

Abstract

In 1979, the United Nations (UN) adopted the Convention on Elimination of all forms of Discrimination Against Women (CEDAW) to its collection of international treaties and conventions. Through the years, many states have chosen to sign and ratify the treaty, and as a result the CEDAW has become one of the most ratified human rights conventions in UN history. The ratifying states are therefore many and very diverse states. Seeing as the states are so diverse, they all have different backgrounds and characteristics in relation to culture, history and politics. As such, the idea that they all have ratified the CEDAW could indicate that they all find the idea of women's rights important. However, as the states are very different, the idea that all the states share the same motives for ratification, women's rights, seems a bit peculiar. Therefore, this thesis will deal with investigating potential motives behind state ratification of the CEDAW as a means to uncover whether states ratify for the good of women's rights or for other reasons. Further, the aspect of whether the CEDAW has been effective within states is examined in order to determine whether states are respecting the Convention.

By use of the theories liberalism, realism and constructivism, four case studies are analyzed. These case studies are France, India, China and the USA and are examined on the main areas of domestic violence, human trafficking, and matters concerning family relations. In addition, areas relevant to examine in the individual states will be included. An example of such an area is e.g. the famous one-child policy, which is only relevant to examine in the case of China.

It has been found that often states ratify on the basis of limited sacrifice, as they would like to join in the Convention as a means to pursue power and obtain national interests. As a result, ratifying states enter into the CEDAW as a means to obtain national interests, but will only join if the sacrifice for the state is limited. As a result, states join the Convention with little intention of enforcing the rights stipulated within the Convention.

On the basis of the findings in this thesis, it can be concluded that the CEDAW is not effective, as the main focus of states are to attain national interests and maintain sovereignty. The main motives behind state ratification are therefore to pursue power through the Convention and to obtain national interests.

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Introduction

Like a game of chess, the international community is complex and with many strategic possibilities. Actions by states and the thoughts behind may provoke different outcomes, not only for the state itself, but also for the international community as a whole.

Over the years, the United Nations (UN) has introduced a variety of treaties and conventions to the international community. In 1979, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) was adopted and opened for signing in 1980. The CEDAW has become one of the most ratified human rights treaties in the UN. As a result, it is fascinating to consider the possible reasons why this Convention in particular, has become so popular and has been ratified by very diverse states ranging from liberal democracies to oppressive regimes. The idea that all of these states, despite their differences, have agreed to ratify the women's rights convention is puzzling. The notion that perhaps not all the states are being honest about the real reasons for ratification, and as such have ulterior motives to participating in the CEDAW, is therefore one of great interest.

Today, the CEDAW has been ratified by 187 UN member states, leaving 7 states yet to ratify the CEDAW. Interestingly enough, the United States of America (USA) is one of these seven and is the only western democracy. Due to its proclamation of being a leading advocate of human rights, the lack of American ratification is interesting, as multiple ratifying states, e.g. China, are known as oppressive to human rights and more important in this regard, women's rights. As such, an interest was sparked by the different motivations behind state ratification of the CEDAW. Furthermore, state motives may give an estimate of the effectiveness of the Convention, as motives and the actions of states can show the willingness of states to follow the rights stipulated in the Convention. Therefore, France, India, China and the USA, have been chosen as case studies in order to give a diverse insight into the thought process and motivation behind ratification, or non-ratification. The notion of motives can cover many aspects of state behavior, and may be based on the wish to be

in good standing with the international community or having the participation in the CEDAW create the possibility to cooperate on other areas amongst other things. As such, it can be imagined that states' motives behind ratification affects the effectiveness of the CEDAW.

Methodological Approach

Theme

This thesis will be written within the sphere of Culture, Communication, and Globalization (CCG) and placed within the frame of International Relations and the Global Order. Within this area, the motives and effects of states' entrance and participation in the CEDAW is relevant to examine as this may indicate the nature and effect of, not only the Convention, but also states' view on the international cooperation of the CEDAW.

Our hypothesis is based on the idea that states enter into conventions like the CEDAW because it shows willingness to participate in cooperative international agreements. This may result in further gain for the states in other political areas in the form of e.g. good will. The idea springs from the fact that states participating in international conventions, like the CEDAW, are politically diverse, as some are western democracies and others are known as oppressive regimes. The political diversity of participating states also raises concerns in regards to the validity of the Convention as states can ratify the CEDAW with reservations to their participation leaving certain parts of the Convention out of national law, which may weaken the goals of the CEDAW. Additionally, the lack of global governance can also be an incentive for different states to ratify international conventions, as the consequences of violating the CEDAW can be considered limited in nature. Based on this, our hypothesis is that states enter into the CEDAW as a means to obtain national interests within the international community.

Our research will contribute to the debate on what the motives are for state participation in the CEDAW. Further, our research will contribute to the debate on whether the CEDAW, which has sovereign states as participants, is effective. On the basis of this our research question reads as follows:

What is the reasoning behind state ratification of the CEDAW and on the basis of this is the Convention effective?

Conceptual Framework

In order to analyze the behavior of states in regards to motives and effects of participating in the CEDAW, different international theories will be utilized. Two of the theories, which we will focus on, are liberalism and realism, as they can be viewed as counterparts within the international relations sphere. Liberalism focuses on the importance of cooperation and protection of rights¹, and the theory is useful in the analysis of state behavior within an organization such as the UN, as well as to investigate potential motives for ratification. With the emphasis on rights and cooperation, liberalism also focuses on a term often used within the UN and especially within the CEDAW; Equality². Therefore, the term equality will also be given attention as the definition of this term, and the use thereof, can prove to be important. Further, the liberal thought of 'logic of consequentialism' will also be incorporated, as this notion deals with how states should only act according to the best possible outcome of a given situation³. Hence, the notion of logic of consequentialism can be useful to apply in our analysis when investigating state motives behind ratification and actions in women's rights.

As mentioned, the theory of realism will also be utilized in as it deals with the notions of power and power relations between states in an international environment. Realism can therefore be useful when considering the diversity of the participating states of the CEDAW, as it can provide an insight into why states choose ratification or non-ratification. It can also help explain reasoning behind implementation and enforcement of the CEDAW after ratification. According to realism, the state is the main actor in international relations and will always be pursuing power through its actions⁴. As such it is relevant in relation to state behavior and state motives behind entering into the Convention.

As we see international relations, and as such the UN and the CEDAW, as socially constructed, the theory of constructivism will also be incorporated. By looking at international relations as socially constructed, the ideas of constructivism are of importance when attempting to understand the differences in state behavior. This is

¹ Dunne, 2008: 111

² Morgan & Facio, 2009

³ BBC, 2013

⁴ Dunnes & Schmidt, 2008: 92

especially due to the fact that states are diverse on matters of culture, history and politics, which may affect their behavioral patterns and thought processes. Hence, constructivism will be applied in our analysis in order to approach the topics of state motives and effects. The importance of liberalism, realism and constructivism will be highlighted if applicable in the discussion, as a means to determine their value in analyzing state motives behind ratification, and as such also the effectiveness of the CEDAW.

Focus has been put on state ratification and not as much state signature of the CEDAW, as we view the point of ratification as a greater and more binding step towards implementation and enforcement of the Convention. Therefore, by viewing the motives behind state ratification, it should be possible to examine the commitment of states to the stipulations within the CEDAW, and as such also its effectiveness. The analysis of four case studies will be based on the areas of ‘domestic violence’, ‘human trafficking’ and ‘family relations’. Using the same topics for analysis, within the case studies, will add to the validity of the analysis, as there is a point of similarities to go from. However, as states are diverse and differ greatly in national politics and legislative measures, it is important to note that direct comparisons are not possible. The definition of domestic violence, from which the analysis is based is “the inflicting of physical injury by one family or household member on another”⁵. The second topic, common to all four case studies, is human trafficking, which is defined as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”⁶. The last category, family relations, refers to all aspects concerning family life and relations, and will include areas such as gender preference, abortion, marriage and reproduction. Besides the topics common to all four case studies, individual areas of analysis will be introduced, as the diversity of each state makes some topics more relevant than others, as, e.g. is the case with China’s one-child policy. Further, the issue of population is of more relevance to examine in China and India, as they are the two largest states in the

⁵ Mirriam Webster, n/d

⁶ United Nations, 2010: P. 2.

world, and have either expressed concern for the enforcement of the CEDAW or had population size pointed out as a possible hindrance to enforcement of the CEDAW. The motives and effects of states participating in the CEDAW are terms which will be utilized in order to best answer the research question. The term ‘motives’, is meant to represent the ideas and thoughts by states of what is to gain, by participating in the CEDAW. The term, ‘effects’, represents the outcome of participation such as legislative changes within the state as well as changes in behavior internationally. Additionally, the terms implementation and enforcement are distinguished between, as ‘implementation’ is defined as the de jure legislative effects of the CEDAW, whereas enforcement is defined as the de facto, governance of the de jure aspects.

Methodology

The research strategies applied will be based on an analytic inductive approach, as the conclusion to reasons behind state ratification and the effectiveness of the CEDAW will be formulated on the basis of our research⁷. The data for concluding on the research question will be of a qualitative nature, using academic journals, books, articles, relevant websites and historical literature. Furthermore, as each ratifying states of the CEDAW submits periodic reports to the CEDAW Committee, these will be included in the analysis, as will the Committee’s responses and recommendations. At the same time, different NGOs produce shadow reports to the UN on a state’s progress or regression which will also be included in the analysis as a means of getting a different view on the states. As some of the states have submitted more than one report, focus will mainly be on the more recent reports, as these reflect the current situations within the states better than reports submitted years ago. Based on this method of analysis and deduction, grounded theory will be the main approach to the research as grounded theory is “concerned with the development of theory out of data and that the approach is iterative, or recursive [...] meaning that data collection and analysis proceed in tandem, repeatedly referring back to each other”⁸.

Due to international relations and the research being socially constructed, the analysis will be based on an interpretivist epistemological paradigm, as the data collected will be analyzed and interpreted based on our understandings. As we recognize that our

⁷ Bryman, 2008: 366

⁸ Bryman, 2008: 541

view may differ from that of other authors and researchers, we will keep in mind Max Weber's idea of 'verstehen', as it emphasizes the importance of analyzing social actions and data with the view of the sender in mind⁹.

Focus throughout the analysis will be on different states with different levels of involvement in the CEDAW. These states also differ politically, culturally, and historically, and as such provide a broader specter of motives and effects. We have chosen to examine the French Republic, the Republic of India, the People's Republic of China, and the United States of America as case studies, as they all provide an insight into different, yet important, aspects of international relations. Firstly, the reason behind choosing the French Republic (hereinafter referred to as France) is due to its dominant position in the European Union (EU), as well as it being the largest state within the EU. Further, France has received a great deal of attention due to its national women's rights issues e.g. the Burqa-ban. Secondly, as the Republic of India (hereinafter referred to as India) is the second case study due in part to its developmental possibilities, population size, as well the attention given, by international media, to violence against women. Thirdly, the People's Republic of China (hereinafter referred to as China) is a rapidly rising state with the largest population in the world. China has also been on the receiving end of much criticism concerning its human rights. China is quite new to the international arena and the motives behind its participation in the CEDAW may be different from those of other states and as such. Fourthly, the United States of America (hereinafter referred to as the USA) is a dominant state in international relations and the UN, but remains the only western democracy not to have ratified the CEDAW even though it is an international advocate for human rights.

The reasoning behind the sequence of the case studies has been based on grouping the ratifying states and presenting them in relation to their population size. As such, the state with the smallest population size is first; France followed by India and China, respectively. The USA has been placed as the last case study on the basis of its non-ratification.

⁹ Bryman, 2008: 15

Through a multiple case study it is believed that the motives behind ratification may be generalized based on the findings. Furthermore, through comparison of states concepts, which may otherwise not have surfaced, can appear through the similarities and differences between the cases, which ultimately enhance the quality of our theory¹⁰.

The reasoning behind the CEDAW being the center of attention is amongst other things due to its reporting system, which enables the ability to follow developments within individual states, as well as the reaction by states to general recommendations from the CEDAW Committee. As a result, it will be possible to make an analysis based on the data provided by states as well as from the actions by states when confronted with violations to the CEDAW.

The possible bias towards state behavior, when conducting research is important to note when analyzing the situations within the case studies, as reader bias can create interpretations of messages different from the intention meant by the author. As such, focus will continuously be put on the elimination of bias throughout the research and analysis, in order to provide as accurate a representation of the given situation as possible.

Flow of arguments

The first section, Theoretical Framework, will present the theories utilized as a means to explain state behavior in relation to participation in the CEDAW. First, the theory of liberalism will be presented and notions such as life, liberty and property will be discussed. As will the term equality, liberalism's view on governmental power, and its view on international cooperation. Second, the theory of realism will be put forward in which we present some of the main ideas developed within realism. These ideas include power, power relations and the realist view on international relations. Further, the realist elements of survival, self-help and statism will be presented. Constructivism will be presented as the third theory, and constructivist ideas are discussed as is the idea of logic of appropriateness.

¹⁰ Bryman, 2008: 60

Following ‘Theoretical Framework’ is the ‘Contextual Framework’ which introduces the CEDAW. In the introduction focus will be on explaining the origin of the CEDAW, the articles, and its procedural methods. This will be done in order to provide a deeper comprehension of the workings and role of the CEDAW and the CEDAW Committee.

Following the introduction to the CEDAW is the analysis comprising of the four case studies. First, the case of France will be analyzed by investigating domestic violence, human trafficking, family relations and ban of religious symbols in public schools. Afterwards, the analysis of India will examine the occurrence of and answers to domestic violence, human trafficking, family relations, and the population general concerns of population size and infrastructure. Thirdly, China will be analyzed, examining the 3 measures common to every case study, as well as its population and one-child policy. Lastly, the case of the USA will be looking at the same three measures as the other cases, but focusing more on the historical events and debates on the ratification of the CEDAW, and why the USA has yet to ratify.

Before concluding on the case studies, a discussion will be included gathering the information deducted from the research. Further, the discussion will incorporate the theories used in order to possibly provide reasoning behind state motives behind ratification. This should also provide the basis for an answer to whether or not the CEDAW is in fact effective.

Theoretical Framework

In this section, the theories of liberalism, realism and constructivism will be presented, as these theories will be utilized in the analysis of the four case studies. The theories will be used to explain the actions of states and possible motives for ratification of the CEDAW.

Introduction to Liberalism

Analyzing state behavior and the effectiveness of UN conventions demands diverse theories as many aspects and considerations must be taken into account. The cooperative nature of the UN, as well as its human rights conventions, e.g. the CEDAW, makes liberalism a somewhat natural choice as a theory worth examining. The hypothesis is that liberalism will aid in the analysis of particularly state behavior, and as such also aid in the answering of the second part of the research question: whether the CEDAW is effective. The following section on liberalism will be divided into three main sections; beginning of liberalism, newer liberalism, and logic of consequentialism. The Beginning of liberalism will focus on the initial ideas of liberalism, which still apply to this day. Newer liberalism will look at ideas and newer measures by liberalists, which can help provide guidance in the answering of the research question at hand. This includes liberalism's view on globalization, human nature, the role of the government etc. . Lastly, logic of consequentialism will be outlined as it is a liberal notion, which may also aid in the analysis of behavior and why actors choose the actions they do.

Beginning of Liberalism

Even though liberalism is an ideology often used in international relations, it has seen its ups and downs, as other ideologies have proven effective in explaining the world order. The main ideas behind the early construction of liberalism are based on individuals having a claim to basic rights such as life, liberty and property¹¹. These rights are to belong to every individual within a state, and they were not to be violated by other individuals, groups or the state itself.

¹¹ Heywood, 2007: 47

Liberalists further believe that people were very much atomist¹², as little sympathy was left to the role of the state. This is known as ‘negative liberty’ as people live under non-interference and without constraints governed by the outside. With this idea, classical liberalists believe the state to be a ‘necessary evil’, as it is a necessity to maintain order and security. The state and its government are also considered an evil, due to the fact that having a governing body means that people’s individual freedoms are limited in order to create a society with collective norms and rules¹³. As such, preference was put on the state to act as watchmen to protect the individual rights of its citizens. However, the fear that the power of the state could grow too large and be taken advantage of by powerful people has been a great concern. As a result of this concern, liberals suggested, as a reassurance for the people, the use of constitutions and division of power. The idea of division of power was produced by Charles-Louis de Secondat Montesquieu, as he articulated what he believed to be the answer to avoiding abuse of power. Montesquieu’s division of power was threefold, and entailed the use of a legislative, executive, and judiciary power, as he believed these three sectors to be able to maintain the freedom of the individual whilst protecting the state, without abusing its powers¹⁴. The implementation of constitutions and division of power has ensured the survival of the state as an equal to citizens in many liberal countries today e.g. the USA. However, the division of power, as well as constitutions, is not the only liberal ideas to survive history. Many aspects live on today with slight changes to accommodate today’s world order including globalization and other factors. This will be discussed further in the coming sections, as liberalism and its effects on international relations today will be examined, in particular in relations to the UN and the CEDAW.

Current Liberalism

After World War II, liberalism saw a brief resurgence due to the creation of the United Nations. The United Nations is built on the main ideas of liberalism, which are the belief in progress and that all people have basic human rights¹⁵. Stanley Hoffmann has proclaimed that “the essence of liberalism is self-restraint, moderation,

¹² “The belief that society is made up of a collection of largely self-sufficient individuals who owe little or nothing to one another” (Heywood, 2007; 47)

¹³ Heywood, 2007: 47

¹⁴ Gyldendals Aabne Encyklopaedi 1, n/d & Gyldendals Aabne Encyklopaedi 2, n/d

¹⁵ Dunne, 2008: 110

compromise and peace” whereas “the essence of international politics is exactly the opposite: troubled peace, at best, or the state of war”¹⁶, which generally coincides with the ideas of realism. This quote by Hoffmann may lead to wonderment as to why liberalism still has a claim to international relations. The answer to this lies in the definition of liberalism as well as the nature of international relations. Liberalism is defined by its focus on “the greatest happiness of the greatest number”¹⁷, which is best accomplished through progress and focus on the individual, as liberals have a positive view on the power of human nature. As such, one of the main values of which liberalism bases its belief is on the power of the people and not governments, as there is a belief in the ability of people to engage in cooperation when needed. This is not to say that war and conflict are non-existent in liberalism, but liberals believe in the ability of people to triumph through reason¹⁸. Hence, liberals hold the belief that the reasoning of human beings can triumph over the lust for power by politicians who at times act on the fear of the people.

Another aspect of liberalism is progress, as liberals believe in the possibility of cumulative progress in international relations through cooperation¹⁹. This aspect of liberalism is interesting in relation to the UN and the CEDAW. The CEDAW is arguably a cumulative effort by many states to improve the general wellbeing of women. Other factors describing the liberal approach are, as mentioned, the fact that all citizens possess basic rights no matter their race, social background, religion etc. These rights are not to be taken from citizens by the government, as liberals believe in the freedom of the individual, as stipulated by state law²⁰.

Another liberal thought is that the power of the government is only to be as strong as the people permit it to be, as governments are to serve the people and not the individual interests of politicians. As such, governments are not to act against the basic rights of the people²¹.

Because of the increase in international politics and the blurring of borders due to globalization and the technology involved in this, liberalists believe that the best

¹⁶ Stanley Hoffmann as cited in Dunne, 2008: 110

¹⁷ Bentham, as quoted in Jackson and Sorensen, 2010:96

¹⁸ Jackson & Sorensen, 2010: 97

¹⁹ Jackson & Sorensen, 2010: 97

²⁰ Dunne, 2008: 110

²¹ Dunne, 2008: 110

scenario for international politics is based on order, justice, liberty and tolerance across governments and borders, as liberals do accept that just as people are different so are states. As such, liberals believe that states must respect each other and each other's differences to a certain degree, as maintaining state sovereignty is very important and cooperation is generally thought to be of better value for peace and the international community²². This is somewhat opposite to the ideas of realism, where realism does indeed seek to maintain sovereignty, but this is done through an international community which is generally thought to be built on an 'anarchic realm'²³²⁴.

