L.J. 1249, 1254 (1996).}
\item \text{67. Id.}
\end{itemize}
The United Nations General Assembly adopted the instrument on September 18, 1979, and the Women’s Convention ultimately became enforceable in September, 1981. As of the summer of 1998, approximately 161 nations had ratified the Convention, including Great Britain, Canada, Italy, and France. This number does not include the United States, however, in spite of the nation’s significant role in the instrument’s design. Although U.S. President Jimmy Carter signed the instrument in 1980, the Senate has yet to make it law. Several senators and First Lady Hillary Rodham Clinton have expressed their support for the Women’s Convention, and President Clinton vowed to make the Convention’s passage a primary element of his presidential agenda. The status of the instrument in the United States, however, depends largely on Senator Jesse Helms, the Chairman of the Senate Foreign Relations Committee, who will determine whether the Women’s Convention will be considered for passage.

Opponents to the ratification of the Convention have contended that it cannot endure the rigors of the Equal Protection Clause. They argue that although the gender classifications of the Convention probably serve an important state interest as required by the intermediate scrutiny test, they may not bear a substantial enough relationship to the state’s objectives. The gender classifications in the Women’s Convention bear a questionable relationship to the state’s objectives as determined by U.S. case law for various reasons, including: (1) the Women’s Convention may not be necessary since other human rights treaties already condemn gender discrimination; (2) gender-based classifications within the Convention may not be necessary to the accomplishment of the state’s objectives; and (3) the differences between the genders highlighted in the treaty, with the exception of the maternity provisions, exist in a social status sense and not in an innate, physical, or immutable way.

69. Plattner, supra note 66, at 1256.
71. AMNESTY INTERNATIONAL, supra note 68, at 133.
72. Id.; Tongue, supra note 70, at 14.
73. Tongue, supra note 70, at 14.
74. Id.
75. Dietz, supra note 14, at 579-80.
76. Id. at 580.
Nonetheless, if it saw fit, the United States could adapt the Convention so that it would meet Equal Protection Clause standards and then adopt the modified version. While the United States' failure to enact the Women's Convention is not unique, its failure to act puts it in interesting company: Afghanistan, Iran, and North Korea have also refused to enact the legislation.

B. The Substance and Goals of the Women's Convention

The Convention employs broad language intended to end discrimination against women by creating and fostering equality between the genders. Article I of the Convention defines "discrimination against women" 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, civil or any other field.

In addition to broad prohibitions on gender discrimination, the Women's Convention also creates in its Member States affirmative obligations to temper customs that have the effect of limiting equality. For example, Article 5 compels States to modify cultural practices that are based on perceptions of female inferiority, and Article 6 mandates that states discontinue the practice of trafficking women and prostitution. Article 7 provides that "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country." The Convention embodies more than an empty recitation of gender equality and instead mandates that States take definitive action in order bring about an end to discrimination against women.

77. Id. at 581.
78. See Tongue, supra note 70, at 14.
79. See Charlesworth et al., supra note 30, at 631.
81. See id.
82. See id. arts. 5, 6.
83. Id. art. 7.
The language of the Women's Convention also evidences some disapproval for discriminatory cultural practices, as illustrated in Article 2’s permission to use “all appropriate means” to end discrimination. Additionally, the responsibility for assessing those cultural practices falls not on the individual Member States but on the enforcement mechanism of the Women’s Convention. Thus, the Convention’s definition of discrimination is then universal in its application, and it does not permit individual nations to establish their own standards for gender equality. This universality creates the potential for achieving an international solution to the problem of gender-based violence.

Regardless, the Women’s Convention espouses an “equal result” rather than an “equal opportunity” ideal and cannot meet goals established by radical feminists. Although the language of the Convention was drafted not only to create symbolic equality but also to mandate practical equality for women worldwide, the instrument offers little more than a symmetry of rights between the genders. The Women’s Convention contains sweeping prohibitions on discrimination, but because Article 1 defines discrimination in terms of unequal rights, the Convention will not compel a broader, nonrights-based examination of female subordination.