Globalization is another aspect, which may have relevance in relation to state ratification of the CEDAW. With globalization, the international arena has met challenges such as the opening of borders, making it easier for people to travel and experience different cultures and systems. Furthermore, the occurrence of such initiatives as the Internet, and the openness of communication channels are also important to the international order, as much conflict and chaos can occur from miscommunication or misunderstanding of available information. Because of such issues, liberals believe even more that how the market is run and how international organizations are managed are important, as the risk of going in a more realist direction is increased due to the possibility of states seeing the protection of state sovereignty as having the foremost priority²⁵. Some liberals further argue that transnational relations will become increasingly important due to the nature of globalization and the international arena. Transnational relations in this regard is defined as the process in which state governments conduct themselves on the international arena with the influence of interest groups, individuals, societies and groups, which have an interest and possibly an effect on the future of the events²⁶. Transnational relations and the mechanisms which it activates, creates an association for some liberals to the notion that people cooperate better and are more supportive of

²² Dunne, 2008: 111

²³ An anarchic realm is characterized in this regards as an area of international relations, where realists believe that the international community is lacking in central governance (The Globalization of World Politics p. 577), which can lead to conflict and lack of order, due to the idea that states act on national interest and not general good.

²⁴ Dunne, 2008: 111

²⁵ Dunne, 2008: 116-119

²⁶ Jackson & Sorensen, 2010: 99

peace than governmental relations²⁷. As such, it can be considered both positive and negative for the outcome of conventions such as the CEDAW, as UN conventions are dependent on the involvement and actions of governments. With some liberals believing that governments may lack in cooperation, there can be a negative effect on conventions and other initiatives made transnationally, as the UN and its initiatives is dependent on governmental involvement and action in the case of mistreatment of citizens. However, as transnational relations include the involvement of citizens, groups, and societies, conventions such as the CEDAW can benefit from the influence of people who are not influenced by power or negative influences from other states. These groups of people and societies may have a better feel for what is going on inside a state and what needs to be altered to better the living conditions of the citizens²⁸. Furthermore, as the CEDAW is situated within the realms of the UN and have rules which are equal to all participating states, states are able to monitor each other and provide some form of government, meaning that states are better equipped to demand change, as they have agreements in place, which they can demand each other to uphold²⁹. However, whether states listen and act on these demands is a different story, due to the lack of legally enforceable global governance.

Logic of Consequentialism

The liberal saying of ‘the greatest happiness for the greatest number’ is relevant to repeat in connection to the logic of consequentialism, which details a way of thinking in given situations. The general idea behind consequentialism is that actions should be based on the best possible outcome, meaning that the consequences of an act must be considered good by the person or people whom it will affect, more so than it will affect them negatively³⁰. Consequentialism is not based on the idea behind an act, and why the act is to be done, but is based on the importance of the outcome of the act, as it is all that matters. If the outcome is good, the act is good³¹, it is a matter of the ends justifying the means, so to speak. There are different types of consequentialism with varying degrees of popularity and analytical outcomes. One type of consequentialism is ‘Utilitarianism’, which focuses on producing the greatest happiness for as many

²⁷ Jackson & Sorensen, 2010: 99

²⁸ Jackson & Sorensen, 2010: 109

²⁹ Jackson & Sorensen, 2010: 109

³⁰ BBC, 2013

³¹ Kupperman, 2007

people as possible³². Another type of consequentialism is ‘act consequentialism’, which has the same general idea of providing good outcomes for as many people as possible. However, ‘act consequentialism’ is known as a more time consuming type of consequentialism, as it considers actions to be individual in nature, meaning no situation is the same, and every action should therefore be considered in detail beforehand³³. This means that instead of basing actions off previous outcomes ‘act consequentialists’ will research anew, the possible outcomes of their actions before acting. Furthermore, the utilization of ‘act consequentialism’ can result in confusion in regards to the prediction of decisions, leading to doubts as to how subjects will behave in given situations³⁴. By acting unpredictable due to the dismissal of previous experiences as a tool to decide on actions, states using ‘act consequentialism’ would also open up for distrust in the international community, as other states would be unable to predict possible outcomes due to the uncertainty of the actions³⁵. A third type of consequentialism is ‘rule consequentialism’ which argues that acts are wrong if they are against the normative rules within a state or society. As such, the consequences of an action must provide as good an outcome as the normative rules within the affected state or community, or better, in order to be considered acceptable³⁶. Even though ‘rule consequentialism’ is predictable and as such provides a sense of security in the possibility of actions, as opposed to ‘act consequentialism’, it has been critiqued for its possible bad outcomes in certain situations. With ‘rule consequentialism’ being influenced by general rules within a state, it may not always result in positive outcomes³⁷.

Even with the different types of consequentialism, it is evident that the general outcome of actions aims at providing the best outcome for as many people as possible. However, in relation to states, it may prove harder to predict the best outcome for as many people as possible, because of the diversity of the populations and the differences in what is considered a good outcome.

³² BBC, 2013

³³ BBC, 2013

³⁴ BBC, 2013

³⁵ BBC, 2013

³⁶ Stanford Encyclopedia of Philosophy, 2008

³⁷ BBC, 2013

Throughout this section, the general ideas of liberalism have been outlined for further use in the analysis of the case studies. It has been found that liberalism bases its main ideas on the notion that all people are entitled to basic human rights, of life, liberty and property. The role of the state is meant to be limited within liberalism, as people are thought to be atomist, resulting in the state having a as little claim to power as possible, as the people are generally seen as being the most powerful player. States are considered 'necessary evils' with the role of maintaining security and order, and the Government within the state is to have only the power the people permit.

Globalization has also been discussed as some of its outcomes are considered by liberalists to be increasingly important, e.g. transnational relations. Lastly, logic of consequentialism has been outlined as it may help explain the background behind state actions in relation to women's rights, where the outcome of the actions has more importance than the action itself, and the result should always be good, as the act will then be considered good.

Introduction to Realism

In this section the theory of realism is presented in order to be able to apply it in the analysis. Aspects of realism such as survival, statism and self-help will be presented as well as the importance of power and power relations will be examined. Realism is stated to be one of the most dominant theory in international relations³⁸ and the notion of realism can be traced far back, as early as the first accounts of the Peloponnesian War around 431 BCE³⁹, undergoing changes as time has gone by. The three essential elements that scholars connect to realism are survival, statism, and self-help⁴⁰. The notion of realism did not become as prominent as known today until the 20th Century through World War I and II. Realist E.H. Carr considered the naïve and idealist belief in the workings of collective security and international law to be the reason behind statesmen on the international scene not comprehending German expansion policy in the interwar phase, and as such not intervening earlier⁴¹.

In its core, realism is based on the idea of power politics and the endeavor towards attaining national interest⁴². Power politics is based on the idea of rivalry between states in order to safeguard national interests and as such power⁴³. The main idea behind realism is that the main actor on the international stage is the state and that the state can therefore act entirely as its own entity as it is a sovereign state. Furthermore, the rise of nations and nationalism made the state the primary element leaving all other ties as secondary. This indicates that the ties created on the international stage between states in, e.g. the UN, will never be as important as the self-interests of the state⁴⁴.

State Survival

Realists also claim that, seeing as the sovereign state is the ultimate authority, international cooperation and politics are managed in a “state of nature”⁴⁵, which means that it is regarded as anarchy. As such, a thing as international natural harmony

³⁸ Dunnes & Schmidt, 2008

³⁹ Heywood, 2007

⁴⁰ Heywood, 2007

⁴¹ Heywood, 2007

⁴² Heywood, 2007

⁴³ Jackson & Sorensen, 2010: 59

⁴⁴ Heywood, 2007

⁴⁵ Heywood, 2007: 130

cannot exist, according to realists. In general, an anarchic international situation means that states are forced to manage their national interests before that of the international communities and make sure to prioritize “state survival and territorial defense”⁴⁶.

According to Heywood⁴⁷, this is also the reason why realism prioritizes the notion of power in the dealings with international politics and also explains the reason why realism has a tendency to understand ‘power’ as based on military means. Realists do however not believe that the lack of international harmony is necessarily equivalent with eternal international conflict. The realist idea is that the conflicts occurring in the international community comes together and establishes a sort of ‘balance of power’. This idea entails that in order to ensure national security, states may enter into alliances with fellow players on the international stage in order to create and prolong periods of peace. Realism does however recognize that if this international order is interrupted the natural result is war between nations. As mentioned above, realists argue that international politics is a ‘state of nature’, however they also argue that it is not a consistent state of nature, as notions such as resources, power and wealth are not dispersed alike between nations⁴⁸.

Throughout time, certain states of great power, capacity, and resources have been titled ‘great powers’ or ‘superpowers’. This means that a hierarchy exists in the international society through which these great powers hold authority over the inferior states⁴⁹. Realist leaders, such as Nicollo Machiavelli and Thomas Hobbes, set forth a behavioral method of conduct for state leaders and states on how to conduct themselves in international relations. This method or approach is often termed as *raison d’état* or *reason of state*⁵⁰ and is used to help states and leaders deal with foreign affairs while enhancing national security. According to Dunnes and Schmidt⁵¹, the historian Friedrich Meinecke believed that the elementary component of reason of state is the State’s First Law of Motion which informs the leaders of the state how to conduct themselves and their foreign affairs in a way which would help

⁴⁶ Heywood, 2007: 130

⁴⁷ Heywood, 2007 :130-131

⁴⁸ Heywood, 2007: 130

⁴⁹ Heywood, 2007: 130

⁵⁰ Dunnes & Schmidt, 2008: 92

⁵¹ Dunnes & Schmidt, 2008: 92-94

ensure the strength (power) and welfare of the state. Additionally, The First Law of Motion means that the state must always pursue power and the state leaders must always estimate the best and most sensible way to ensure that the state obtains power in a hostile (international) environment⁵². This is especially enforced by the idea that the welfare and survival of the state are never a given, as realists believe that warfare is a natural and legitimate culmination of the use of force within international relations⁵³, and therefore conflict would make the welfare and survival uncertain. In connection with reason of state, it is important to note that particularly one subject is prominent for realists; the notions of morals and ethics and which roles they play in the international society. Realists believe that concepts such as universal principles, universal norms or values do not exist. Therefore, the theorists of realism caution states when entering into certain matters of unspecified ‘ethical’ conducts on the international stage, e.g. the Universal Declaration of Human Rights (UDHR), which would make it necessary for them to sacrifice national interests⁵⁴.

Further, realists would argue that state leaders and states, in general, should generally abstain from following traditional morality principles such as principles that would consider notions such as piousness, caution and ‘the greater good of mankind’. Reason of state, therefore, demands that state leaders not follow a traditional Christian line of virtue or morality, but rather follow a line of action that includes concepts such as political wisdom and essentialism. In this relation, adherents of reason of state often speak of a ‘dual moral standard’, which means that there is a division between the morality and moral principles of the individual in the state and the morality through which a state should conduct itself when dealing with its foreign and external relations. As such, realists do not believe that the general morality of the masses should be projected to the conduct of the state. The argument and defense for this dual moral standard is that often states must act in an, at times, immoral manner when dealing with foreign and external affairs in order to ensure national security and the welfare of the state. Realism does believe in morality, it simply argues that the state in itself is a moral entity as it creates and upholds the possibility for an ethical political

⁵² Dunnes & Schmidt, 2008: 92

⁵³ Dunnes & Schmidt, 2008: 92-94

⁵⁴ Dunnes & Schmidt, 2008: 92-94

community to exist internally in the state⁵⁵. As such, the moral welfare of the state and the ethical community is up to state leaders to uphold and ensure⁵⁶. Therefore, realists believe in moral and ethical principles, they do however also believe that at times “it is kind to be cruel”⁵⁷. That is, at times it is good for the state to conduct itself in a less than moral fashion in order to secure the greater good of the state.

Statism

Within realism, ‘the group’ is identified as *a*, if not *the*, key element in political analysis. According to Dunne and Schmidt⁵⁸, Macchiavelli and Thucydides considered the main entity to be the city or the ‘polis’⁵⁹, however this changed after 1648 with the Peace of Westphalia. After this point in time, realism started to center around the sovereign state as the main object of analysis and political interaction⁶⁰. Dunne and Schmidt⁶¹ claim that this state-centered approach is often coined as ‘the state-centric assumption of realism’⁶². Realists when discussing states also another term into use: statism. The term, statism, is used to refer to the state as “the legitimate representative of the collective will of the people”⁶³. This legitimacy is highly important as it is used to legitimize the state’s exercise of power and authority within its internal borders⁶⁴.

Further, realists believe that beyond the borders of the state, only anarchy exists⁶⁵; that is, international politics takes place without essential central authority which realists believe only lies with the sovereign states. That is, realists believe that the only existing authority is the state and, therefore, the authority is limited to state borders, essentially making the sphere beyond the borders into a wasteland. As such, the use of anarchy has a different use in realism than in other areas, as anarchy in realism does not necessarily refer to utter and complete chaos, but rather the absence

⁵⁵ Dunnes & Schmidt, 2008: 92-94

⁵⁶ Dunnes & Schmidt, 2008: 100-102

⁵⁷ Desch as quoted in Dunnes & Schmidt, 2008

⁵⁸ Dunnes & Schmidt, 2008

⁵⁹ Dunnes & Schmidt, 2008: 93

⁶⁰ Dunnes & Schmidt, 2008: 93

⁶¹ Dunnes & Schmidt, 2008

⁶² Dunnes & Schmidt, 2008

⁶³ Dunne & Schmidt, 2008: 93

⁶⁴ Dunnes & Schmidt, 2008

⁶⁵ Dunnes & Schmidt, 2008: 93

of central authority in the international arena. However, it is worth noting that realism distinguishes between international and domestic politics even though Hans J. Morgenthau stated that “international politics, like all politics, is a struggle for power”⁶⁶. Morgenthau goes on to explain that the abovementioned distinction is called for, as the behavioral patterns differ from domestic to international politics as they have different organizational structures. Realism therefore believes that international politics is filled with anarchy, because there is no overarching-authority and every sovereign state will always believe that it is, or should be, at the top of the hierarchy in the international society.

Furthermore, it is advisable to note that the realist outlook on international relations as pure anarchy is the reason for their conclusion and belief that state leaders’ most proud job is to uphold the state and safeguard its survival, as the survival of the state is not a given in an anarchic situation⁶⁷.

Self-help

As mentioned in the introduction to this section, self-help is another core principle of realism. It is especially important for a state to indulge in self-help in the anarchic international society, as realists have identified a lack of global governance. In general, realists find that it is not wise for a sovereign state to enter into global, international institutions, such as the United Nations, and the accompanying cooperation, as the state may trust this international institution with its survival, welfare, and security. This is especially not advisable as no guarantee exists that will ensure that the state will receive help when its survival is endangered. One means to engage in self-help is, e.g. to build up military capacity which will enhance power capability. Dunne and Schmidt⁶⁸ however note that this may not be the way forward for a smaller, inferior state if it is endangered by a more powerful, superior state.

Therefore, realists also incorporate the term balance of power, which was briefly introduced previously in this section. Balance of power entails that if a state or several weaker states are endangered by a larger, more powerful, hegemonic state or coalition

⁶⁶ Morgenthau as quoted in Dunnes & Schmidt, 2008:93

⁶⁷ Dunnes & Schmidt, 2008: 93

⁶⁸ Dunnes & Schmidt, 2008: 92-93

of states, the weaker states should form their own alliance in order to ensure their own survival. Following, they should investigate the strength of the opposing, threatening states for in this way to ensure their independence and sovereignty by balancing the power. This power balance ensures that no states or coalitions can dictate other states, e.g. the power balance in the Cold War; balanced with the Warsaw Pact and the NATO⁶⁹.

Furthermore, within realism a development has occurred; recognizing the expanding international community and cooperation, mechanisms of international pressure, and so on, realists have added a concept called ‘the principle of limited sacrifice’⁷⁰. This concept entails that a state can and will, at times, involve international (human) rights in its foreign policies approach, through e.g. the UN and its CEDAW, and sacrifice part of its national interest. Limited sacrifice however argues that states will only accept paying a limited price for the actual implementation of the rights⁷¹. In connection with the principle of limited sacrifice, Freeman states that this principle may be equally relevant to that of state sovereignty when it comes to the limitations of action on human rights in international relations⁷².

In this section, realist issues of statism, state survival, and self-help has been presented. Further, the realist focus in power and power relations have been put forward to investigate and apply in the analysis. Also, realism’s view on international relations as anarchy has been presented, and this notion will be utilized in the analysis section.

⁶⁹ Dunnes & Schmidt, 2008

⁷⁰ Freeman, 2002:134

⁷¹ Freeman, 2002:134

⁷² Freeman, 2002: 134

Introduction to Constructivism

The concept of constructivism will be examined as a means to establish whether the notion is of importance in relation to states' behavior in regards to the CEDAW. In this relation, constructivist aspects of the focus on ideas, norms and beliefs and their role in interpretation will be presented. Further, logic of appropriateness will be presented in order to apply it in the analysis.

Constructivism as a theory within international relations was introduced by Nicholas Onuf⁷³ and caused a great amount of interest and one of the famous books on the matter by Alexander Wendt came in the wake of this event⁷⁴. The concept of constructivism, or social constructivism, is the dealings with human awareness and its workings within international relations. The notion focuses on the ideas, norms and beliefs held by individuals in a social reality. Whereas realism is said to be a more material-focused approach because of its belief that power is to be measured in military force and capacity, as well as a state's economic doings. Constructivists, on the other hand, do not believe that the material aspect is of as great importance, but rather that the social reality is of most importance. Social reality, constructivists claim, does not exist as a physical or objective material, but rather as an internal part of the actors and viewers of international affairs. Therefore, when looking at international relations through the eyes of constructivism, it is necessary to look at the ideas, beliefs and understandings of the actors on the international stage as well as the existing shared understanding between those actors⁷⁵. In this regard, international relations and the international system are not something which can be seen or touched but rather it is something which exists as a shared understanding between actors as an inter-subjective consciousness; either way, the system consists of beliefs and ideas held by the actors and spectators involved. As such, the international system itself is a man-made creation which has been established by individuals, who at a certain time and space have manufactured a set of rules and norms for this system⁷⁶.

⁷³ Jackson & Sørensen, 2010

⁷⁴ Wendt, 1992

⁷⁵ The concept of actor can in this case be any type of actor, e.g. state, individual, government, etc.

⁷⁶ Jackson & Sørensen, 2010

Seeing as the system is based on ideas, if a change occurs in the founding ideas, the system too will transform⁷⁷. The interconnectedness between the international relations system and its forming ideas has been put into illustration by the notorious constructivist Alexander Wendt, who uttered his famous phrase that: “Anarchy is what states make of it”⁷⁸. Through the use of this quote, one may argue it becomes clear that even the notion of anarchy, which is used to a great extent in realism, is subject to the interpretations of outside actors (in this case states) based on their ideas, norms and beliefs. With the introduction of constructivism into international relations theory, the notion of change was suddenly more achievable, as the actors involved in international relations should start regarding each other differently and as a result create new norms and ideas within international relations⁷⁹.

Through the years, constructivism has been inspired by other branches, e.g. sociology. Within the sphere of sociology, especially the concept of structuration, introduced by Anthony Giddens, inspired constructivists. The concept of structuration was to help approach the nature of the relationship between structures and actors. That is, structures, in form of e.g. rules to assist social action, do not define actions of the actors in an automatic manner⁸⁰. Jackson and Sørensen⁸¹ argue that this view is quite opposite to the view of realists where the structure of anarchy does in deed keep actors in place. On the other hand, constructivism proposes that an inter-subjective understanding exists between structures and actors, and that even though structures can limit the actors, the actors can also choose to view and understand the structures in a different manner, and as such, change the rules of the game and the game itself. One may argue that such structures could e.g. be the UN and the CEDAW. Therefore, this development within constructivism offers a more dynamic view on anarchy rather than the static view presented in realism⁸² As such, seen from a constructivist point of view, it is possible to understand and interpret the aims and specifications of the CEDAW differently. Further, the participating states may also have different understanding of what the UN framework is all about and what should be obtained through, and expected from, the cooperation in the UN and the CEDAW. As a result,

⁷⁷ Jackson & Sørensen, 2010: 159-179

⁷⁸ Wendt as quoted in Jackson & Sørensen, 2010: 160; Wendt, 1992

⁷⁹ Jackson & Sørensen, 2010

⁸⁰ Jackson & Sørensen, 2010: 160-162

⁸¹ Jackson & Sørensen, 2010: 160-162

⁸² Jackson & Sørensen: 2010: 160

if a state has a different understanding than the CEDAW Committee or the other ratifying states, of the aim and approach of the CEDAW is, it is arguably more likely that obstacles to the implementation of the CEDAW may occur in national legislation and, as such, it is more likely that the CEDAW will not be effective.