Although the Convention acknowledges the necessity of a mix of political, economic, social, cultural, and civil freedoms, it continues to define the rights of women in relation to the positive rights of men. The Convention guarantees to women all rights on a basis equal to men. This paradigm of equality as parity fails to recognize that “equality is not freedom to be treated without regard to sex but freedom from systematic subordination because of sex.” As a consequence of this conceptual defect in the Convention, women do not receive special protection against harms specific to their experiences as women.

84. Dietz, supra note 14, at 577.
85. See id.
86. See id.
Thus, the Women’s Convention represents no definitive action to challenge or remedy the existing social structure that continues to subjugate women and to propagate gender-based violence.

C. Successes and Failures of the Women’s Convention

The Women’s Convention has prompted some tremendous achievements for women’s interests in several of the countries that have ratified the treaty. In Nepal, for example, the treaty has been used in several different capacities by female citizens.88 These women have employed Convention language to bolster arguments in favor of a bill that would raise the marriageable age, grant women property rights, and compel harsher punishments for rape and sexual assault.89 Additionally, in Brazil, various elements of the Convention were duplicated in the nation’s new constitution.90 Finally, and perhaps most importantly, the Convention has given a symbolic and influential legal recourse to women worldwide who have endured discrimination.91

Unfortunately, the Women’s Convention has not been without its failures. Although the Women’s Convention does provide some sort of enforcement mechanism, it has been largely ineffective. Article 17 of the Convention created a monitoring body called the Committee on the Elimination of Discrimination Against Women.92 CEDAW’s primary function is to oversee the progress and performance of nations in their goal to end discrimination.93 One element of evaluating State progress is outlined in Article 18; it requires Member States to submit reports on the “legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect.”94

Although Article 18 requires only that States submit reports within one year after their ratification and every four years thereafter,95 because CEDAW meets only rarely, there has been significant backlog in evaluating the reports of the countries who have complied with the order.96 Additionally,
the goals of the Women's Convention are hindered by countries who have periodically failed to submit reports. The Convention also suffers from a lack of a complaint mechanism by which to challenge the inaction of nations who have signed the treaty. Other than a relatively ineffective self-reporting requirement, CEDAW has little authority to mandate the compliance of individual nation-states to the terms of the Convention. Although the Convention would have powerful potential with the appropriate enforcement mechanisms, in reality, nations are left with little external impetus to compel change in discriminatory tactics.

Similar to most international treaties, the goals of the Women's Convention are hindered by enforcement problems. These problems of enforcement, however, appear to be particularly severe and pervasive in this instrument. For example, the Convention is monitored only through a reporting system. The International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, however, offer reporting as well as individual and State complaint mechanisms.

Additionally, CEDAW receives less funding for supervising the observance of women's rights than comparable enforcement agencies and meets for considerably less time than other human rights monitoring committees. For example, the UN Human Rights Committee meets three times per year for three week periods, while CEDAW must address all of its member States' reports in one two-week session per year. As noted by the UN Secretary-General, CEDAW "faces constraints unmatched by other committees monitoring global human rights instruments."

The Women's Convention has also been subject to an unusually high number of reservations, making it one of the most reserved human rights

97. See id. at 381. As of late 1996, fifty-four initial reports, forty-two second periodic reports, fifty-one third periodic reports, and forty-four fourth periodic reports had not been submitted by Member States. Id.
100. Charlesworth, supra note 58, at 786.
101. See id.
102. See Toepfer & Wells, supra note 24, at 110.
103. Id. (internal citation omitted).
treaties in history. This high number of reservations is due in part to flexible language, as Article 28(2) permits all reservations that do not thwart the general purpose of the Convention. Although allowing liberal reservations may have increased the willingness of nations to adopt the Convention, this proliferation of reservations will ultimately dilute the treaty’s strength. Unfortunately, as a result: “The Women’s Convention may face the paradox of maximizing its universal application at the cost of compromising its integrity.” Thus, by permitting reservations, the Convention loses even more authority. In combination with an already impeded enforcement structure, this lack of authority could translate into substantial problems in implementing the noble goals of the Women’s Convention.