In the last couple of decades, constructivism has grown in size and relevance as the concept has brought with it an increased focus on ideas and culture in international relations⁸³. Karber⁸⁴ states that within constructivism international relations are in fact viewed as a “social system” with multiple layers of actors operating with mixed motivations through intervening institutions”⁸⁵. In this quote, the presentation of international relations as a ‘social system’ is especially important, as international relations can be argued to be reliant on the context in which it is presented and the actors’ interpretations. Therefore, international relations are not solid and constant, but rather of a dynamic nature, consisting of different meanings and outcomes from actor to actor. As such, one can refer to the CEDAW in which a variety of states have signed and ratified the Convention on the basis of an international cooperation, the UN. However, when put in relation to Karber’s quote, cooperation like the CEDAW is very likely to be interpreted differently by the states involved and even by the institution which created it, the UN. That is, the states may all be entering into the CEDAW with different understandings and interpretations of what the Convention entails and signals, possibly hindering the cooperation and a successful outcome.

Constructivist Theory in International Relations

As mentioned in the section Introduction to Realism, one of the core arguments of realism is that anarchy will eventually lead to self- help. However, constructivist Alexander Wendt rejected this notion, stating that whether self-help is chosen depends on the given interaction between states. Wendt argues that interests and identities are established through the processes of interaction between states, whereas realists claim that states are aware of their identities and national interests before entering into interaction with other states⁸⁶. According to Karber⁸⁷, constructivism, in

⁸³ Karber, 2000:189-190

⁸⁴ Karber, 2000:189

⁸⁵ Karber, 2000:189

⁸⁶ Wendt as cited in Jackson & Sørensen, 2010:163

⁸⁷ Karber, 2000: 190-192

general deals more with the notions of identities, demands and institutions within international relations.

Both realist and constructivists agree that states want to be secure and survive. However, Wendt states that the only way of discovering whether a state is content with what it has, or whether it seeks more power, can only be determined by analyzing identities and interests of states and as such the interaction between states⁸⁸. In order to help the reader better understand constructivism, the following example by Wendt⁸⁹ is useful to examine:

*“‘500 British nuclear weapons are less threatening to the United States than 5 North Korean nuclear weapons’ because ‘the British are friends and the North Koreans are not’”*⁹⁰

Therefore, constructivism does not believe that military capacity determines power and relations between states. As such, Wendt argues that it is not only the military capacity but rather the nature of the social relationship between states and the inter-subjective meaning that exists between them, which determines power relations. Hence, one may argue that the relations between the states in the CEDAW are also crucial to the effectiveness of the CEDAW as the existing social relationship between the states can contribute to the attitude towards the CEDAW. That is, if two CEDAW states have a positive, friendly relationship and one of the states have strongly committed itself to the values and implementation of the CEDAW, this state may influence the second state to implement the CEDAW further.

Constructivism and the Logic of Appropriateness

The Logic of Appropriateness was developed as a means of describing logic of action. Risse notes⁹¹ that Logic of Appropriateness is a central belief in constructivism and it entails that actors must determine what is right or ‘appropriate’ behavior or action in a certain situation⁹². Logic of Appropriateness states that political action is in fact

⁸⁸ Wendt as presented in Jackson & Sørensen, 2010:163

⁸⁹ Wendt as quoted in Jackson & Sørensen, 2010:163

⁹⁰ Wendt as quoted in Jackson & Sørensen, 2010:163

⁹¹ Risse as presented in Sending, 2002: 76

⁹² Risse as cited in Sending, 2002

‘obligatory action’ and further states that it is based on the notions of identity and rule. Obligatory action is defined on the basis of the following elements: the given situation, identity or role of the actor, how appropriate different actions are to the actor in certain situations (rules), and on the basis of these factors act according to what is most appropriate⁹³. As such, the three core elements of obligatory action are situation, identity/role, and rules. Firstly, when it comes to a situation, a given situation can be interpreted very differently due to individual dissimilarities. Therefore, an important factor in interpretation is the individual’s use of experiences and knowledge, as well as complex reasoning⁹⁴. March and Olsen⁹⁵ find that this is an important aspect as it indicates how various actors with same core identities may behave differently by applying different rules, as a direct result of the fact that they comprehend and interpret the situation differently. March and Olsen⁹⁶ provides the following example: if a state regards a certain situation as a crisis they will evoke appropriate rules to handle that situation, in opposition to the rules evoked by a state that has classified the same situation as uncritical⁹⁷. Further, the elementary tools, which actors utilize to comprehend and interpret a situation, are based on the institutions in which the actors operate. As such, the central position of institutions means that a similar behavior can be expected from dissimilar actors⁹⁸. In relation to the CEDAW, this would, in theory, mean that the UN institution can expect similar behavior from each of its member states in regards to the implementation CEDAW. However, one may argue that as the ratifying states may differ greatly in identity and motivations behind entering the CEDAW, it would be difficult to expect the same reaction and behavior from each state. Identity is institutionally defined, according to March and Olsen⁹⁹ in the form of, e.g. civil servant or prime minister. This institutionally defined identity will then be the reason for the motivation for action on the basis of duties and obligations. That is, the actor finds motivation for appropriate action through the obligations and duties attributed to its identity. As such, Olsen and March¹⁰⁰ state that an institutionalized identity demands given actions in order to

⁹³ Sending, 2002

⁹⁴ March and Olsen as presented in Sending, 2002

⁹⁵ March and Olsen as presented in Sending, 2002

⁹⁶ March and Olsen as presented in Sending, 2002

⁹⁷ March and Olsen as presented in Sending, 2002

⁹⁸ Sending, 2002: 448

⁹⁹ March and Olsen as presented in Sending, 2002

¹⁰⁰ March and Olsen as presented in Sending, 2002

fulfill the identity. Rules refer to the norms, practices and traditions which tells the actor how to act in order to fulfill the institutional identity in a given situation. As such, different actors act according to institutionalized rules in different situations on the basis of what is appropriate. As a result, an actor will be able to take a certain path by interpreting a situation, finding out what one's identity is and which rules to follow¹⁰¹.

In this section, aspects of constructivism, such as beliefs, norms, ideas and the importance of differing interpretations and understandings have been presented. The constructivist thought, logic of appropriateness has also been put forward to state how constructivism would explain e.g. state behavior. In the following section, the international cooperation CEDAW will be explained in order to establish the workings and procedures relating to the CEDAW.

¹⁰¹ March and Olsen as cited in Sending, 2002

Conceptual Framework

In this section, the CEDAW will be presented as it is the Convention against which the case studies are measured. As such, it will provide a basis for understanding the cooperation of CEDAW.

Introduction to the CEDAW

As the research question is centered around the motives behind state ratification of the CEDAW and the effectiveness of the Convention, it is important to fully understand the Convention. As such, the following chapter will introduce the CEDAW, its beginnings as a draft declaration to its adoption in the UN as a full Convention. The process of explaining this development involves focusing on the Commission initially drafting the Convention. After the history of the CEDAW has been outlined, focus will be on the articles, which for simplicity have been clustered, 2-4 at a time, in order to provide a general basis for understanding the CEDAW and the rights stipulated within. Particular focus will be given to article 1, as it provides the definition of discrimination, which is important for the interpretation of the Convention. After the articles have been discussed, the possibility of making reservations will be outlined, followed by an introduction to the optional protocol of the CEDAW. Lastly the CEDAW Committee and NGO involvement in the CEDAW will be discussed.

The CEDAW is an international convention adopted by the UN on December 18, 1979. It was created by the Commission on the Status of Women (CSW), which was created in 1946, as a subdivision to the Commission on Human Rights¹⁰². It was created to ensure the needs of women to be heard in the UN, and after much pressure from women's rights groups and activists, the CSW became an individual commission, separate from the Commission on Human Rights. The CSW has managed to create quite a few conventions and declarations all in order to protect the rights of women, and to ensure that no state is to discriminate against women based on gender. Some of these conventions include; The Convention on the Political Rights of Women; the Convention on the Nationality of Married Women; and the Recommendation on Consent to Marriage, which deals with the problem of child

¹⁰² UN, n/d

brides and sets out to create a minimum age for marriage¹⁰³. However, as these conventions were generally only effective in states where such issues arose, it was believed that a general international convention dealing with women's rights would prove most effective on a larger scale¹⁰⁴. In 1963, the CSW was requested, by the General Assembly, to create a draft declaration, which outlined the human rights standards internationally and gathered them all in one document. This draft, known as the Declaration on the Elimination on Discrimination Against Women, was accepted by the General Assembly on November 7, 1967. Even though the Declaration had complicated issues regarding political and moral intent, it was not legally binding to states, as it was not yet a treaty. As such, the CSW decided to ask member states of the UN for their opinion on a possible convention, which would be binding to ratifying states, and in 1974, they started work on a convention which would hold normative power. The Convention on the Elimination of All Forms of Discrimination against Women was created during the years 1974-1979, and the support for the Convention within the UN was overwhelming, as it was accepted with a 130 to none vote with 10 states being abstentions¹⁰⁵.

Inside the CEDAW

With the support of the member states, the CEDAW set out to better the conditions and rights of women worldwide, through extensive articles. However, before explaining the specific articles within the Convention it is important to first understand what a convention is. A Human Rights convention, also at times referred to as a treaty, is an agreement between states, which stipulates under which terms states are to act in regards to human rights. According to the UN¹⁰⁶, conventions are generally available for signing and ratification by the international community. The UN goes on to explain that:

“Usually the instruments negotiated under the auspices of an international organization are entitled conventions (e.g. [...] Vienna Convention on the Law of Treaties of 1969). The same holds true for instruments adopted by an organ of an

¹⁰³ UN, n/d

¹⁰⁴ UN, n/d

¹⁰⁵ UN, n/d

¹⁰⁶ United Nations Treaty Collection, 2013

international organization (e.g. [...] the 1989 Convention on the Rights of the Child, adopted by the General Assembly of the UN) ”¹⁰⁷.

As such, the CEDAW, a creation by the CSW, which is an organ of the UN, is an international convention, which entitles women, of participating states, to their human rights, which have been outlined in detail within the Convention. There are 30 articles within the convention, and the UN has chosen to divide these articles into 6 sections¹⁰⁸. However, the articles of the Convention can also, for simplicity, be divided into 3 sections; articles 1-16 all concern the explanation of rights and what the Convention entails; articles 17-22 can be categorized as explanatory of the function of the CEDAW Committee; articles 23-30 can be categorized as explanatory of how the Convention is to be implemented¹⁰⁹.

Article 1 of the Convention defines the main term ‘discrimination’ in order to have the rest of the articles be understandable with a common definition of what discrimination is. Discrimination is defined 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”¹¹⁰.

Without the definition of discrimination being explained in detail, states may have different definitions and ideas as to what discrimination against women entails, making the effectiveness of the CEDAW less likely, as the grounds for comparison between state progress would differ too much. Article 2 of the Convention is also quite important to highlight, as it outlines the measures, which states must take in regards to national policy. States must implement all required measures to avoid discrimination of women and to ensure equality between women and men. It is suggested that this should be done through legislature and by taking action when

¹⁰⁷ United Nations Treaty Collection: Definitions, n/d

¹⁰⁸ CEDAW, 1979

¹⁰⁹ UNICEF, 2011

¹¹⁰ CEDAW, 1979

discrimination occurs¹¹¹. Articles 3 and 4 outline the requirements of states to take action in protecting the human rights of women, even if it entails taking special measures for a short period of time. Articles 5 and 6 discuss the need for states to stop all stereotypes of women and men, as stereotypes can hinder the equality of women. They also discuss the need to stop trafficking of women, as it is a big problem in some states¹¹². Articles 7-9 discuss the rights of women to be positioned in governments and act on the international stage, as well as their rights to vote and be part of NGO's and other organizations. Further, these articles discuss the rights of women to a nationality, as well as to change, retain, or acquire a nationality, and not be forced into the nationality of their husbands, which occurs in some states¹¹³. Articles 10-12 discuss some of the key terms, which are also linked with liberalism; the right to education, employment and basic health care. These rights are to be provided at equal terms and rates, as is currently the case for men. It is also important that women are provided healthcare in relation to family planning and maternity¹¹⁴. The remainder of the articles; 13-16, describe the rights women should have in the economic and social life; the rights of rural women, as these women, in some places, live very differently and with a different culture from the rest of a state. Further, the right to be equal to men before the law is highlighted, as is the right to choose who to marry and how many kids to have. Lastly, all marriages are required to be registered in an official registry, as a means to try to control e.g. the occurrence of child brides, etc.¹¹⁵.

As previously mentioned, article 17-22 outline the commitments, which the CEDAW Committee is to undertake, and how it is to work¹¹⁶. The last articles within the Convention are articles 23-30, and these are dedicated to explaining and outlining the management of the CEDAW. Some of the aspects outlined in these articles are that states, if having current measures in place, which are better equipped at ensuring equality between men and women, are not to change such measures¹¹⁷. Hence, the goals of the CEDAW are not to overrule any measures by states, which serve the

¹¹¹ CEDAW, 1979

¹¹² CEDAW, 1979

¹¹³ CEDAW, 1979

¹¹⁴ CEDAW, 1979

¹¹⁵ CEDAW, 1979: article 13-16

¹¹⁶ CEDAW, 1979: article 17-22

¹¹⁷ CEDAW, 1979: article 23-30

same purpose in an equal or better manner than the measures within the CEDAW. Further, all states shall be allowed to request revision of the Convention. Such requests are to be in writing and addressed to the Secretary-General of the UN, as he or she will act as depositary of the Convention¹¹⁸. Further, all states are allowed to make reservations, understandings and declarations (RUDs) to their participation upon ratification. Such RUDs shall be made available by the Secretary-General for all states to see, as it is important for states to be aware of what others are hesitant about and make RUDs to¹¹⁹. As the CEDAW is built on the hopes that states will help govern the rights of women in all participating states, it can be assumed that the publishing of all RUDs by states is a means to ensure the possibility of states to have as much transparency as possible. As such, if RUDs are kept secret, states will be unable to know if the concerns they have are viable in relation to violations of the CEDAW. This is important to note, as states, when ratifying the Convention, are bound by the stipulations within the Convention, and if they violate the conditions, which they have agreed to, they can be held accountable by the international community¹²⁰. This means that states can bring forward any misinterpretations or misunderstandings of the implementation of the CEDAW to the Committee in order for them to clear up the issues and hence leave less opportunity for states to interpret the CEDAW according to own ideas. This procedure is listed in article 29 of the CEDAW and stipulates that two or more states can have a case brought to arbitration if they are unable to solve the issues on their own. In case the Committee, along with the states involved, cannot solve the dispute, it is sent to the International Court of Justice (ICJ)¹²¹. Article 29 has been subject to many reservations, which can bring up questions of the possible governance of the CEDAW. This will be discussed further in the case studies, where it is relevant to note, that the procedure of solving disputes through the Committee or the ICJ has never been done¹²². The reservations to article 29 by a variety of states can be explained through realism as a means for states to protect sovereignty and national interest. It would not be in a state's national interest to be brought before the ICJ, as it would highlight issues of human rights abuses within the state. Hence, realists would argue that states, in order to protect national

¹¹⁸ CEDAW, 1979: article 25

¹¹⁹ CEDAW, 1979: article 28

¹²⁰ UNICEF, 2011

¹²¹ UN5, n/d

¹²² UN5, n/d

interest and sovereignty, exclude themselves from article 29. Furthermore, it can be argued that realists would consider the reservation to article 29 as a limited sacrifice, as the reservation also entails excluding oneself from being able to bring other states before the ICJ. Hence, states choose to not have the possibility to bring other states before the ICJ, as a means to ensure not going before the ICJ itself.

Reservations to the CEDAW

Reservations are allowed under the conditions of the CEDAW, as long as they do not conflict with the goals and purpose of the Convention. As such, states are not to make reservations, which allow some form of discrimination or unequal treatment of women, as the main goals of the Convention must remain intact¹²³. The reasons for states entering reservations are many and often include states arguing that provisions within the Convention interfere with the laws, religion, values or culture of the state. The CEDAW Committee considers these factors to be unqualified as grounds for exception, as it would make the article in question obsolete. As a result, states are asked to modify their reservations or withdraw them completely in order to protect the rights of women and the validity of the Convention¹²⁴. As such, due to the sovereignty each state holds, they are free to provide reservations to the Convention as a means to uphold the national law.

It is not, however, only reservations which are against the stipulations of the CEDAW which are frowned upon. Some reservations are considered to be against the general rules of international conduct and may therefore be challenged by other states within the community¹²⁵.

When states ratify with reservations they are not bound by their reservations eternally, as reservations can be retracted or altered. If actions are taken in regards to reservations of the Convention, states sometimes alter their reservations in order to respect the recommendations by the CEDAW Committee and respect the goals of the Convention. Reservations to the CEDAW are not commonly retracted, but are most

¹²³ UN1, n/d

¹²⁴ UN1, n/d

¹²⁵ UN1, n/d

often left as they are or at times slightly modified¹²⁶, however, as will be seen in the chapter on France, some states do make efforts to retract reservations in order to improve implementation of the CEDAW. A last option for states unwilling to remain party to the treaty is renouncing support by retracting its ratification of the Convention, and as such its participation¹²⁷.

Optional Protocol:

The reservations made by states are not the only alterations and additions to the Convention, as there is also an optional protocol, which was adopted in 1999¹²⁸. The optional protocol is considered an international agreement and acts as an elaboration of issues, which have been deemed too shallowly explained within the Convention. As the optional protocol is considered an international agreement, it, like the CEDAW, is subject to state signature and ratification as the terms within the optional protocol may alter the view, which states possess of the Convention¹²⁹. The optional protocol, which has been added to the CEDAW, has two procedures, which states can ratify. The first procedure is known as the Communications Procedure, which gives individual and groups who feel violated the right to complain to the CEDAW Committee. Complaints to the Committee must be submitted in writing, and will then be examined by the Committee¹³⁰. This arguably leaves women from oppressive states more of an option to complain about their conditions, as they are no longer required to complain to their own governments which may be corrupt or simply does not like the idea that this person is to shed a negative light on the state, but instead can go directly to the international community and the laws of the CEDAW, as the Committee represents the CEDAW and hence also the international community which is party to the Convention¹³¹. It is, however, important to consider the likelihood that the women who need this opportunity are less exposed to its presence due to governments of oppressive states being less willing to inform its women of the opportunity to complain.

¹²⁶ UN1, n/d

¹²⁷ UN1, n/d

¹²⁸ UN2, n/d

¹²⁹ UN3, n/d

¹³⁰ UN4, n/d

¹³¹ UN4, n/d

The second procedure within the optional protocol is known as the ‘Inquiry Procedure’, and elaborates on the rights of the CEDAW Committee, as it, through the inquiry procedure, is entitled to investigate and inquire about abuses within states, which are party to the optional protocol¹³². As with the communications procedure, this is arguably a help for women in states which are oppressive and corrupt, as they can be helped by the Committee’s work, as they will less likely be caught in the act of actively resisting abuse or complaining about governmental abuse. However, it has to be mentioned that urgent and individual cases of abuse are not dealt with immediately, as the committee does not have the power to do so¹³³. What the Optional protocol does provide is an insight into the worlds of women and to locate where policies needs to be changed or reformed. Also it gives the Committee insight into which recommendations they can make on changes to state behavior in order to better the conditions for women¹³⁴. It is not only the Committee which benefits from the optional protocol, also the states can make positive changes if they are willing to, as the opportunity for individuals to raise concerns with the Committee may create an incentive for states to respect the CEDAW as well as the optional protocol. Further, the hope is that the presence of the optional protocol will provide a broader understanding and awareness of the CEDAW, especially for women in states with discriminating behavior¹³⁵.

CEDAW Committee

The CEDAW Committee was established in 1982 and consists of 23 experts from around the world, who specialize in women’s rights and how to improve the lives of women around the world. The members of the Committee are elected by states that are participating in the CEDAW, and they are chosen to represent the diversity of the member states¹³⁶. As such, members of the committee are also very diverse, and represent different cultures, civilizations, geographical areas, and legal systems. Diversity within the Committee ensures better understanding of the different states that are party to the CEDAW, and provides a chance for everyone to be understood and get as fair treatment as possible. The Committee convenes every 2 years, and is

¹³² UN4, n/d

¹³³ UN5, n/d

¹³⁴ UN5, n/d

¹³⁵ UN5, n/d

¹³⁶ UN7, n/d

summoned by the Secretary-General who, as previously mentioned, acts as depository to the Convention¹³⁷. One of the most important aspects of the Convention is the fact that the Committee requires each ratifying state to submit periodic reports every four years¹³⁸.

These reports are submitted in order for the Committee to keep track of the progress within each state, and to assess problem-areas and make suggestions as to where each state can make improvements to women's rights. These reports are not left for the Committee to analyze without the involvement of the state, as states send representatives to meet with the Committee. This helps maintain the communication between the Committee and the member states and provides better opportunities for the Committee to ask questions and get elaborate answers to issues, which might arise from reading the report¹³⁹. Through two-way communication, states are included in the process of analyzing state progress and can discuss issues, which make them less likely to feel deprived of their sovereignty, which is otherwise possible. The meeting between the CEDAW Committee and the member states results in the Committee creating a report for the state to read, where suggestions and recommendations are made, as to how the state can improve women's rights¹⁴⁰.

NGO Involvement

With human rights, and the protection thereof, being a debatable topic, due to the possibility of different interpretations, the CEDAW Committee has chosen to welcome the involvement of Non-governmental organizations (NGOs) in the process of improving women's rights. In order to ensure that the information which the Committee receives, portrays the situation within a given state as accurately as possible, NGOs are encouraged to provide their own reports either in writing or orally at committee meetings¹⁴¹. These reports, also known as shadow reports, are made available to the member state which is discussed at the Committee meeting prior to the meeting, in order for the state to be able to prepare statements if needed¹⁴². The

¹³⁷ UN7, n/d

¹³⁸ A report is to be submitted within the first year of membership of the Convention, but thereafter reports are to be submitted every four years.

¹³⁹ UN7, n/d

¹⁴⁰ UN7, n/d

¹⁴¹ Office of the United Nations High Commissioner for Human Rights, n/d

¹⁴² Office of the United Nations High Commissioner for Human Rights, n/d

presence of NGOs is not limited to reports sent to the Committee, as they are also welcome at meetings with the Committee and states¹⁴³. By involving NGOs in the analysis of progress, the CEDAW Committee provides the opportunity for a broad analysis of state behavior and the effects of the CEDAW, which in turn will enhance the quality of the report, which the Committee creates with recommendations and observations on state behavior. It also enhances the presence of the citizens of the state, as NGOs can sometimes represent the current situation amongst the citizens better than the state can. This is due to the NGOs most often having a small focus area, in this case women's rights, and they are able to better project the current situation¹⁴⁴.

Throughout this chapter it has been highlighted how the CEDAW went from being a draft declaration to a full Convention. The articles within the Convention have been outlined with particular focus on articles 1 and 29.1, as these are of particular importance to the case studies. Article 1, is of importance as it defines the main term of the Convention; discrimination. The importance of defining discrimination is in order for states to enter into the Convention with a common understanding of what the CEDAW is about and how its main term is defined. Article 29.1, focuses on the governance of the CEDAW, and how states, if in disagreement of the interpretation of the CEDAW, can go about solving the issue, first through arbitration and as a last resort through the ICJ.

What has further been outlined is the possibility of states to make reservations to articles within the Convention as these can alter the involvement, which states have to a given article. As a means to elaborate on issues found to be lacking within the CEDAW, an optional protocol was added in 1999, which had two procedures included; the communications procedure and the inquiry procedure. The communications procedure has been added to allow citizens of participating states the opportunity to go to the CEDAW Committee instead of the Government with complaints of violations, as Governments may at times be unwilling to listen to complaints by citizens. The direction of the CEDAW is controlled by the CEDAW Committee, whose role has also been outlined. The Committee consists of 23 experts

¹⁴³ PeaceWomen, n/d

¹⁴⁴ Wadlow, 2012

on women's rights elected to represent different parts of the world. One of the most important tasks of the Committee is to oversee the reporting by states of progress on women's rights, and as a response provide the states with recommendations and observations. In relation to the reporting by states and the Committee, the participation of NGOs has also been highlighted, as NGOs are included in the reporting process, as they can present shadow reports on progress or violations within a participating state.

Introduction to Analysis

In this part of the thesis, the analysis of the case studies chosen will be conducted. This will be done in order to investigate what the motives behind state ratification are and whether they differ from state to state. Further, the analysis will also center on whether the CEDAW has been effective in the states. The shared areas examined are domestic violence, human trafficking, and family relations. Other areas will be included to as each state is different and therefore different areas should be considered too.

Case study of France

The initial part of the analysis focuses on the case study of France. This will be done by investigating issues of women's rights related to the CEDAW such as domestic violence, human trafficking, and family relations. Further, the issue of the headscarf and burqa debate will be examined as this is an area particular to France and its women's rights. This will be done in order to examine whether the CEDAW has been effective in France. Further, the circumstances surrounding France's ratification of the CEDAW will be presented as to find what possible motives the state could have had to ratify the Convention.

France and the CEDAW

It is stated in the French Constitution that the CEDAW, as an international convention¹⁴⁵, has precedence over domestic French law and an awareness campaign has been activated in order to make judges aware of the CEDAW as part of the French legislation¹⁴⁶. The CEDAW Committee however regrets that no French courts have yet made any rulings in relation to the Convention¹⁴⁷ and therefore there arguably has been no de facto change as of yet. Further, the Committee states that seeing as the French legal system is of a monist¹⁴⁸ nature, the CEDAW should have

¹⁴⁵ Assemblée Nationale, 1958: article 55

¹⁴⁶ Concluding Comments, 2008: 2

¹⁴⁷ Concluding Comments, 2008: 2

¹⁴⁸ If a state has a monist legal system, international law will be incorporated into national law upon ratification. The Peace and Justice Initiative, n/d

effect upon implementation in French domestic law and French citizens should be able to evoke the principles of the CEDAW in front of the domestic courts¹⁴⁹.

Ratification

France signed the CEDAW on July 17th, 1980, and ratified the Convention on December 14th, 1983¹⁵⁰. One may argue that as three years went by France wanted to take precautions before ratification of the Convention. However, the fact that it took France some time to ratify the CEDAW is not unusual, as it varies to a great extent whether states ratify right away or wait¹⁵¹. It is interesting to note that between France's signing and ratification of the CEDAW there was a change in government from the Independent Republican Party to the Socialist Party in 1981 with the election of Mitterrand¹⁵². This change in government could explain the time it took for France to ratify, but it can also indicate that the motive of France was the same no matter the party in rule; to ratify and implement the CEDAW, which signals that France's general national politics is fixed in regards to rights.

The claim that France took precautions in regards to the CEDAW can be supported by the number of reservations made by the French Government in relation to the CEDAW. Further, France made a declaration upon signature that article 9 of the CEDAW should not be seen as barring national law on French nationality¹⁵³. Article 9 states that women should hold equal rights to men to attaining, changing, etc. their nationality and the nationality of their children¹⁵⁴. One may claim that with this declaration already upon signature, France signaled that it needed to take precautions regarding participation in the CEDAW.

Reservations

France made a number of reservations upon its ratification of the CEDAW. One of the reservations was in regards to articles 5(b) and 16.1(d), which, among other things,

¹⁴⁹ Concluding Comments, 2008: 2

¹⁵⁰ United Nations Treaty Collection 2, n/d

¹⁵¹ United Nations Treaty Collection 2, n/d

¹⁵² Election Resources, 2012

¹⁵³ UN Women Watch, n/d

¹⁵⁴ CEDAW, 1979: 9

deal with parents' equal rights in the upbringing of their children. Article 16.1(d)¹⁵⁵ states that men and women shall have: "[t]he same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount¹⁵⁶". The French state claimed that these articles were not to be interpreted as joint parental authority in cases where the legislation in France had decided that this authority was only to be exercised by one parent¹⁵⁷. Furthermore, the French Government stated that article 16.1(d) was not to prevent article 383 of the Civil Code¹⁵⁸, which states that:

"Statutory administration shall be exercised jointly by the father and mother where they exercise in common parental authority and, in the other cases, under judicial supervision, either by the father or by the mother, according to the provisions of the preceding Chapter. Statutory enjoyment is attached to statutory administration: it belongs either to the two parents jointly, or to the one of the father and mother who is responsible for the administration."¹⁵⁹

The parental authority, according to French Civil Code, is to be conducted jointly by the mother and father unless it is under judicial supervision and then belongs to either the mother or the father. The French Government found this to be a potential conflict with the abovementioned article 16.1(d) of the CEDAW¹⁶⁰. One may argue that this reservation serves more as a clarification for the French government, as the possibility for one parent to have statutory administration over the child is not excluded by article 16.1(d) which only states at the end of the article that the wellbeing of the child must come first, and if the wellbeing of the child is to be with either the father or the mother then that can be worked into the Convention.

Furthermore, the Government of France has stated that France's electoral code's article LO 128¹⁶¹, paragraph 2, cannot be excluded from application by article 7 of the

¹⁵⁵ CEDAW, 1979: article 16. 1 (d)

¹⁵⁶ CEDAW, 1979: article 16. 1 (d)

¹⁵⁷ United Nations Treaty Collection 2, n/d

¹⁵⁸ United Nations Treaty Collection 2, n/d

¹⁵⁹ United Nations Treaty Collection 2, n/d

¹⁶⁰ United Nations Treaty Collection 2, n/d

¹⁶¹ The LO 128 relates to the momentary disqualification of people who have attained French nationality:

Convention¹⁶². In 1984, the reservation towards article 7 was withdrawn, as the new Organic Law¹⁶³ had nullified the article LO 128 of the electoral code upon which the reservation had been made as it related to the momentary ineligibility of people who had attained French nationality¹⁶⁴. Also, articles 15 paragraphs 2 and 3 as well as 16.1(c) and (h) were made reservations to as these articles were not to exclude the use of the provisions of the Civil Code in national legislation¹⁶⁵. Additionally, in 1986, the French Government withdrew the reservation it had declared towards article 15.2 and 3, as well as the reservation it had made towards article 16.1(c), (d) and (h). The reason was that the discrimination against women in the areas of property rights in matrimonial relationships and the legal administration of children were nullified by Act No. 85-1372 from 1985¹⁶⁶. That is, France has put in place its own laws to handle the discrimination occurring, and after the Act had been passed the discrimination against women in regards to property in a marriage and administration of a child had been handled. As such, one may argue that France waited to remove the reservations until it knew it had its own national laws in place to keep within the criteria set up by the CEDAW. Through Logic of Consequentialism, this can be explained by France ensuring that the outcome of the action of removing reservations would be a better outcome. This can be due to France knowing that it could not obtain its national interest, such as good standing within the international community, if it was not in fact, in compliance with the CEDAW. The action of France removing this reservation can also be explained by the approach of realism as the state is implementing an aspect of the CEDAW which is in accordance with its own wishes and something it would have wanted anyway¹⁶⁷. Hence, it could be explained as an aspect of limited sacrifice. Additionally, the French Government informed the Secretary-General of the UN in 2003 that France intended to withdraw the reservations made to 5(b) regarding family education and 16.1(d)¹⁶⁸. Article 16.1(d) refers to the right to equal parental authority regardless of marital status, and therefore the reservation was made, as the

¹⁶² United Nations Treaty Collection 2, n/d

¹⁶³ Organic Law No. 83-1096 from December 20, 1983: United Nations Treaty Collection 2, n/d

¹⁶⁴ United Nations Treaty Collection 2, n/d

¹⁶⁵ Book Three, Part V, Chapter two of the Civil Code: United Nations Treaty Collection 2, n/d

¹⁶⁶ United Nations Treaty Collection 2, n/d

¹⁶⁷ BBC, 2013

¹⁶⁸ United Nations Treaty Collection 2, n/d

mother has primacy to parental authority over a child born out of wedlock, according to French domestic law¹⁶⁹.

The Government of France, however, stated that no legislation of the Convention should be seen as prevailing over French domestic law in any manner relating to provisions which may favor men over women¹⁷⁰. One may argue that France wants to ensure that by focusing on equality for women, no other inequality is created. However, the CEDAW states in its article 4 that temporary special measures can be introduced by the states to increase de facto equality between men and women without it being considered discrimination¹⁷¹. Hence, a discrepancy exists between what France finds to be appropriate and what the CEDAW believes to be appropriate. This can be explained by 'logic of appropriateness'. As France and the CEDAW have different experiences, knowledge, and identities, they can have different understandings of what a situation should be classified as and which rules would be appropriate to for them to apply. France arguably believes in equality between the genders with no exceptions, whereas the CEDAW states that it is acceptable to emphasize women over men in order to better the equality deficit women face. Seen through the eyes of liberalism, this action could be explained by the fact that liberalism believes there should be a strong focus on equality, that is, equality for all without creating further inequality with special measures for one gender. On a different note, it is interesting to consider that France has no reservation to article 4, as the article clearly goes against the statement above in regards to favoring one sex over the other. This can be due to the subjective nature of the article, as it is only presented as an option for states to implement, if needed.

Additionally, France has reservations towards article 14.2(c) and (h), article 16.1(g) as well as article 29.1¹⁷². In relation to article 14.2(c), which deals with the right to social security access for rural women, France stated that rural women can acquire access to social security if they live up to the standards of employment and family as stated in French legislation¹⁷³. However, in its Sixth Periodic Report, France states that major

¹⁶⁹ Lijnzaad, 1995: 344-45

¹⁷⁰ United Nations Treaty Collection 2, n/d

¹⁷¹ CEDAW, 1979: 4

¹⁷² United Nations Treaty Collection 2, n/d

¹⁷³ UN Women Watch, n/d

progress has been made within French national legislation that further secures the social benefits of the rural population and especially improves the social protection of farmer's spouses. An example could be the Agricultural Act of 2006 which ensures that farmer's spouses can obtain the status of collaborating spouse¹⁷⁴. France found these improvements to be sufficient measures to remove the reservation it had towards article 14.2(c) of the CEDAW¹⁷⁵. It can be argued that France waited to remove the reservation until it felt confident that it had the proper installments in place to implement and enforce the CEDAW. This indicates that France takes the CEDAW and the intention of implementing and enforcing the CEDAW seriously. Seen from a viewpoint of liberalism and logic of consequentialism, this can explain why France has removed the article, as it has weighed the possible outcomes and decided that removing the reservation would lead to a better situation for rural women. That is, France has incorporated a part of the CEDAW into its national legislation, which indicates that it believes in the CEDAW as an international convention and therefore respects it. By removing the reservation, France is opening itself up to criticism from the system. This indicates trust in the international community and the CEDAW, and on the basis of a liberal approach, the action of France removing reservations can be explained as making cumulative progress within international relations.

Furthermore, France has made a reservation to article 14.2(h) which asserts that state parties should ensure that women have the right: "[t]o enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication"¹⁷⁶. France declared that article 14.2(h) should not be interpreted as defining the facilitation of these services as being free of charge¹⁷⁷. One may argue that the reason for this reservation is that France is afraid that the stipulations within the CEDAW will dictate how France should distribute these services, and therefore may be viewed as infringing upon France's national sovereignty. On the basis of realism, the actions of France can be explained by the fact that even though France may believe in the principles of the CEDAW, France

¹⁷⁴ Collaborative farmer spouse: the spouse helps around the farm, but is not in charge of the farm. France Sixth Periodic Report, 2006: 9-10

¹⁷⁴ France Sixth Periodic Report, 2006: 9-10

¹⁷⁵ France Sixth Periodic Report, 2006: 9-10

¹⁷⁶ CEDAW, 1979: 14.2 (h)

¹⁷⁷ France Sixth Periodic Report, 2006: 9

acts strongly to protect its national sovereignty as the upmost important aspect. According to the Committee's response to the Sixth Periodic Report of France, the reservation to article 14.2(h) has the character of an interpretative reservation, and the Committee has requested that the reservation be withdrawn¹⁷⁸. As such, the CEDAW Committee is arguably stating that France's reservation is excessive. France only states that it will not provide it 'free of charge', which is arguably not what the Committee was gunning for but merely that it should be available to women, especially rural women.

Furthermore, France has made a reservation to article 16.1(g), which refers to the equal right for men and women to choose a family name¹⁷⁹. This reservation was made by France on the basis of an opinion poll that indicated that the natural transfer of the father's family name to the child was widely accepted¹⁸⁰. One may therefore argue that the Government of France has made the reservation on the basis of the opinion of the people, perhaps with the thought that it is not necessary to change such an aspect when the majority of the people find it to be working suitably. However, the fact that France has chosen to make this reservation, which is in violation with the CEDAW, indicates that France is not willing to take all appropriate measures to eliminate discrimination against women, as put forward in the CEDAW. It can be argued that France is discriminating against women, as the reservation is made on a study showing the opinion of the majority. Even though the majority may include women, there is still a minority group, which is left with no choice of last name, which is a discrimination of women's rights. If France was to remove its reservation it would not affect the majority group as it is still free to choose whichever last name it wants, however, it would open up for the minority group to choose for itself which name to have. The issue of family names was however improved with the Act of 4 March 2002, which was further amended in 2003. This Act changed the natural transfer of the father's family name to children born in wedlock. The parents may now choose the last name of the child by submitting a joint written statement to a registrar. It is also stated in the Act that if no joint agreement can be reached, the child

¹⁷⁸ Concluding Comments, 2008

¹⁷⁹ United Nations Treaty Collection 2, n/d

¹⁸⁰ Lijnzaad, 1995: 344-45

will still receive the father's name¹⁸¹. The CEDAW Committee has expressed concerns at this as it calls it a form of veto power which can only be used by the father¹⁸². Therefore, one may argue that France has implemented an aspect of the CEDAW on the basis of the advice of the Committee, however it can be argued that France is still discriminating against women, as the father has 'the veto right', and as such the final say in the matter. This can be explained by logic of appropriateness, as France is basing its interpretation of the situation on its experiences which could arguably include the finding that a majority of people finds the transfer of the father's name natural.

As mentioned previously, France has also made a reservation to article 29.1. To this article, France states that "it will not be bound by the provisions of article 29, paragraph 1"¹⁸³. This is arguably a way for France to secure its state if any disagreement in relation to any of the CEDAW articles occurs. If so, France cannot be exposed to arbitration or be presented before the ICJ by another state, nor can France itself put other states through arbitration or before the Court. This could be seen as an expression that France will not subject itself to criticism from other states as this can bring with it consequences that can affect its reputation on the international stage. By applying realism, it is possible to explain the actions of France; as being attempts at ensuring state survival, national interest and safety against the anarchical system of international relations. It can also be argued that France was aware that it would not be in full compliance with the Convention despite the ratification.

One can further argue that the many reservations by France to the CEDAW can be explained by means of realism, as it seems to be a way in which France maintains control over the articles with which it is not quite sure it agrees or complies. By introducing the reservations, France is maintaining power. That is, if France did not have the reservations, and it knew it did not comply with certain articles, it would be more open for criticism on these areas by other states as well as the CEDAW Committee, and as such the power relation would not be to France's advantage. On the other hand, as mentioned above, France is reviewing and removing some articles,

¹⁸¹ France Sixth Periodic Report, 2006

¹⁸² Concluding Comments, 2008

¹⁸³ UN Women Watch, n/d

which indicates that the reservations are there until France has created appropriate national legislation to handle the respective articles. By doing so, France ensures that its domestic legislation is in compliance with the CEDAW, before opening up to criticism by the CEDAW Committee. The development of removing reservations, seen from the view of liberalism, can be explained by liberalism's basic belief in progress and that no individuals in a state should have their rights violated¹⁸⁴.

Optional Protocol

France signed the optional protocol to the CEDAW in 1999 and ratified it in 2000. By ratifying the optional protocol, France has made it possible for individuals and groups to comment upon and even complain about the behavior of France in relation to the CEDAW and the rights stipulated therein. As a result, France can be argued to have the intentions of implementing and enforcing the equality principles put forward in the CEDAW, as France is willing to receive criticism and complaints on the matter to perhaps further improve the issue. This can be explained by liberalism as a means to provide 'the greatest happiness for the greatest number', and seeing as this is the most important aspect, France is not afraid of receiving criticism on the matter.