D. Violence Against Women and the Women’s Convention

Although the Women’s Convention was recognized for its unusually broad consideration of women’s rights, it nonetheless failed to address specifically the pervasiveness of violence against women. It was not until 1992 that CEDAW made a recommendation regarding violence against women. The recommendation, known as General Recommendation Number 19, states that “gender-based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under specific human rights conventions is discrimination within the meaning of Article 1 of the Convention.” Thus, although there is no specific provision in the Convention that guarantees women protection from violence, CEDAW chose to include it within the province of prohibited activity. The Committee ultimately recognized that gender-based violence impedes upon the basic human liberties of women (including the right to life, liberty, and the right to be free from torture), and thus constitutes discrimination against women.

Notably, General Recommendation Number 19 also states that a nation’s complicity in failing to sanction private acts of violence against women will constitute discrimination in violation of the Convention. “[U]nder general international law and specific human rights covenants, states may also be

104. See Cook, supra note 65, at 644.
105. See id.
106. Id.
107. See Dietz, supra note 14, at 577.
108. Id.
109. See Misiaveg, supra note 63, at 1119.
110. See Dietz, supra note 14, at 577-78.
responsible for private acts if they fail to act with due diligence to prevent violations of rights, or to investigate and punish acts of violence, and to provide compensation." The Convention accepted the more modern view of international law that permits regulation of private as well as public human rights abuses.

Nonetheless, because the Convention is stymied by enforcement problems, this prohibition on private and public violence against women serves as little more than a template for action. In order to protect women sufficiently from violent aggressors, CEDAW must adopt more stringent enforcement standards, including individual and State complaint mechanisms. Although the Women’s Convention is significantly more enlightened with regard to women’s rights than previous human rights documents and possesses some potential in quelling violence against women, CEDAW must be granted more authority and additional resources to foster substantive change effectively. Finally, the Committee must be permitted to investigate the true origins of gender-based violence. Without the authority to question the fundamental social, political, and economic hierarchies that establish masculinity as the norm against which all is measured, violence against women can never be completely eradicated. Acknowledging this male-dominated structure continues to be a source of difficulty, even in more modern international instruments.

V. THE UNITED NATIONS FOURTH WORLD CONFERENCE ON WOMEN

A. History and Background of the Beijing Conference

The United Nations has sponsored four world conferences to address women’s issues; they have been held in Mexico City, Copenhagen, Nairobi, and most recently, Beijing. These conventions were designed to encourage international uniformity and agreement on women’s issues through union rather than to produce legally binding documents. Nonetheless, conference charters serve two significant purposes: they support international treaties that

111. Id.
112. See id. at 578.
113. See Byrnes, supra note 98.
114. See Plattner, supra note 66, at 1262-63.
115. See id. at 1262.
protect the rights of women, and they bring into focus new issues that affect the lives of women. 116 Although the recommendations of the Beijing document will not be binding on member states, they will certainly be used as reference points for designing and executing social welfare projects in the developing world, especially by international aid organisations and more developed countries. 117 The first conference on women was held in 1975, but similar issues continue to concern contemporary conference members, 118 because the aspirations of previous conferences have been far from realized. 119 The task of the Fourth World Conference on Women, held in Beijing, was to continue pressing for the achievement of gender equality and the elimination of discrimination against women. 120

The Beijing Conference was held in September, 1995, and was attended by thousands of women, including First Lady Hillary Rodham Clinton, from various parts of the globe. 121 The Conference goals were broad and included consideration of the feminization of poverty, education, the deterioration of health services, employment, gender sensitivity in the media, and most significantly, violence against women. 122 In order to define precisely the harms suffered by women internationally, the Conference drafted and adopted a Platform for Action (Platform) that specifies twelve areas of concern for women. 123 The primary purpose of the instrument was to compel change in the international community's consideration of the interests of women. 124 The Platform provides strategic suggestions for "governments, the international community, the private sector, and nongovernmental organizations" so that they may foster the development of women's rights. 125

116. See id.
118. See Plattner, supra note 66, at 1249.
120. See id. at 310-11.
121. See Plattner, supra note 66, at 1263-64.
122. See Cook, supra note 119, at 310.
123. See id. at 310-11.
124. See id. at 311.
125. Plattner, supra note 66, at 1264.
CONFRONTING GENDER-BASED VIOLENCE

B. Successes and Failures of the Beijing Conference

The charter drafted at the Beijing Conference represents an advancement for women in its express recognition of women’s rights as human rights and in its clear pronouncement of the goals of the international community with regard to women’s rights. Nonetheless, the language ultimately adopted by the Conference in the Platform has been widely criticized by some scholars as unnecessarily restrained in its aspirations. Because much of the innovative language initially intended for inclusion in the Platform was strongly challenged by conservative forces, the ambitious nature of the Platform was suppressed significantly. The Platform language was heavily disputed by more than half of the 181 delegations, and only ten nations agreed to accept the document in its entirety. The Platform will doubtless protect those interests won by its predecessors and will serve as a template from which other, more ambitious, documents can be drafted. In that sense, the Platform could be heralded as a success. Although the Platform recognizes the inequalities from which women suffer on an international scale, it does little to challenge the patriarchal structure from which those inequalities originate. Indeed, the Platform adopts a traditional equality-based perspective on how to eliminate discrimination against women.

Although, at one level, the contestation in Beijing between feminist and antifeminist perspectives resulted in a hard-won reaffirmation of previously agreed “equality” commitments by states, at another level the outcomes represent few, if any, advances for women . . . the traditional equality paradigm remains the dominant framework for seeking women’s “emancipation” . . . Extending to women the rights that we currently enjoy is not enough. It is not enough because it does not challenge the underlying social, political and economic institutions that reproduce gender hierarchies.

126. See Dietz, supra note 14, at 592.
127. See Cook, supra note 119, at 310.
128. See id.
129. See Plattner, supra note 66, at 1273.
130. See Cook, supra note 119, at 317.
131. See id. at 316.
132. Id. (quoting Dianne Otto, Holding Up Half of the Sky, But for Whose Benefit?: A Critical
Without more direct and substantive challenges to the institutions that perpetuate women's subjugation, the Platform for Action does little to advance women's interests in the field of international law. Finally, unlike the Women's Convention, the Platform provides for no enforcement mechanism. The initiative to comply with the dictates of the charter is instead left with the individual State Members. Thus, because the Platform serves only as a model and places no external pressure on its signatories to conform to its purposes, its goals will be difficult to fulfill.¹³³

C. Violence Against Women and the Beijing Conference

Regardless of the Platform for Action's generalized successes and failures in implementation, the document's relatively novel recognition of the international significance of violence against women represented an advance in that area. The Program crafted international and worldwide standards by which violence against women can be judged.¹³⁴ The Platform recognizes that violence against women represents an impediment to the achievement of equality.¹³³ The declaration defines "violence against women" as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."¹³⁶

Like CEDAW, the Platform employs a more modern conception of international law that would hold nations responsible for their failure to eliminate private acts of violence against women.¹³⁷ Thus, the Platform assumes a relatively progressive conception of the issue of violence against women. It suggests a variety of commendable measures to prevent and eradicate violence, including adopting legislation, creating institutional mechanisms that will allow women to report their experiences, and providing shelters and relief.¹³⁸ Although these suggestions are certainly a positive step

---

¹³³ See Plattner, supra note 66, at 1274.
¹³⁴ See Dietz, supra note 14, at 591.
¹³⁶ Id.
¹³⁷ See id.
¹³⁸ See id. at 431-33.
toward eliminating violence, none of them adequately challenge the fundamental problem of gender hierarchy.

Lastly, when attempting to create substantive change in international practices, an enforcement mechanism should be adopted. To ensure that the Platform is able to achieve its laudable goals, it is crucial that it be permitted to administer its ambitions. Like the Women's Convention, without a mechanism for enforcing the Platform's provisions, the goals of the Beijing Conference serve as little more than a template for action in addressing women's interests.

VI. THE DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN

A. History and Background

Like the Beijing Conference, the Declaration on the Elimination of Violence Against Women is a more recent development in the international community's consideration of women's rights. DEVAW, which was adopted by the United Nations General Assembly in December, 1993, represents a significant step in the legitimization of the importance of violence against women as a human rights issue. The adoption of DEVAW indicates that at least some international progress has been made in eradicating violence against women.