France may be of the opinion that it is already fulfilling great deals of the CEDAW which can result in France thinking that the complaints it may receive will not be serious enough to affect its international reputation. This could also be the case as France has already made reservations to the articles it finds to be in opposition to French national legislation and can therefore not be commented on directly. Seen from a liberal approach, one may argue that the ratification of the optional protocol is a sign that the government is there to serve the people and if it does not do its job right, people have the opportunity to go around the Government of France and complain or report to the CEDAW Committee. As liberalism generally believes that the good in people will always prevail, the opportunity for people to complain if needed provides a better situation for France, as it will only provide further equality for men and women.

¹⁸⁴ Dunne, 2008: 110

France and the International Community

France has been one of the great powers in historical international events in a variety of ways. France has had colonies in North America and India in the 17th and 18th Centuries and was in close territorial competition with other Great Powers of the era¹⁸⁵. Furthermore, after World War II, France was a founding member of what was later to become the European Union (EU). France is the largest state in the EU geographically and consists of around 64 million people¹⁸⁶. France is known for its high involvement in many EU projects and participates in the Economic and Monetary Union and the Schengen Agreement, which are both considered to be some of the more in-depth projects of the EU¹⁸⁷. One may therefore argue that seeing as France is already deeply involved in cooperation like the EU, this has an influence on how France views other aspects of international cooperation, such as the CEDAW. This can entail that France is more willing to enter into international cooperation and may therefore be a reason behind why France has also ratified the CEDAW. In connection to France's cooperation within the EU, it should also be mentioned that France has opposed a number of EU areas and projects and ended up rejecting the EU Constitution in 2005¹⁸⁸. This indicates that France will not follow any cooperation blindly as it considers its own interests and opinions. It is also worth noting that France is of an influential role in the EU as it, due to the size of the state, has 29 votes in the Council of the European Union along with the United Kingdom, Germany and Italy, which is the highest number of votes attributed to any state¹⁸⁹. It can as a result be stipulated that France is used to being a member of an international cooperation as well as used to getting a say in such cooperation, which can contribute to its participation in the CEDAW. This indicates that France spends a lot of time contemplating the effects of actions within international cooperation, and therefore the French ratification of the CEDAW has arguable been thoroughly considered before the actual ratification.

¹⁸⁵ Brown, n/d

¹⁸⁶ Europa, n/d

¹⁸⁷ Civitas, 2012

¹⁸⁸ Civitas, 2012

¹⁸⁹ Civitas, 2012

Domestic Violence

Domestic violence is a problem of great importance in France. According to the CEDAW Committee, research shows that every third day a woman dies at the hands of her partner in France¹⁹⁰. Therefore, the Committee has expressed concerns that the level of violence is high, especially the level of domestic violence in France. This is an issue which France has attempted to address through, amongst other things, the utilization of awareness campaigns¹⁹¹. France was complimented by the Committee for having introduced provisions to increase the de jure and the de facto context for French women. This was especially noticed by the Committee through the introduction and adoption of Act No. 2006-399 from 2006, which was created in order to toughen the framework of punishment for domestic violence and to further reinforce the prevention of violence against women in the domestic sphere¹⁹². In its Concluding Comments, the CEDAW Committee does, however, also recommend that France puts into effect wide-ranging provisions, as a means to address the high prevalence of domestic violence against women¹⁹³. Therefore, the Committee advises France to thoroughly examine all the cases of reported violence against women, especially the violent cases resulting in the murder of women, and ensure that measures, which are put into force, are effective¹⁹⁴. Additionally, the Committee has expressed that it would like the Government of France to further ensure great cooperation between the French police, NGOs and the public prosecutor, and further encourages the state to gather statistical information divided by type of violence, age, and the nature of the relation between victim and offender¹⁹⁵. This is also stated in the General Recommendation no. 19 of the CEDAW Committee, which deals with how states should act in regards to handling violence against women. General Recommendation No. 19.4 further states that: “[t]he full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women”¹⁹⁶. One may question what positive measures are and whether this is not something to be interpreted by the states; a very constructivist approach taken by the CEDAW. Seen from a constructivist approach, this can be

¹⁹⁰ Concluding Comments, 2008: 1-2

¹⁹¹ Concluding Comments, 2008: 1-2

¹⁹² Concluding Comments, 2008: 1-2

¹⁹³ Concluding Comments, 2008: 1-2

¹⁹⁴ Concluding Comments, 2008: 6

¹⁹⁵ Concluding Comments, 2008: 6

¹⁹⁶ General Recommendations, 1992

explained by a great amount of focus on the interpretation based on the idea, norms and beliefs of the individual state.

According to a report made by Amnesty International on violence against women in France from 2006, France is in need of amending its laws to better cope with domestic violence. In France, sentencing cannot be cumulative and as a result the offender will only receive punishment for the most serious offence¹⁹⁷. The proposed plan of action by Amnesty International is that a law be implemented in order to punish offenders of domestic violence with the possibility of cumulative sentencing with up to three years¹⁹⁸. It could in this regard be argued that if France was to implement this law, it would further target domestic violence as this is arguably often a repeated crime, at times even resulting in murder. If France implemented such a law, it would arguably make it easier to stop domestic violence offenders earlier and increase the chance of stopping before the violence escalates to murder. This would ensure that France is in compliance with the CEDAW as the state has listened to the concerns of the CEDAW Committee in relation to the high rate of murder stemming from domestic violence.

Mental Abuse Law

In addition to the concerns regarding domestic violence, France has introduced a debated law from 2010 which criminalizes the psychological abuse within the sphere of domestic violence¹⁹⁹. According to the BBC, the law penalizes mental violence which is defined as: “repeated acts which could be constituted by words or other machinations, to degrade one’s quality of life and cause a change to one’s mental or physical state”²⁰⁰. The French law covers both men and women, but will focus most on the protection of female victims of domestic violence as women are disproportionately victimized²⁰¹. Both critics and supporters have doubts when it comes to how convictions can actually be reached in a case where there is little or no physical evidence. Critics further attacked the government on the basis of the law,

¹⁹⁷ Amnesty International, 2006: 24-25

¹⁹⁸ Amnesty International, 2006: 24-25

¹⁹⁹ BBC, 2010

²⁰⁰ BBC, 2010

²⁰¹ BBC, 2010

accusing it of meddling in private matters between couples²⁰². However, one may argue that it is debatable whether it is a private matter as the discrimination and abuse against another person arguably is a matter to be addressed by the state, as it infringes on personal freedom and human rights. If a conviction is actually reached, the offender can be faced with up to a three year imprisonment and a fine of up to 75,000 euros²⁰³.

The law against mental abuse is of a new variety and can be considered a new approach to addressing domestic violence in France. This is in accordance with what the CEDAW Committee asked France to do in a comment to the state's Sixth Periodic Report, as it requested that France take comprehensive measures in use to address *all forms* of violence against women²⁰⁴. As a result, one can expect this element to be presented in France's Seventh Periodic Report as France is still testing whether the law will have the desired effect. The suggestion of the law, and the implementation, could be seen as a sign that France is taking the words of the CEDAW Committee seriously and therefore has implemented the highly debated law. As a result, liberalists would argue that France is looking out for the wellbeing of its people by addressing abuse, be it physical or mental. This is in line with the notion of ensuring equality and the rights to life and liberty of its people.

Marital Rape

The notion of marital rape was an aspect which was not introduced and criminalized in France until 1992. The notion of marital rape is therefore relatively new in France, and the problem is often not reported by the victims and is rarely followed by any legal action²⁰⁵, and as such people may not be aware of its criminalization. An example of this can be seen when the Cour de Cassation²⁰⁶ decided in 1992 to overrule a lower court's decision to reject the allegations and charges against a husband who had been accused of marital rape. The lower court stated that the sexual

²⁰² BBC, 2010

²⁰³ BBC, 2010

²⁰⁴ Concluding Comments, 2008: 6

²⁰⁵ Caulcutt, 2011

²⁰⁶ The Cour de Cassation is the uppermost court in the French judiciary system and can handle appeal cases from lower courts. Its foremost purpose is that the court standardizes case law as well as to safeguard that legal texts are understood and interpreted in the same way throughout the republic of France : Cour de Cassation, n/d

relations had been “carried out within the framework of marriage as it is traditionally understood”²⁰⁷. This clearly indicates that the view on marital rape was still to be changed within the cultural spheres of France.

Furthermore, often victims do not realize that they should not and must not be forced to have sexual relations with their spouses. Therefore, a French national campaign was launched in 2011 in form of a TV spot to inform people that marital rape was a crime. French statistics show that eight out of ten rape victims were raped by someone they knew, such as a friend, relative or spouse²⁰⁸.

By criminalizing marital rape and running campaigns to inform and reform people on the topic, France can be said to be in compliance with the CEDAW as the Committee asks in its General Recommendations No. 19 that any discrimination should be prevented including acts of a, e.g. physical or sexual nature²⁰⁹. France may therefore be attempting to inform its populations in order to reach equality. However, this could be explained by liberalism, because France has listened to the comments by the Committee, which indicates that it has estimated that the outcome of an action is better if listening to the Committee, which is in line with logic of consequentialism.

Religious Symbols

A series of problems occurred in France starting in 1989, when three Muslim girls refused to remove their head scarfs²¹⁰. This was the first case of bigger proportions which involved the use of head scarfs in France, incidents had occurred before but they had always been resolved by the local authorities²¹¹. After 1989, the occurrences issues concerning the use of headscarves spread quickly and divided people in the debate. Aspects such as integration of immigrants, rights of minority groups, and religious expressions in schools were touched upon. The problem kept escalating and a French school official excluded approximately 100 girls from attending public school due to their use of the headscarf and refusal to remove it. Caitlin Killian²¹² claims that this behavior from the French official is due to the eager protection of the

²⁰⁷ Simon, 2001

²⁰⁸ Caulcutt, 2011

²⁰⁹ General Recommendations, 1992: No. 19

²¹⁰ Killian, 2003: 567

²¹¹ Killian, 2003: 567

²¹² Killian, 2003: 567

French separation of church and state²¹³. A case from 1999, involving two girls of Turkish origin, ended with a teacher's strike objecting to the use of veiling in French schools. Despite the attempt to solve the problem with an official and professional mediator as well as certain compromises agreed to by the two Turkish girls, the case ended with the expulsion of the two girls²¹⁴. One may argue that this case involves a problem for women's rights, as the girls were excluded from education on the basis of a religious symbol only worn by women. Therefore, article 10 of the CEDAW, which deals with the equal rights of men and women to education²¹⁵, is not being respected by the French officials.

In 2004, the French Government introduced a law which banned wearing of religious symbols in French public schools. This was criticized by, amongst others, Human Rights Watch for not being in accordance with freedom of religion as well as being discriminatory towards women²¹⁶, as some of the most visible religious symbols are generally worn by women.

The ban on religious symbols includes Muslim head scarfs, Jewish skullcaps, and Christian crosses which are too large in size²¹⁷. Human Rights Watch states that this law disproportionately affects Muslim girls resulting in discrimination based on religious beliefs²¹⁸. As such, one can argue that France is in violation of article 1 of the CEDAW, which states that: "the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex"²¹⁹. As article 1 defines discrimination as including any restriction made on the basis of sex, one may argue that the ban of religious symbols can be viewed as discriminatory. One may further question if the ban discriminates against certain religions, as it bans different religious symbols but not the Christian cross if it is not too big. If students are still allowed to wear small crosses and female Muslim students may not wear their headscarves, the problem becomes whether the ban increases the discrimination toward minority groups and especially women within the minority groups. It is also

²¹³ Killian, 2003: 567

²¹⁴ Killian, 2003: 568

²¹⁵ CEDAW, 1979: article 10

²¹⁶ Winter, 2006:180

²¹⁷ Sciolino1, 2004

²¹⁸ Human Rights Watch, 2004

²¹⁹ CEDAW, 1979:1

important to note that this ban is also discriminatory towards men who wears, e.g. a skullcap. Further, the 2004 French Prime Minister Jean-Pierre Raffari stated that headscarves and other religious symbols are against “French republican ideal of freedom and equality”²²⁰. Seen from a view of liberalism, the state of France is prioritizing the notion of freedom and equality as it views it as “the greatest happiness of the greatest number”²²¹, as the French Government has arguably thought that by removing religious symbols from schools, it was keeping the notion of church and state separated, ensuring freedom and equality for the part of the population who wears religious symbols because others dictates it. The approach of constructivism would however explain this event by means of logic of appropriateness, as the wearing of headscarves would go against the values of France, the situation is viewed as potentially dangerous, and therefore the ‘appropriate’ rules are applied to deal with the situation.

Furthermore, the French Government passed a bill in 2010 that would forbid full-face veils by 2011. The law presents violators of the full veil ban with a 150 euro fine if they wear the veil in public²²². According to the News center, France24, a group of French Muslim leaders disagreed with the law. However, they believed it was best to try to discourage women from wearing the full veil instead of banning it by law, as this would only do more damage by stigmatizing an already exposed group²²³. As such, some Muslim leaders can be argued to also see the law as further damaging and discriminating against women in the minority groups. Seeing as France has the biggest population of Muslims in Europe, this is arguably discriminatory at an even greater scale even though fewer than 2000 Muslim women, out of France’s large Muslim population, wear the full veil²²⁴. The law has also brought with it the provision that men who force their female family members to wear a full veil can receive a 30,000 euros fine and a year imprisonment²²⁵. One may argue that this provision is made in order to prevent discrimination against women on the domestic front as well as in regards to the personal freedom of the women. With this last part of the law, France is trying to prevent discrimination based on gender in accordance with

²²⁰ Sciolino2, 2004

²²¹ Bentham as quoted in Jackson and Sørensen, 2010: 96

²²² Reuters, 2011

²²³ France24, 2010

²²⁴ Reuters, 2011

²²⁵ Gal-or, 2011: 317

article 1 of the CEDAW. However, one may argue that not all cases of women wearing a full veil can be classified as being due to the force of the husband, and for the women wearing the full veil voluntarily the law can be classified as discrimination against their rights to express themselves.

In 2005, the French administrative immigration tribunal decided not to grant citizenship to a Mrs. Faiza despite the fact that she had been married to a French national for two years. The basis for the tribunal's rejection was due to the notion that Mrs. Faiza had "adopted a radical religious practice, incompatible with the essential values of the French community, notably the principle of gender equality."²²⁶ Most media suggested after analysis of the tribunals words that the mention of radical religious practice was a reference to Mrs. Faiza use of the burqa. This decision has since been referred to as 'the burqa decision'²²⁷. Additionally, the French Minister for Higher Education has stated in relation to the burqa decision that, "[t]he principle of the equality of the sexes is not negotiable"²²⁸. Through these words, it can be seen that the French Government sees the burqa as putting women in an inferior position in comparison to men, as the burqa is generally said to be symbolizing the suppression of women²²⁹. As such, one may argue that France was indeed trying to secure women's rights and the entire CEDAW, as it was trying to ensure that all women had the same rights as men. This is in accordance with article 5(a)²³⁰, as it stipulates that states must ensure the elimination of the superiority or inferiority of either of the sexes. However, the assumption that the burqa equals inferiority can be counterargued by constructivism, as the burqa and the full veil may not symbolize the same to the women wearing it. As constructivists finds everything to be socially constructed, different people may view the burqa as representing something different.

One may however argue that in relation to dealing with the situations with headscarves and full veils, France is acting in a manner best explained by liberalism, as it focuses on equality for all, as the French Minister for Higher education stated it: France's equality is not negotiable. One could argue that this strong focus on the

²²⁶ Gal-or, 2011: 319

²²⁷ Gal-or, 2011: 316

²²⁸ Gal-or, 2011: 316

²²⁹ Gal-or, 2011: 315

²³⁰ CEDAW, 1979: article 5.a

liberal notion of equality, which states that men and women are entitled to the same rights and responsibilities, may be having the opposite effect in France, as the French law concerning the burqa can be said to discriminate against women by rejecting their freedom to express themselves. However, it can also be discussed whether the approach of liberalism can fully explain these actions by France regarding the burqa, as there is not equality for all. As such, the French law could be creating more inequality and discrimination against women as it disproportionately affects women due to Islam being the second biggest religion in France with 5-10 percent²³¹ of the population being Muslim, which is clearly in violation with the CEDAW.

It is noteworthy that the CEDAW Committee has not commented on this in relation to the reports provided by France nor is it presented in the reports. One may therefore argue that the CEDAW Committee has not found this development to be a problem in relation to discrimination. This could also indicate that the CEDAW has not taken into account all forms of potential discrimination against women or the discriminatory effects new provisions might create for women. It is also possible that the Committee does not mention the aspect of the religious symbols, as religion is not mentioned in the CEDAW and the Committee therefore does not have the possibility or wish to bring it up.

As a result, it can be claimed that the CEDAW has had an effect in France as measures to eliminate discrimination against women has been implemented. The problem is however that the CEDAW itself may not be sufficiently up to date to prevent all forms of discrimination against women, as the effort to create equality may bring unforeseen inequality and discrimination with it.

Human Trafficking

The U.S. Department of State has created a ranking system of states which places them within a scale from one to three, one being the best, in regards to human trafficking and measures taken to prevent it. France has been placed among 'tier 1' states, which means that the Government of France is in compliance with the minimum standards of the

²³¹ CIA World Factbook, 2013

Trafficking Victims Protection Act (TVPA)²³². This indicates that France has taken provisions to handle the aspect of human trafficking on a national and international stage, as the state ranks amongst the highest on the scale. It can however be questioned to what extent these provisions are useful towards decreasing trafficking, as it only claims that the 'tier 1' states fulfill *minimum* standards.

In regards to human trafficking, the CEDAW Committee has expressed concerns for the increasing trafficking of women. The Committee is further concerned that this increase in trafficking of girls as well as women may result in mistreatment of female prostitutes²³³ as the increase in forced prostitutes can lead to an increase in mistreatment. It has been estimated that the majority of the 18.000 women²³⁴ in the commercial sex trade in France are victims of trafficking. According to the United States Department of State, France is what is termed a destination country for the human trafficking of women. The trafficked women are typically from origin countries in Eastern Europe, Africa and to some extent South America and Asia. The women or girls are typically trafficked for the purpose of forced labor or commercial exploitation of a sexual character²³⁵.

Furthermore, certain reports by NGOs have shown that there have even been incidents when diplomats in France have exploited the women and girls as domestic involuntary workers²³⁶. According to the United States Department of State's Trafficking in Persons Report 2008, the Government of France is in compliance with the minimum standards to be taken to minimize trafficking in France²³⁷. This can arguably be seen in 2007, as France made some revisions, especially in regards to their anti-trafficking law, as a means to further improve the prosecution of violations of forced labor²³⁸. However, one may argue that France should

²³² U.S. Department of State, 2011

²³³ Concluding Comments, 2008: 6

²³⁴ United States Department of State, 2008

²³⁵ United States Department of State, 2008

²³⁶ United States Department of State, 2008

²³⁷ United States Department of State, 2008

²³⁸ United States Department of State, 2008

do more to prevent trafficking than simply complying with minimum standards. The French prosecution used this anti-trafficking statute, for the first time in 2007, to convict two violators guilty of trafficking women for sexual exploitation²³⁹. Despite these developments, NGOs have complained about victim assistance programs set up for these victims of trafficking in France. However, France has introduced several measures to help victims of trafficking who find themselves within France. Amongst other things, the French Government gives the victims a so-called 30 days reflection period starting when the victim has registered herself at a French shelter. This is given to the victims in order for them to reflect and consider the legal options to handle the situation in front of them²⁴⁰. Furthermore, if the trafficking victim is repatriated France helps with medical care and safety precautions when they return to their home country²⁴¹.