B. Successes and Failures of DEVAW

In general, because United Nations declarations are not signed and upheld by nations, they have no legally binding authority. Consequently, States have no tangible outside pressure to conform to the terms of DEVAW. Additionally, at some points, DEVAW suffers from imprecise drafting, which could lead to confusion among nations who elect to comply. For example, DEVAW limits State obligations in eradicating violence against women by

139. See Dietz, supra note 14, at 588.
140. See Misiaveg, supra note 63, at 1109-10.
141. See id.
142. See Armatta, supra note 11, at 836.
143. See Misiaveg, supra note 63, at 1133-34.
deferring to national legislation. In technical terms, this qualification may permit nations to define their level of compliance with DEVAW by establishing individual legislation and could create significant dangers of inadequate protection of women. Alternatively, this language could be nothing more than a procedural regulation.

In spite of these potential pitfalls, DEVAW makes significant advancements regarding gender-based violence. DEVAW is one of the first women's rights instruments to recognize that subjugation (and gender-based violence in particular) are products of unequal power distribution between men and women. DEVAW notes that "violence against women is a manifestation of historically unequal power relations between men and women, which has led to domination over and discrimination against women by men and... is one of the crucial social mechanisms by which women are forced into a subordinate position compared to men." DEVAW deviates from the typical international instrument that assumes equality based on a balance of power between men and women. This instrument effectively questions the culture upon which women's subjugation has rested. DEVAW rejects any notion that "cultural relativism" should permit violence against women and prohibits States from utilizing tradition to skirt compliance. Finally, similar to the previously addressed instruments, DEVAW permits individual States to be held accountable for their own inaction in protecting its female citizens from violence.

Because declarations do not possess a legally binding nature, the positive aspects of DEVAW must ultimately serve only as a tool in advancing women's interests in the eradication of gender-based violence. Because of the substantial innovations contained within the instrument, DEVAW may possess enough political force as evidence of a growing international trend to transform the actions of individual nations.

144. See id. at 1122.
145. See id. at 1125.
146. See id. at 1125-26.
147. See id. at 1134-39.
149. Declaration on the Elimination of Violence Against Women, preamble., cl. 6.
150. See Otto, supra note 148, at 27.
151. See Dietz, supra note 14, at 588.
152. See id.
CONCLUSION

Consideration of the issue of women's rights as human rights represents a relatively novel growth in the field of international law. The mere existence of the four artfully drafted and relatively forceful instruments—the Universal Declaration, the Women's Convention, the Platform, and DEVAW—indicate that substantial progress has been made over the course of the last century. The result of these four documents is a distinct fusion of the traditional and the radical. Policymakers have succeeded in evolving the discourse surrounding women's rights by using what is commonly regarded as the conservative and orthodox vehicle of international law. Thus, the four instruments act in symbiosis to create a new vision for addressing women's rights that is simultaneously progressive and conventional. Yet, as we enter this new millennium, there is still a significant amount of work to be done to ensure that women do not suffer the tremendously debilitating effects of gender-based violence as they have in the past.

With some minor and some major alterations to these instruments and careful drafting of new instruments, women could be protected from violence in previously unimaginable ways. As evidenced by the drafting of the DEVAW, the international community is moving toward the recognition that in order to end violence against women, the social, economic, and cultural power structures that have kept women dominated for centuries must be demolished and reassembled. Although addressing the ultimate repercussions of violence is important and necessary, ending violence requires more than mere patchwork and wordplay. Substantial social reconstruction is necessary to eliminate these international crimes against women. Consequently, the role of the women's rights international instrument must continue to move from the mere treatment of wounds to the prevention of those wounds altogether by questioning existing power structures.

The addressed instruments and those to be drafted in the future must be granted the power to implement their goals. Without this power, the instruments remain nothing more than a political expression with only moderately powerful weight. In other words, without the power to create external pressure on nations to conform to the goals of reestablishing power structures, the world can expect little substantive change from offending nations. Violence against women can only be effectively eliminated by compelling signatory nations to address the problem through some mechanism of outside pressure. Although this may appear to be a radical solution, in
comparison to the suffering endured by women worldwide, it is both a necessary and unavoidable process.