In regards to legislation on the matter of trafficking and prostitution, France refers in its Sixth Periodic Report to the Act of 18 March, 2003 on internal security²⁴². In this Act it is stated that, in regards to the options listed above, if the victim files a complaint against the person who has trafficked her, works with the police, and the accused trafficker is actually convicted, then the victim will receive a residence permit²⁴³. France has however received criticism on the fact that the victims have to pay all the fees in relation to the residence permits, validation taxes as well as the residency renewal fees. The criticism also extends to the level of support to be sought depending on where in the country the victims have been trafficked. That is, if for example the victims have been trafficked to some of the smaller towns in France, it is less likely for them to find a shelter, as they simply do not exist in most small towns. At the same time, the victims have reported a lot of troubles achieving the full extent of the victim protections services, as they have to manage

²³⁹ United States Department of State, 2008

²⁴⁰ United States Department of State, 2008

²⁴¹ United States Department of State, 2008

²⁴² France CEDAW Report, 2006: 25

²⁴³ France CEDAW Report, 2006: 25

these services with the local authorities which often involve many bureaucratic processes²⁴⁴.

Additionally, the notion that women, who may have been trafficked into France from the outside world, have to file a complaint in order to be considered for French residential permit is also of great concern to the Committee, as this makes it more difficult for victims of trafficking to procure international protection when needed. Further, the Committee in its 2008 Concluding Comments to France's 2006 Sixth Periodic Report noted that the fact that passive soliciting was made illegal by the act on internal security was discrimination against women²⁴⁵. This is due to the fact that this 2003 law penalized the prostitutes rather than the pimps, even though around 90 percent of the prostitutes are victims of human trafficking²⁴⁶. The CEDAW Committee therefore advised France to reconsider the 2003 Act, or at least do a full study of its impact on the prostitutes and trafficking in general²⁴⁷. Furthermore, in a shadow report on France's Sixth Periodic Report, made by The French Coordination for the European Women's Lobby from 2007, it is stated that with the introduction of this law in 2003, France became the first state in the EU to criminalize prostitutions, which is frowned upon by the UN and the CEDAW²⁴⁸. It is noteworthy that even though the 2003 Act on internal security has been heavily criticized, it also strengthened the penalty for trafficking human beings. The offence can be punishable by seven years prison and a fine of 150.000 euros²⁴⁹.

Possibly as a result of this iterated concern the French Government decided to overrule the law on internal security in March, 2013. With this ruling it is now legal to solicit but not to live off the earnings of a prostitute²⁵⁰, which arguably means that now the main focus will be on targeting the pimps. The fact that France has overturned the 2003 law on

²⁴⁴ United States Department of State, 2008

²⁴⁵ Concluding Comments, 2008: 6

²⁴⁶ Sparks, 2013

²⁴⁷ Concluding Comments, 2008: 6

²⁴⁸ The French Coordination for the European Women's Lobby, 2007

²⁴⁹ The French Coordination for the European Women's Lobby, 2007

²⁵⁰ Sparks, 2013

internal security after criticism from the CEDAW Committee indicates that the CEDAW is respected in France, as the French Government has chosen to act on an advice given by the CEDAW Committee concerning its national legislation on prostitutes. Seen from a liberal point of view, the actions of France can be explained by the wish to ensure the right to life and liberty of all human beings. This can also explain why France is accepting the advice of an international institution in order to secure the greater good of the greatest number. As such, France would have an interest in implementing the suggesting made by the CEDAW in order to obtain its national interest of providing right to people and ensuring the elimination of exploitation of people.

Measures against Trafficking

According to the shadow report by the French Coordination for the European Women's Lobby, the minister of Sports initiated a campaign called 'We Will Not Be Accomplices' in 2006 right before the World Football Cup in Germany. The campaign included a 30 second short movie on trafficking and was shown on television during primetime and at the match between France and Mexico. Furthermore, the French political parties have committed themselves to a global campaign against trafficking and prostitution called 'Buying Sex is not Sport' also made in relation to the World Cup²⁵¹. This arguably indicates that France is taking comprehensive measures to eliminating human trafficking on the international stage which shows that France is engaged in the issue. Seen from a liberal perspective, France's action can be seen as an attempt to reach the good in people, as liberals believes that human nature is fundamentally good.

Furthermore, another means which has been introduced is an increase in resources for 'the Central Office for the Repression of Trafficking in Human Beings' which is the central French governmental office for dealing with human trafficking²⁵². The office does however still not have enough resources to cover the entirety of France, as it only has 30

²⁵¹ The French Coordination for the European Women's Lobby, 2007: 17

²⁵² The French Coordination for the European Women's Lobby, 2007: 17

specialists hired to analyze all cases of human trafficking. At the same time, the office is in charge of keeping record of all the information there is to know of human trafficking at a national level in France²⁵³.

The CEDAW Committee further states that certain provisions must be taken in order for France to implement appropriate measures to combat trafficking as well as the mistreatment of prostitutes. Amongst other things by ensuring that an understanding of the milieu of trafficking and prostitution is in place and notice e.g. trends within the milieu²⁵⁴. This must be done in order to better comprehend the necessity and most effective use of possible policies and provisions to be implemented to deal with the discrimination against women in the field. Further, the extent of data provided in the report is also an aspect of which the CEDAW Committee has been concerned, as it states that the amount of research and data on the issue has been scarce. The Committee has proposed that France puts more effort into gathering and analyzing research and data and divide it by social origin and age²⁵⁵.

One may argue that France seems to be in compliance with the CEDAW, article 6, in which it is stated that: “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”²⁵⁶. It can be claimed that as France has introduced new measures to handle the trafficking of women, the state is interested in eliminating trafficking and as such working in compliance with the CEDAW or at least have applied what the French Government believes to be ‘appropriate measures’. This can be explained by logic of appropriateness as France is determining what it finds to be the appropriate rules to apply on the basis of the situation and France’s identity, as France has interpreted what it finds to be appropriate measures, e.g. the Law on Internal Security from 2003 and the subsequent removal thereof.

²⁵³ Amnesty International France, 2006

²⁵⁴ Concluding Comments, 2008: 6

²⁵⁵ Concluding Comments, 2008: 6

²⁵⁶ CEDAW, 1979: article 6

Family Relations

According to the CEDAW Committee, France should continue the provisions already in place in relations to how men and women resolve professional and family responsibilities in order to give more women the opportunity for full time employment. It should also attempt to get men to take more responsibilities within the sphere of child care. This ought to be done through attempts at getting more men to take paternity leave and through the establishment of awareness creating activities. Equal division of domestic tasks in a family should also be encouraged by introducing more and bettered child care institutions²⁵⁷.

In the Committee's Concluding Comments to France's Fifth Periodic Report, the Committee expressed concern that the legal age for marriage was 15 for girls and 18 for boys²⁵⁸. This arguably also represents an unequal relationship in regards to marriage. Especially as the Convention of the Rights of the Child²⁵⁹ describes anyone under the age of 18 as a child. Therefore, a problem exists in relations to the fact that girls can get married as children, which can arguably lead them into some problems. Problems of child marriages can arguably stem from the girl being forced into marriage or her inability to comprehend the commitment of marriage which can have unforeseen consequences. In 2006, the legal age of marriage was however altered in France, changing the legal age for girls from 15 to 18 years, apparently to prevent forced marriages and domestic violence²⁶⁰, which arguably indicates that girls marrying young does create problems. Further, France directly states in its Sixth Periodic Report that it has acted as the Committee recommended and has implemented an amendment to the French Civil Code which changes the legal age of marriage. This has further been included in a draft law on marital violence²⁶¹. One could claim that this is, however, just an attempt by France to be the best student in the class, so to speak, and not necessarily because the state finds it to be of great importance. This can be explained by the theory of realism, as this could be a way for France to strengthen its international reputation and as such a possible way to gain power.

²⁵⁷ CEDAW Concluding Comments, 2006

²⁵⁸ CEDAW Concluding Comments, 2006

²⁵⁹ United Nations Human Right, 1989: article 1

²⁶⁰ BBC NEWS, 2006

²⁶¹ CEDAW Report France, 2006: 61

In relation to abortion, which is not directly mentioned in the CEDAW, the Committee has noted that it is concerned with the high abortion rates in France²⁶². It goes on to ask France to ensure that girls and boys receive thorough sexual education, amongst other things in relation to contraception and avoidance of early pregnancies. However, the Committee states this at the same time as it commends France on the level of information in regards to sexual relations, direct and easier access to contraception, and the opportunity for the access to services which provide voluntary abortion²⁶³. This is arguably a contradiction of sorts, as the Committee initially shows concern for the high abortion rates and subsequently commends the facilities which provide abortion. As such, France should continue to provide abortion services but should ensure that they are not used as a means of contraception.

In this part of the analysis, France's implementation and enforcement of the CEDAW has been discussed especially in relation to the three main categories: domestic violence, human trafficking, and family relations. It has been found that France has implemented new measures in relation to domestic violence in form of e.g. its mental abuse act. Further, the aspect of human trafficking has been found to be a problem in France. However, the state is attempting to deal with it through awareness campaigns, measures to assist victims of trafficking, as well as cooperating with the victims in order to prosecute and increase the prosecution of traffickers. In regards to family relations, France has changed its minimum age of marriage for girls in order to comply with the CEDAW. On the matter of the headscarf and burqa issue, it was concluded that France was acting in a discriminatory manner towards this segment of the female Muslim population. The motives behind France's participation in the CEDAW have been found to be in relation to its role within the EU cooperation as well as a means for France to ensure the 'greatest happiness for the greatest number'. Further, France has entered into the CEDAW with an intention to enforce the Convention, as it has made an effort to remove reservations when possible, which indicates that its motives are to participate in the CEDAW and protect women's rights. However, France is not entering into the CEDAW with open arms, as it is not willing to give up its sovereignty, as can be seen from its reservation to article 29.1.

²⁶² Concluding Comments, 2008: 6

²⁶³ Concluding Comments, 2008: 6

Case Study of India

In the first case study of France, three topics were discussed which will also be discussed in the case study on India; family relations, domestic violence, human trafficking. Family relations in the case of India will focus mostly on the issues, which arise from gender preference, as girls are shown to be less desirable than boys. In the section on domestic violence, focus will be on the use of Dowry as is common in some part of India, as well as the general perception of domestic violence in India amongst Indian citizens. Furthermore, the importance of education and the pursuit of data on the issue will be touched upon. Human trafficking in India will be looked into as the measures taken by the Indian Government to stop the prevalence of human trafficking can possibly open up to the motives behind India's ratification of the CEDAW.

The three topics common between all case studies are not the only topics analyzed in relation to India, as the occurrence of rape is also looked into, as a means to highlight issues concerning India's enforcement of the CEDAW. However, before touching upon the topics listed, it is important to first discuss and analyze India's position in international relations, as this may very well provide an insight into the motives behind state ratification. As India currently has the second largest population it is also relevant to examine how India structures its domestic policies, and protects the rights of the people. Furthermore, as the general analysis of the case studies seeks to answer the research question, it is important to examine India and its participation in the CEDAW. This includes discussing India's declarations and reservation to the CEDAW and possible reasons behind including these in its ratification.

India's Position in the International Community

India has the world's second largest population with an estimated population size of more than 1,220,800,000 people, only surpassed by China²⁶⁴. It is not only in population size that India is compared to China, as the two states are often spoken of as having economic promise, growing military capabilities and great potential as trading partners to western states²⁶⁵. The potential promise for future developments in

²⁶⁴ CIA Factbook, 2013

²⁶⁵ The Economist, 2013a: 11

India as well as China has resulted in the two states being part of a grouping known as the BRICS states. BRICS is an acronym made of the first letter from every BRICS state - Brazil, Russia, India, China and later South Africa, which was included in 2011. Chief economist at Goldman Sachs, Jim O'Neill first introduced the term in 2001; in a paper called 'Building Better Global Economics, BRICs'. O'Neill argued that the potential of the BRICS could grow to the point where their economies combined would eclipse the economies of the richest states in the world, by 2050²⁶⁶. The economic potential within India arguably brings with it more influence in the international community, as states want to be able to follow the developments, and possibly influence India to go a direction benefitting the international community or even individual states. An example of how states may try to benefit from the developments in India is looking at possible actions by a state like the USA, the current global hegemon²⁶⁷. Through realist's eyes, the USA would benefit from cooperating with India, as it would be able to influence India in a direction conducive to the desires of the USA. As states are always looking to pursue power in accordance with the realist First Law of Motion, they are willing to latch on to other states in a means to benefit from the strength from the coalition of power²⁶⁸ which are created by cooperation of the others, as long as the losses of such a cooperative agreement are not greater than the gains. In the example of the USA and India, realists would further argue that the USA is using India as a means to remain in the driver's seat, as this can result in the USA getting the edge on other states in benefitting from the developments within India²⁶⁹.

The growing influence and the potential of India have also affected its involvement in the UN, where some believe India should get a seat in the Security Council like its fellow BRICS state, China. This has grudgingly been supported by the other Security Council members, but where China's rise was a given and was hard to argue with, India is often viewed as the state which has great potential to be a power state in the international community but cannot seem to get its act together and seal its status²⁷⁰. If India were to become a permanent member of the Security Council, it would hold

²⁶⁶ Koba, 2011

²⁶⁷ Jackson & Sorensen, 2010: 301

²⁶⁸ Dunnes & Schmidt, 2008

²⁶⁹ Jackson & Sorensen, 2010: 59

²⁷⁰ The Economist, 2013a: 11

immense power and influence on the decisions made within the UN, due in particular to the power of the veto. With the ability to veto any suggestions within the Security Council, India would be able to exert its will in situations, and hence benefiting the goals and direction of India itself²⁷¹. The benefits of being a member of the Security Council have been further proven when looking at the aid given to states within the UN. For non-permanent members there has been an average increase in aid of 59% from the USA, and 8% from the UN in the time they rotate on to the council²⁷².

Though India seeks to become a permanent member, it is still worth considering the increase in aid for non-permanent members as it shows the power of permanent members, especially the USA, as well as the tactics used within the Council to have issues influenced in a manner beneficial to the aid provider. By increasing its aid to members of the Security Council, the USA can heighten its chances of influencing the state getting aid, to vote in the same direction as the USA, and hence support American national interest. If India were to have a permanent seat, it would most likely have an increase in interest from non-permanent members, as the power, which comes with a permanent seat, can benefit other states cooperating with India. Furthermore, it can be argued that a position as permanent member within the Security Council would solidify India's position as a powerful state, and it would provide the opportunity for India to influence decisions to its advantage. As such, India would be able to grow nationally as well as internationally, furthering the position it is in within the international community.

Through its involvement and participation in UN activities, such as the CEDAW, it can be argued that India is positioning itself within one of two theoretical frameworks. Liberals would argue that India is participating in UN activities to enhance the progress of India domestically, as well as the progress of the international community²⁷³. Furthermore, it can be argued that liberals would consider the UN as a sort of security community, in which cooperation leads to states being less likely to react with violence or "large-scale physical force"²⁷⁴ to other states' actions. Hence, India can be seen as utilizing the UN community as a way of ensuring peace and

²⁷¹ Axworthy, 2012

²⁷² Kuziemko & Werker, 2006: 1

²⁷³ Jackson & Sorensen, 2010: 96-97

²⁷⁴ Jackson & Sorensen, 2010: 99

international cooperation, in comparison to not being part of the community, which could result in harsher retribution if violating, e.g. women's rights.

The other theoretical framework, which can make arguments to explain India's actions, is realism. Seen from a realist perspective, India's participation can be explained as a means to increase its power in the international community. By participating in UN activities such as the CEDAW, India is showing willingness to cooperate, eliminating some of the possible aftermath of violations of rights. As such, realists would argue that India is ensuring its survival, through its pursuit of power²⁷⁵. With its potential to grow and gain influence in the international community, India is increasing its status in the hypothetical hierarchy of the UN and the international community, increasing its role in what realists call 'power politics'. Power politics refers to the rivalry between states of ensuring national interests and survival above the need of the international community or other states²⁷⁶. The somewhat selfish nature of India's participation in the CEDAW and the UN as a means to increase power and influence is also an indicator of India being aware and working by the philosophy that no state is to be trusted completely as they, too, are working primarily to attain national interest and ensure survival²⁷⁷. By being a member of the UN Security Council, realists would argue that India is ensuring its survival in the UN by being part of the exclusive company of permanent members with the power to veto.

India's Population and Constitution

India has many challenges to face, as it has the second largest population in the world. The diversity of its citizens is one of these challenges as the Indian population consists of many ethnic groups, the primary ones being Indo-Aryan and Dravidian, as well as religions, such as Hindu, Muslim, Christian and Sikh²⁷⁸. The diversity in religions and ethnic groups brings many challenges for India, as cultures, values and beliefs differ from group to group. As such, the notion of rights and the implementation thereof can be challenging to implement nationwide, due to the logistical hardship of governing such a large population, as well as the legal system being of a nature where laws are different for Muslims, Christians and Hindu

²⁷⁵ Jackson & Sorensen, 2010: 59 + 75

²⁷⁶ Jackson & Sorensen, 2010: 59

²⁷⁷ Jackson & Sorensen, 2010: 60

²⁷⁸ CIA Factbook, 2013

people²⁷⁹. What this means for the CEDAW is that the implementation can be more difficult as the laws are different and the individual interpretations of the CEDAW differs from group to group. Constructivists would see this as a natural conflict within conventions such as the CEDAW, as the ideas, beliefs and norms of people differ depending on the life they live and the society to which they belong. However, constructivists would also argue that the challenges of mainstreaming norms and beliefs are present but not completely impossible, as changes of ideas can facilitate reform of the system²⁸⁰.

In order to provide the state with fundamental laws and rights, the Indian Constitution was adopted in 1949²⁸¹. Its preamble introduces three words, which cover the promises, which the Constitution provides its people. These words open up to a theoretic perception of India as preferring liberal values, as the three promises which the Constitution makes its citizens are; justice, liberty and equality. These words are also prevalent in liberalism, and are meant to provide the citizens with justice in the economic, social and political sphere; liberty of expression, faith, thought, worship and belief; and equality of opportunity and status²⁸². To provide the citizens with these rights, the Constitution has been divided into 22 parts, where part 3 is of particular interest in relation to the CEDAW. Part 3 of the Indian Constitution covers the fundamental rights of the citizens of India, including articles on the rights to equality and non-discrimination by the state regardless of race, religion, sex, place of birth, or caste²⁸³. This is in line with the definition of discrimination and the elimination thereof by the CEDAW, and several articles within the Constitution cover the same aspects as articles within the CEDAW. One such article is Article 15 number 3, which states that the Government of India is not prohibited by the Constitution to make provisions special to women and children²⁸⁴. This is in line with article 4 of the CEDAW, which explains that implementing temporary special measures in order to eliminate discrimination against women is allowed, in order to “accelerate de facto equality between men and women”²⁸⁵. Another similarity between the CEDAW and

²⁷⁹ CIA Factbook, 2013

²⁸⁰ Jackson & Sørensen, 2010: 177

²⁸¹ National Portal of India, n/d

²⁸² Constitution of India, 1949: preamble

²⁸³ Constitution of India, 1949: article 15(1)

²⁸⁴ Constitution of India, 1949: 6-7

²⁸⁵ CEDAW, 1979: Article 4

the Indian Constitution is article 16.1 of the Constitution and articles 7, 8 and 11 of the CEDAW, as these all cover the notion of equality in the area of employment, be it in an official capacity or in the private work force²⁸⁶. The correlation between the Indian Constitution and the CEDAW bodes well for India's implementation, as it hypothetically should not be experiencing complications with the CEDAW going against huge parts of national law. It further shows India's liberal side as the incorporation of rights of equality and freedom from discrimination shows a willingness and acknowledgement of the issues being present within India and unfair. However, state constitutions have often been in correlation with human rights laws and conventions, without the given state respecting the laws or participation in the conventions, e.g. the USA²⁸⁷.

With the incorporation of articles addressing inequality and discrimination in certain sectors within the Constitution, the Indian Government has worked towards the notion of providing equal rights for its people in order to provide the best outcome for as many people as possible. But, the presence of articles covering equality and elimination of discrimination will not eliminate the issues if not enforced. Furthermore, though the CEDAW and the Constitution of India may have similarities, it is important to remember that the CEDAW leaves states open to make reservations and declarations, which can make enforcement even more difficult.

India and the CEDAW

India signed the CEDAW on July 30, 1980, and became a ratifying participant thirteen years later in 1993 with declarations and reservation included in the ratification²⁸⁸. India's two declarations to the Convention are directed at articles 5(a), 16.1, and 16.2. Article 5(a) outlines the requirement of states to eliminate any practices or prejudices, which may result in the inferiority, superiority, or stereotypical division of any of the sexes²⁸⁹. Article 16.1, which has been clustered with article 5(a) in the first declaration to India's participation in the CEDAW, covers the requirement of states to eliminate discrimination of women in the private sphere, more precisely in relation to marriage²⁹⁰. The declaration, which India has added to

²⁸⁶ Constitution of India, 1949, pp. 7-8 & CEDAW, 1979: Article 7, 8 & 11

²⁸⁷ Carter, 2012

²⁸⁸ UN Treaty Collection, n/d

²⁸⁹ CEDAW, 1979

²⁹⁰ CEDAW, 1979

these two articles, stipulates that India is willing to abide by the articles in so far as they do not conflict with India's policy of non-interference in relation to the private affairs of the citizens within Indian federal states²⁹¹. The second declaration added by India at the time of ratification is to article 16.2, which covers the changes which must be made to state legislation and procedure in relation to a minimum age for marriage, and the creation of an official marriage registry²⁹². The declaration made to this article argues that India is fully supportive of the idea behind the article; however, due to the vastness of India and the diversity it represents, it does not consider the implementation of an official registry realistic²⁹³. With these declarations, it can be argued that India attempts to show support for the CEDAW. However, looking at the reasons for the declarations it becomes evident that the willingness to enforce the articles in question is limited, as it has been stated that national enforcement of the articles is unrealistic due to the diversity within India. This argument can further be supported by the fact that the declarations have not been made into reservations, and as such, India has not fully blocked the existence of the articles in the version of the CEDAW, which is applicable to India. Rather, it seems India is using the declarations as a means to reserve the right to not follow the articles, based on the assumption that it is too much of a hassle to enforce statewide. Declarations like these, based on the articles being difficult to enforce due to inconvenience, indicates that India does not want to work hard enough to enforce them. If a state was fully intent on enforcing legislation and ensure the implementation and enforcement of articles like the ones India has made declarations to, it can be argued that it would do everything possible to enforce said legislation. As such, India may have difficulties enforcing the articles of the CEDAW, but if it was intent on doing so, it should not be impossible. In this regard, it may be argued that the motives behind ratification are deeper than the wish for improvements to women's rights within India, as the seemingly limited desire to enforce the articles to which there have been made declarations to leaves wonderment as to other motives. Realists would see no issue with the ratification of conventions, including declarations and reservations, as it would only provide some form of insurance of state sovereignty and to work towards protection of national interests. The dangers, seen through realist eyes, is that without reservations and declarations,

²⁹¹ CEDAW, 1979

²⁹² CEDAW, 1979

²⁹³ CEDAW, 1979

India would not ensure limited sacrifice, as it would leave itself open to criticism and the diminishing of reputation if violations of the CEDAW are pointed out. Limited sacrifice can further explain the motives behind India's ratification, as the consequences of non-enforcement are few.

Another aspect, which is arguably beneficial to India, is its primary use of declarations, as India has found and used the middle way between full ratification of the articles and ratifying with reservations. As such, India is able to have the opportunity to succeed by implementing the articles, and less opportunity to fail, as declarations have been made. By doing so, other states, as well as the CEDAW Committee, have less opportunity to highlight the lack of enforcement of the articles, and India will avoid possible embarrassment and loss of reputation on the international stage, which is fully applicable to the realist approach of states doing everything possible to maintain and pursue power²⁹⁴. With this in mind, it is interesting to consider the possibility of India having other interests in the ratification of the CEDAW as it may consider the benefits of participation in the Convention as a means to reach national interests elsewhere.

This is conducive to arguments of realism, as realism is centered on the perception of states obtaining national interests and ensuring state survival. The effects of ratifying the CEDAW and showing support for a cause, which so many other states have supported, could result in India gaining good will from other states on other areas, which in turn could further the growth and developments of the state.

India has not only made the two declarations to the CEDAW but also made a reservation to article 29.1, as it does not consider itself bound by this article²⁹⁵. Article 29.1 outlines actions participating states of the Convention can take in the event of disputes²⁹⁶. Through reservations to this article, India avoids these mechanisms all together, and as such arguably also avoids the governance, which has been included in the CEDAW. One reason for making reservations to article 29.1 could be in order to protect the sovereignty of India, as negotiation, arbitration and going to the ICJ could

²⁹⁴ Jackson & Sorensen, 2010: 59

²⁹⁵ UN Treaty Collection, n/d

²⁹⁶ CEDAW, 1979

be an infringement on national sovereignty depending on the outcome of the dispute. By protecting national sovereignty from the infringement of other states and the ICJ, India has ensured that the only feedback under the auspice of the CEDAW is from the CEDAW Committee, which has no legal rights to punish or otherwise mandate action from states participating in the CEDAW²⁹⁷. As such, India has been able to limit its risk of getting negative critique and attention on a larger scale, through reservations to article 29.1. This can aid in the strive towards reaching national interest of growth on the international stage, as the limitations to negative feedback and attention can provide a better ground for India to cooperate with other states. It is arguable that if India had a court ruling against it in the ICJ, due to human rights abuses, other states may be hesitant to be associated with India, as the negative attention given to India may transfer to the other states making it difficult for not only India, but also the other states to reach its goal, and hence also its national interest. This is backed by the realist approach, as realists believe that states act according to protections of state sovereignty, national interest, and limited sacrifice²⁹⁸.

Gender Preference

Taking into account the articles, which India has made declarations and reservations to at the time of ratification, it is interesting to examine some of the areas which these articles cover and how these issues are dealt with within the state. Article 5(a), which India has made a declaration to, covers the requirement to eliminate discrimination of women through the use of current prejudices, customary and other practices within the state, which may lead to the inferiority of women²⁹⁹. As earlier mentioned, India has not completely excluded itself from this article, as it has merely made a declaration of its intent to follow the article to the best of its ability, without compromising its non-interference policy³⁰⁰. However, it seems as if the principle of non-interference may turn out to be somewhat of a curse for the women of India, as there are still gender issues within the states, making women inferior to men. The inferiority to men starts at birth as there is a preference for boys, and the notion of infanticide has therefore been discussed as a means of discriminating against girls³⁰¹.

²⁹⁷ CEDAW 1979: article 21

²⁹⁸ Jackson & Sorensen, 2010: 60

²⁹⁹ CEDAW 1979: article 5(a)

³⁰⁰ India's Combined Second and Third Periodic Report, 2005: 98

³⁰¹ McBride 2013

This has resulted in a discrepancy between the ratios of men to women in India. In 1991, the ratio was 947 women for every 1000 men, whereas in 2012 that number had fallen to 914 women to every 1000 men. The main cause for the discrepancy is abortions based on gender selection and murder of infant girls³⁰². Abortion in India is legal in some cases, which have been outlined in the ‘Medical Termination of Pregnancy Act’ from 1971, and which has been amended in 2002³⁰³. However, gender selective abortions are not allowed, but still occur to an extent where it is becoming a problem for India and its women to men ratio. Due to the developments continuing to create a decline in women, the Indian Government created the ‘Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994’. The act, as can be deducted from the name, was created to prevent the selection of a baby’s sex and use it as a reason to abort the pregnancy. The Act was amended in 2003 to also prevent the use of scientific techniques as these have been misused in order to help parents decide on the continued course of a pregnancy. Lastly, the Act also prohibits clinics from providing information on the sex of a baby, as a means to aid the elimination of gender selective abortions³⁰⁴. The above mentioned methods of eliminating male preference has been outlined in the Combined Second and Third Periodic Report by India, however, they do not deal with the underlying reasons behind the devaluing of women and girls³⁰⁵. Some of the main reasons behind the inferiority of women include the lack of ability of women to carry on the family name when married, as women who get married take their husbands name. Furthermore, women’s worth is additionally decreased by the use of dowry, where the woman’s family pays the husband at the time of marriage³⁰⁶. This practice is arguably discriminating against women and their worth, as it can be viewed as a payment made to take the burden of having a girl from the wife’s family. The CEDAW Committee has expressed concerns in regards to the use of dowry in India, as it fears it will lead to further discrimination and violence against women, and the Committee has therefore urged the Indian Government to implement the already existing legislation prohibiting dowry³⁰⁷. The concerns by the Committee of increases in violence against women due to the use of dowry seems valid, when looking at the numbers presented

³⁰² Poddar, 2013

³⁰³ India’s Combined Second and Third Periodic Report, 2005: 94

³⁰⁴ India’s Combined Second and Third Periodic Report, 2005: 98

³⁰⁵ Combined Second and Third Periodic Report, 2005: pp. 17

³⁰⁶ Poddar, 2013

³⁰⁷ CEDAW Committee Response, 2007

in the Ministry of Women and Child Development (MWCD) draft report from 2011. Through this report, as well as numbers provided by the National Crimes Record Bureau, which provides data on crimes in India, it becomes evident that the deaths of women due to dowry have risen from 6787 in 2005 to 8343 in 2009³⁰⁸, hence providing basis for the concerns of the Committee. What often times happen is that husbands and their families seek to get rich off of dowry resulting in them continuing to demand money from the bride's family, even after the mandatory dowry has been paid³⁰⁹. The most common means of punishing the bride if the increase in dowry is not respected, sometimes resulting in her murder, is by covering her in flammable material and burning her, telling the authorities that she caught fire whilst cooking³¹⁰.

Suggested means of legislation and changes, which can be made to turn the development in a more positive direction with less discrimination against women, include the CEDAW Committee's request to see current legislation enforced. This request is backed by the 'National Commission for Women (NCW)' of India, which has the task of initiating steps to help women in India³¹¹, as it has suggested that the Indian Government make alterations and additions to the Dowry Prohibition Act of 1961³¹². These alterations are suggested in order to make its enforcement more effective and provide the Indian women with more security and limit the possibility of discrimination. The NCW suggests enforcement of harsher punishment to those who demand dowry, and lessening the punishment for the people, paying dowry as these people are considered victims³¹³. These suggestions are in line with the Dowry Prohibition Act³¹⁴, but the Act is not enforced to a degree where it benefits women and eliminates the discrimination and violence, which comes with the dowry system.

The lack of action in relation to the dowry system is against the stipulations of the CEDAW, as different articles of the CEDAW can cover the violations in relation to dowry. One such article is article 2, which stipulates the requirements of states to implement legislation or uphold current legislation in an effort to eliminate

³⁰⁸ MWCD, 2011: 105

³⁰⁹ Bedi, 2012

³¹⁰ Bedi, 2012

³¹¹ NCW, 2012

³¹² MWCD, 2011: 29

³¹³ MWCD, 2011: 29

³¹⁴ Dowry Prohibition Act, 1961

discrimination against women³¹⁵. As India already has the Dowry Prohibition Act, the Medical Termination of Pregnancy Act, and the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act established, it is against CEDAW requirements not to have them fully enforced and to work towards the furthering of the legislation implemented³¹⁶. Interestingly, the acts implemented but not enforced could also be considered under article 5.1 of the CEDAW, to which India has made a declaration, as the presence of dowry and gender selection are clearly a sign of the inferiority of women to men³¹⁷. As such, the implementation of the CEDAW is limited in these above-mentioned cases, and the signs point towards discrimination against women being a vicious circle. This is the case, as the birth of a girl often has little value in India. As such, the value of the girls is lowered and the dowry system is used to have the burden of the woman transferred from one family to another and, in some cases, may lead to the death of the woman if disputes arise³¹⁸.

One way of possibly eliminating the nature of discrimination against women could be the implementation of article 4 of the CEDAW, as it allows for states to implement special measures for women in a limited period in order to even out the status for women and men³¹⁹. Implementing special measures for women also involves equality being put aside for a time, in favor of women, as the deficit of equality can be lessened for women. The idea of special measures is not new to the Indian Government, as the Indian Constitution has an article with the same stipulation, of the Government being allowed to implement special measures to further the equality of women or any other groups discriminated against³²⁰.

Domestic Violence

The use of dowry and gender selection at pregnancy are just two areas in which India has seen adversity, as women continue to experience discrimination due to their gender. Another issue, which has been highlighted in the Committee response to the Combined Second and Third Periodic Report from India, is the concern for the lack of

³¹⁵ CEDAW, 1979: article 2

³¹⁶ CEDAW, 1979: article 2

³¹⁷ CEDAW, 1979: article 5(1)

³¹⁸ Bedi, 2012

³¹⁹ CEDAW, 1979: article 4

³²⁰ Constitution of India, 1949: 6-7

legislative actions to address violence against women in all forms³²¹. Domestic violence in India is quite common and it has been argued that part of the reason for it being so common is due to the attitude of accepting domestic violence³²². This acceptance is not only male, but also female as has been supported by a study showing that a majority of women interviewed thought it was acceptable for husbands to beat their wives for several reasons, including arguing with him, burning food, refusing sex, going out without his consent, etc.³²³. This study has highlighted the relatively large acceptance of violence, and gives the impression that an attitude and cultural change would help change the circumstances for women in India, so that women are no longer treated as inferior to men. Simister and Makowiec³²⁴ argue that educational levels within India are a factor in the prevalence of domestic violence against women. Studies show that the acceptance of domestic violence decreases the more education people have. The reason behind this is, amongst other things, that certain stress factors are more likely to have been eliminated with higher education levels; such stress factors include the stress of poverty, as educated households tend to have a higher income, and as such do not have the increased worries of how to make ends meet³²⁵. The levels of domestic violence were not the only thing decreasing with higher education, as the acceptance of domestic violence also decreased, for both men and women. This is evident through data from the Demographic and Health Surveys (DHS), where the acceptance of domestic violence goes from about 27% for women with zero to two years of education, to less than 3% acceptance for women with 18 or more years of education³²⁶. This shows the importance of increasing education for the people of India, and particularly the Indian girls and women as they are more often discriminated against in relation to education. Women are generally less educated than men, as men are seen as having a bigger need for education as they have the role of breadwinner and provider. Women are more prone to having the role of housekeeper and taking care of the family, and as such are often considered to not need an education³²⁷. The concerns of increasing education for girls has been noted in both shadow reports and the CEDAW Committee response to the Combined Second

³²¹ CEDAW Committee Response, 2007: 4

³²² Delsol et al. 2003, as cited in Simister & Makowiec, 2008: 509

³²³ Fagan, 2010: 76

³²⁴ Simister & Makowiec, 2008

³²⁵ Simister & Makowiec, 2008: 511

³²⁶ DHS, as cited in Simister & Makowiec, 2008: 514

³²⁷ Simister & Makowiec, 2008: 516

and Third Periodic Report of India, as the disparity between the educational level of women and men continues to exist on a larger scale³²⁸. Legislation has been implemented in India, but it seems the enforcement has been less successful, resulting in the educational level of women continuing to lack behind that of men³²⁹. In a DHS survey from 2008, it was investigated why girls did not get an education or why they ended up dropping out after a while. Some of the reasons include the cost of an education being too high, the distance to a school being too far, the need for an education being considered non-existent, and the girls having been required to work³³⁰. Through this it can be deduced that girls face many challenges which keep them from studying, and the task of changing this, and hence also changing the culture of domestic violence, is demanding. The Indian Government has made a Constitutional amendment, as well as programs related to primary educations, such as the Sarva Shiksha Abhiyan programme, which aims at universalizing education for children aged 6-14 and making it free and compulsory in order to improve the educational possibilities for girls and women, and for students from rural areas³³¹. This is in line with article 10 of the CEDAW as it outlines the requirements of states to eliminate any discrimination against women in relation to education³³². An increase in education and the availability thereof for women from a young age would arguably be helpful in the elimination of discrimination against women in regards to domestic violence, as women are put in a better position in regards to their work life, and the jobs for which they are qualified. By educating women to be eligible for more prestigious jobs, the Indian Government will help provide an economic situation more beneficial for the elimination of domestic violence, as at least one stress factor in the form of poverty will be diminished. Furthermore, it is arguable that educating women will be a means to also eliminate some degree of stereotypical behavior requirements, as women are then no longer limited in regards to their position in society. This is in line with article 5 of the CEDAW, which says that stereotypes of women should be avoided in the interest of eliminating discrimination³³³. Currently, with the culture perception leaning towards a preference for boys, as well as providing better opportunities for men to be educated and work outside the home, most women are,

³²⁸ CEDAW Committee Response, 2007: 2 & 6, NAWO, 2006: 10

³²⁹ CEDAW Committee Response, 2007: 6

³³⁰ Simister & Makowiec, 2008: 515

³³¹ Sarva Shiksha Abhiyan programme, 2007

³³² CEDAW, 1979: article 10

³³³ CEDAW, 1979: article 5

figuratively speaking, put into a box of stereotyping them to be inferior to their husbands and work primarily in the low-prestige jobs with low incomes.

It is important to note that it is not only the educational level which needs to be dealt with, as the culture and history of gender roles are also relevant in the elimination of domestic violence. The International Institute for Population Sciences has stated that:

“There is a culture of silence around the topic of domestic violence that makes the collection of data on this sensitive topic particularly difficult. Even women who want to speak about their experience with domestic violence may find it difficult because of feelings of shame or fear”³³⁴.

This quote highlights the cultural limitations to the elimination of domestic violence, as the extent of the problem is hard to determine and the people being violated are keeping quiet due to the fear of retribution, or out of shame. As such, the Indian Government has been called upon by NGOs to act in order to diminish the occurrence of domestic violence and has been provided different measures to consider. These measures include creating women’s rights groups to act as ambassadors for the cause of limiting domestic violence, as well as to minimize the isolation which these women experience when subject to domestic violence³³⁵. The goal is to increase the self-worth of the women subject to domestic violence to a point where they are comfortable acting on their own behalf. Furthermore, it has been suggested that men should be exposed to gender sensitive education, so that they understand the position of the women and can understand the effects of domestic violence³³⁶. These suggestions may have been a factor in the creation and adoption of the Domestic Violence Act, 2005, which is the first attempt at making domestic violence a punishable offence in India. The Act sets out to enhance the options available to victims of domestic violence, as these were otherwise limited. It encourages women to file a case against their abuser instead of otherwise keeping silent which has often been the case³³⁷. Before the Act, one of the fears of women who had been violated was that they, in the case of filing charges against their assailant, did not have access to any of the facilities she shared with her husband, as they were in his possession. This has also been counteracted through the Act, as women are now entitled to the

³³⁴ International Institute for Population Sciences (IIPS) as quoted in Simister & Makowiec, 2008: 510

³³⁵ NAVO, 2000:66

³³⁶ NAVO, 2000: 66

³³⁷ Costa, 2012

possessions shared with the husband as much as he is, whilst the case is going on³³⁸. The creation of the Domestic Violence Act, 2005, has been commended by the CEDAW Committee, as being a great initiative and a step in the right direction for the evolvement of women's rights in India. However, the Committee continues to express concern for the lack of enforcement of the Act, as it believes various federal states and territories have continued to not enforce the Act effectively to the advantage of women³³⁹. Looking back at the declarations made by India to some of the articles within the CEDAW, it shows that the vastness of the state is a hindrance to the enforcement of laws and acts, as the Committee has noticed the lack of enforcement in some areas of the state and not others. In order to combat this problem, the Committee suggests actions, which the Indian Government can take in the enforcement of the Domestic Violence Act, 2005³⁴⁰. These suggestions include working closely with women's rights groups in order to form a comprehensive plan to reverse the cycle of discrimination against women and in particular domestic violence. The Committee further urges the Indian Government to work with the many federal states to enforce the Domestic Violence Act, 2005, in a nationally covered manner, making every woman benefit from the Act. Furthermore, the CEDAW Committee highly recommends that the Government makes and provides extensive and thorough data on violence against women, cases reported to authorities, and the number of protections given under the auspice of the Domestic Violence Act, 2005³⁴¹. These requirements can arguably be seen as a projection of support by the CEDAW Committee of the legislative developments by the Indian Government. However, as the implementation does not equal satisfying enforcement according to the Committee, it has provided the Government with tools to better help prevent violence against women, and as such also live up to the requirements of the CEDAW.

The implementation of legislation by the Indian Government can be seen as a liberal attempt at creating equal rights for men and women. The problem with enforcing the legislation and new initiatives has been attributed to the challenges of being a large and diverse state. Constructivists would argue that India's problems of enforcement stems from the differing cultural perceptions of the topic of domestic violence. Hence,

³³⁸ Costa, 2012

³³⁹ CEDAW Committee Response, 2007: 4

³⁴⁰ CEDAW Committee Response, 2007: 4

³⁴¹ CEDAW Committee Response, 2007: 4

in some federal states and in some social groups it may be easier to enforce legislation as the social construct of the people living there is in agreement with the legislation³⁴². However, other federal states and social groups may have a significantly different perception of the world and how to live in it, and legislation will therefore be harder to enforce³⁴³.

Human Trafficking

According to a poll by the Thomson Reuters Foundation, India is ranked fourth in the world of the worst states for women to live in. This ranking is primarily based on the issues within India of infanticide, gender-based abortions, domestic violence and human trafficking³⁴⁴. The prevalence of human trafficking is considered a large problem within India, but the exact scope of the problem is not known, as data on the issue is sparse. As such, it is difficult to say exactly how big the problem is and how many people are affected each year. In 2009, it was estimated that most trafficking took place within India, and that only 10% of trafficked people were brought out of India³⁴⁵. This shows that the problem is mostly situated within India, and that action must be taken by the Indian Government in order to stop human trafficking.

Oftentimes, it is thought that trafficked women are sold to prostitution, but this is not the case. Many women in India are also trafficked in order to perform forced labor, and to be forced into marriage. Especially the use of trafficking to find a wife is interesting, as it further highlights the need for changes to the male preference within India. The preference for males has resulted in a discrepancy between the numbers of women to men throughout India, though more prevalent in some areas than others³⁴⁶. With infanticide and gender-based abortions being common, the elimination of girls makes it harder for some men to find a wife, which results in the business of trafficking being lucrative and common³⁴⁷. As trafficking is present all over the world, it has gotten the attention of international organizations, like the UN, as well as NGOs, and has been addressed in the CEDAW, article 6. Article 6 of the CEDAW

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³⁴⁴ Anderson, 2011

³⁴⁵ Anderson, 2011

³⁴⁶ United States Department of State, 2012

³⁴⁷ United States Department of State, 2012

outlines that states must take all the necessary and appropriate actions to stop trafficking and the exploitation of women in relation to prostitution³⁴⁸. By not making reservations or declarations to this article, India has agreed to implement and enforce the stipulation of article 6. Another article, which covers aspects of trafficking, is article 11, which outlines the stipulation of how to ensure equality between men and women in the work force. Article 11 states that all women are entitled to the same job opportunities as men, as well as the right to free choice of employment and profession³⁴⁹. These rights are taken from trafficked women as they are often lured or kidnapped into forced labor. The tactic of luring women into forced labor has been used often, as agencies and people representing fake agencies convince women to move to another district or area, in order to work and earn money for their families. Once the women have agreed and are in the possession of the agencies, they are sold and forced into working for little to no money³⁵⁰. When the women agree to work with the agencies, before they realize it is a scam, they are forced to pay recruitment fees, which are often high for the families who tend to be poorer. In order to pay the fee, the women and their families often take out a loan, which is commonly provided by the agencies themselves³⁵¹. By providing the money for families to loan, the agencies ensure that the families remain indebted to the agency, and the women are forced to work hard jobs for little money, and the little money they have will mostly go to the agencies. As such, the women are forced to work even harder and for longer than initially informed by the agency, as the debt must be repaid and the women are caught in a web from which they cannot escape³⁵². Luring women is not the only means for groups and people to make money off of trafficking, as some women, and in particular young girls, are often kidnapped with the purpose of selling them into forced labor or into marriage³⁵³. The high number of girls being trafficked within India, as well as the girls being sent out of India has made the USA rank India as a ‘Tier 2’ state in its ‘2012 Trafficking in Persons Report’³⁵⁴. The tier ranking is based on the Governmental efforts to combat trafficking in India, and is based on the notion that India does not fulfill one or more of the requirements set out by the USA

³⁴⁸ CEDAW, 1979: article 6

³⁴⁹ CEDAW, 1979: article 11

³⁵⁰ United States Department of State, 2012

³⁵¹ Antelava, 2013

³⁵² United States Department of State, 2012

³⁵³ Antelava, 2013

³⁵⁴ United States Department of State, 2012

Department of State. These requirements involve diminishing the number of trafficking victims and increasing measures to counteract trafficking³⁵⁵. It can be argued that the Combined Second and Third Periodic Report by India, also has considered these deficiencies, as it has mentioned future commitments, which it seeks to implement and enforce. These include the commitment to create legislation opposing trafficking, and also strengthening current legislation to a point, where victims of trafficking can benefit³⁵⁶.

Some action has been taken in the fight to end trafficking, and includes working with UNICEF Country Office and the National Law School to create a manual with guidelines on combatting trafficking of women and children, including the importance of not viewing the trafficking victims as perpetrators and criminals, but instead respecting the fact that they are victims³⁵⁷. The Indian Government has also made plans to increase financial support to groups, which focus on rescuing trafficked women, in order to support the work, which can aid the Government in grasping the scope of the problem, as well as benefit from the expertise, which these groups have on the subject³⁵⁸. All of these measures seem to indicate that the Indian Government is aware of the issues revolving around trafficking of girls and women in India. However, it can be discussed how much of an impact it will have on the goal of diminishing trafficking, as many factors are included in the practice being as extensive as it is. Not only is the male preference within society a factor, as girls and women are in such high demand that it leads to trafficking, but the governance within India is also lacking in its infrastructure, to a degree where it is made easier for traffickers to go about their business. By bribing local politicians and police, traffickers are able to move girls and women from city to city without the fear of being caught. In a BBC News³⁵⁹ article, a man who lives off of trafficking women is interviewed and speaks openly about his experiences and how he goes about his business³⁶⁰. By bribing the police and letting them know when he will be moving his victims, he is able to get through cities and federal states without being caught. And even if he gets caught, he expresses little worry for a fate in prison, as he has enough

³⁵⁵ The CIA World Factbook, 2013

³⁵⁶ Combined Second and Third Periodic Report, 2005: 8

³⁵⁷ UN WomenWatch, n/d

³⁵⁸ UN WomenWatch, n/d

³⁵⁹ Antelava, 2013

³⁶⁰ Antelava, 2013

money to bribe his way out³⁶¹. This shows a lack in infrastructure to support the efforts made in relation to women's rights and the enforcement of the CEDAW. In order to change the culture of bribing governmental employees much needs to happen. It is not simply a matter of changing the officers, as the culture of bribery is common in many other areas of India³⁶², and it is therefore expectable that it will continue to happen with new officers as well. Arguably, the change needs to happen in legislation, which should be heavily enforced.

The Indian Government has attempted to enforce legislation on the issue of trafficking, but to a smaller extend than what the issue requires. In West Bengal, for instance, every police station has an officer in charge of trafficking cases³⁶³. However, as West Bengal is just a small part of India, measures are not likely to make a huge impact on the problem of trafficking within India. The measures are needed on a wider scale and with national support. Furthermore, it is interesting to note that even though the Indian Combined Second and Third Periodic Report has mentioned trafficking and measures which are to be implemented, the CEDAW Committee has made no comments in its response report. This may give the impression of trafficking being of less importance compared to other issues, which needs attention from the Indian Government, and as such, it is possible that the Indian Government will use little resources to enforce legislation on the topic at the expense of other pressing matters, which have been focused on by the Committee.

As India has done little to enforce the legislation, it can be argued that it is acting according to realism and the notion of limited sacrifice.

However, the fact that India implements legislation addressing some of the issues focused on in the CEDAW could also be explained as India trying to project some of the same values as liberalism. By implementing legislation, which sets out to ensure the rights of as many people as possible, and the equality of men and women, the Indian government is looking to improve the national wellbeing. However, the implementation of legislation needs enforcement in order to be effective in the fight against trafficking, and as such the Indian Government has many other things to

³⁶¹ Antelava, 2013

³⁶² Champion, 2011

³⁶³ Antelava, 2013

improve in order to better the general situation for women, in particular its infrastructure. With the internal structure lacking in the enforcement of legislation, it could be feared that the Indian Government would be more likely to focus on areas, which have been highlighted by the CEDAW Committee. If India were to focus on domestic issues which have not been highlighted by the Committee, it could result in continued focus on previously highlighted areas and the progress made to non-highlighted issues would not being considered as progress. As such, the lack of focus on trafficking by the Committee could result in little focus on enforcement by the Government, as resources are scarce and, if the Indian Government focuses on national reputation and international gain, it can be argued that it would choose to enforce legislation on the areas which the CEDAW Committee has put focus on previously instead of trafficking.

Rape

Gender preference, domestic violence and trafficking are all very relevant topics to discuss in regards to India, but one topic in particular has been getting a lot of attention in the media lately – rape. The occurrence of rape cases from India has highlighted the issues, which women deal with in regards to having their bodies respected. According to the CEDAW Committee, it is important for the Indian Government to act on the problem and alter legislation to suit the situation better. What has been requested is that the Indian Government alters its definition of rape within its Penal Code as it has excluded making marital rape a part of the definition³⁶⁴. This exclusion leaves women vulnerable to rape when married, which is against article 16 of the CEDAW, which states that women and men have the same personal rights during marriage³⁶⁵. By eliminating marital rape from the definition of rape, it can be argued that the Indian Government sees women's rights in regards to her body as being different when married compared to when not married. This is a discrimination of women, and leaves them vulnerable to abuse by their husbands, whose penalties for raping their wives are non-existent due to lack of definition in the Penal Code. Interestingly enough, the article of the CEDAW which marital rape would belong under, is also one of the articles to which India has made a declaration. The declaration states that India generally supports the stipulations of the article, but

³⁶⁴ CEDAW Committee Response, 2007: 4-5

³⁶⁵ CEDAW, 1979: article 6

as it operates with a system of non-interference, it will not make legislative changes regarding people's personal lives without the consent of the federal state³⁶⁶. By making this declaration, the Indian Government has somewhat left the decision up to each federal state within India, as they each have different cultures and customs, due to the vastness of the state and the diversity it represents. The enforcement of possible legislation is therefore complicated by the possibility of the federal state not agreeing to the legislation, and as such, the non-interference policy is a hindrance to the development of women's rights.

It is not only husbands who rape their wives, reports of non-marital rape happening in India have also been given focus, as the legislation doesn't seem to have worked towards eliminating the trend. Seeing as the CEDAW Committee Response, which addressed the issue, is from 2007, it should be possible to see a noticeable change in statistics and behavior today. This is not the case according to women's rights groups and protesters from India who argue that much needs to be changed in order to curb the issue of rape³⁶⁷. The general treatment of women who have experienced being raped, has been documented from NGOs, including Human Rights Watch, as being below par, as they are often being treated as outcast³⁶⁸. This happens when they go to the hospital or the police station, as the officials at these places are known to refer to the women as 'dirty', or to not act on the complains resulting in the women feeling even more assaulted and adding to the shame they often feel after their ordeal³⁶⁹. This behavior can be linked back to the culture of women being inferior to men, and not having as much freedom as the CEDAW requires women to have. In order to change the behavior and culture around rape, it has been suggested that the mindset of men needs to change in order to improve the conditions for women. In a survey supported by UN Women, it was found that 75% of the men asked believed that women, by the way they dress provoke men, and 40% of the men believed that women who are outside at night are deserve to be sexually harassed or being attacked³⁷⁰. In this regard, sexual harassment has been defined as: "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature

³⁶⁶ CEDAW Reservations, 2013: India

³⁶⁷ Park, 2013

³⁶⁸ Kashyap, 2013

³⁶⁹ Kashyap, 2013

³⁷⁰ Park, 2013

[...]”³⁷¹. The word unwelcome refers to the woman’s perception of the acts by men. If the woman does not feel comfortable with the situation it is an unwelcome action, and as such constitutes sexual harassment³⁷². Not only is the mindset of men dangerous to women, it also aids the vicious cycle of girls and women being unable to get an education and move around freely, as their families are hesitant to let them walk freely and go to school, at the fear of them being raped or attacked³⁷³. It is simply too dangerous for them to move around on their own, resulting in women being discriminated against in many other areas than just through sexual harassment and rape, as it affects the daily lives of women, including their education. This has been proven detrimental to the developments of equality for women, as higher education for both men and women has been proven to result in a change in acceptance of discrimination of women³⁷⁴. Furthermore, as was the case with trafficking, there is the issue of national infrastructure being too weak for Indian women to seek justice in cases of rape. The authorities, which women must go through, have been too poorly trained and are guided by own constructions of what rape is a result of and how it affects women. Women are therefore not getting the justice, which they are entitled to in accordance with national law³⁷⁵. However, this seems to be changing due to the more recent cases of rape which have been given international attention, due to their cruelty, the Indian Government is changing national legislation to include harsher punishment for rapists. This, hopefully, will help ensure more equality for women in accordance with the CEDAW and international human rights law.

From a theoretical perspective, the issue of rape and the actions taken by the Government are difficult to place, as it can generally be explained by liberalism. However, as the legislation, which has been implemented has not been enforced even after recommendations from the CEDAW Committee and women’s rights groups, it is arguable that constructivism is better equipped to explain India’s position. As India seems to focus more on the notion of the state being large and diverse with many different customs and traditions, the Government chooses to act according to its non-interference principle, which allows the different federal states within India to have a

³⁷¹ UN WomensWatch2, n/d

³⁷² UN WomensWatch2, n/d

³⁷³ Park, 2013

³⁷⁴ Simister & Makowiec, 2008

³⁷⁵ Kashyap, 2013

decisive say in the legislative developments. This is visible through the declaration made to article 16 of the CEDAW, as the Indian Government agrees to the principles of the article, but as the districts must agree with legislative changes, it may be impossible to enforce legislation on a national level. The reason for it being near impossible to implement national legislation with the consent of every district is that, with the differing cultures throughout India, comes different traditions, customs and views on certain events, e.g. rape, domestic violence, and using women as a commodity. These views are not easily changed as they are ingrained in cultures.

Throughout the chapter on India it has been found that India is currently going through times of development, which may result in an increase in power within the international community. However, this increase in power is dependent on varying factors, including the infrastructure of India being ready for changes, which has been argued not to be the case. Where this has been seen is amongst other things in regards to India's lack of enforcement of current legislation on topics relating to women's rights. Even though India has a Dowry Prohibition Act, from 1961, India still has high levels of violence against women based on dowry. Human trafficking also occurs regularly due to the lack of women in certain areas of India, as there has been a general gender preference for boys. This preference has resulted in gender selective abortions, infanticide and increased trafficking in women, despite national legislation against these measures. As such it is relevant to note that India has problems with its infrastructure to a degree where it affects the lives of women. As such, the motives behind ratification of the CEDAW does not seem to be based on the idea of India wanting to enforce the articles within the CEDAW, as it has been unable to enforce national legislation which has existed longer than the CEDAW. Therefore, the motives behind ratification of the CEDAW seem to be due to India's interest in gaining more power and influence on the international stage.

Case Study of China

In this section of the analysis, the case study of China will be analyzed. The aspects of domestic violence, human trafficking and family relations will be examined in relation to China to see whether the situation of these aspects have been changed in relation to the CEDAW. In relation to China's family relations, the famous one-child policy will be analyzed to find how this policy affects discrimination of women. China's relationship with the international community will also be looked at in order to see whether this relationship can have and influence on China's dealings with the CEDAW.

Declaration to the CEDAW

China signed the CEDAW when the Convention opened for signature in 1980³⁷⁶. The Chinese government decided to ratify the Convention in November the same year. As such, China may have used the time between signature and ratification to discuss the implications of ratifying the CEDAW and check with national law to examine if there were any conflicting aspects before ratifying. China made one declaration when it signed the Convention and that same reservation was confirmed and reiterated when China ratified the Convention that same year. The declaration regarded paragraph 1 of article 29³⁷⁷, in which it is stated that if states within the Convention disagree on what the values and meaning are of the Convention and on how the guidelines and specifications of the Convention is to be implemented, it can be brought to arbitration ad later on to the ICJ. One may argue that by stating that it does not find itself to be subject to article 29.1, China is indicating that if disagreements with other states occur on how to interpret the articles, China will not be put in the situation of risking arbitration with a negative outcome out for China. The notion that China may be forced into arbitration may also create a problem in relation to the state's sovereignty. As mentioned in the section, Introduction to Realism, realism centers on the sovereign state as the ultimate authority in the international community³⁷⁸. As such, China may be refusing to acknowledge this paragraph as it may overrule the authority of China as a sovereign state. Further, seen through the eyes of realism, the aspect of anarchy in international relations can be attributed to why China has made this reservation, as the state is the only central authority. Therefore, it can be argued that China sees the

³⁷⁶ United Nations Treaty Collection2, n/d

³⁷⁷ CEDAW, 1979: article 29.1

³⁷⁸ Dunnes & Schmidt, 2008: 93

CEDAW as something broad and undefined that is open to different interpretations depending on the beholder. That is, one may argue that China found the aspects of the CEDAW to be of a broad nature in which the states could decide in which degree they wanted to implement the ideas of the CEDAW in their own states. The possibility of states interpreting actions and articles within CEDAW differently can also be the reason behind China's declaration. Additionally, the declaration can also be examined on the basis of the 'logic of appropriateness', as situations can be interpreted differently by states depending on their knowledge and experiences, which can be the reason behind China's declaration. China has had some bad experiences with especially western states as the West directed hits at China's military power, sovereignty and economic well-being which led to the fall of the Qing Dynasty in 1911-1912³⁷⁹. China itself leads a non-interference policy³⁸⁰ in its relations to other states and thereby refuses to e.g. meddle with the form of government in the states with which China cooperates. As such, China may interpret article 29.1 as a risk of infringing on its sovereignty as this has happened previously. Further, if China was to evoke article 29.1 against another state, one may argue that to some degree that would also violate China's non-interference policy which has arguably become a part of the Chinese identity and experience, as it is based on past historical events. As a result, one may argue that China does not find article 29.1 'appropriate' to carry out by any states, as it goes against China's identity, knowledge and experience. As such, the fact that this article can be said to go against the Chinese identity also indicates a hindrance for the effectiveness of the CEDAW, as China refuses to agree to this element of governance.

Also, according to Wilson³⁸¹, these blows left a memory behind in China's national consciousness with China as a victim in earlier relations with the West³⁸². Therefore, China may be reluctant to enter the position of victim again, and is therefore choosing not to be subject to the will of the western states in the CEDAW. This is a problem for the implementation of the CEDAW as distrust exists between China and the western ratifying states. This can be explained by constructivism, as these social constructed relationships are important within international relations as social relationships and

³⁷⁹ Wilson, 2008

³⁸⁰ Aidoo, 2012

³⁸¹ Wilson, 2008

³⁸² Wilson, 2008

the social reality determines whether states are friends or foes. As such, China views its social relationship to the western ratifying states of the CEDAW as uncertain, which can arguably hinder the purpose of the CEDAW as China may be unwilling to be told what to do by western states when discussing implementation.

China and its Population

The Chinese population has been estimated to be around 1,350,000,000 billion³⁸³ people and consists of a variety of ethnic groups. 56 ethnic groups were officially identified as of 1999 including groups such as Tibetan, Miao and Tartar³⁸⁴. The largest ethnic group is however the Han Chinese at 91.96 percent according to a national consensus conducted in 1990³⁸⁵. China's ethnic groups often live in clustered communities in other smaller areas. The ethnic groups are often centered in autonomous regions as well as in provinces such as e.g. Tibet and Taiwan³⁸⁶. In its concluding comments to China's Third and Fourth Periodic Report in 1999, the Committee stated that the diversity in China as well as the great size of the state would be a problem for the creation of de facto equality in China³⁸⁷, and as such a problem for the enforcement of the CEDAW. Hence, the Committee is stating that the many different views of the ethnic groups in China on women's rights can be a problem for the de facto equality, as well as the great size of the state may make it difficult to properly ensure enforcement of the implemented measures.

China and the International Community

In the first part of the 21st Century, China has been a rapidly rising star in the international arena. China has over the years gained economic strength and is now a key player in international economics³⁸⁸. In the last three decades, China has been signing and ratifying a great deal of international human rights treaties³⁸⁹, and is a permanent member of the UN Security Council³⁹⁰, which indicates that a certain level of power has been achieved by China, as the Security Council's permanent members

³⁸³ CIA Factbook, 2013

³⁸⁴ China UN, 1999

³⁸⁵ China UN, 1999

³⁸⁶ China UN, 1999

³⁸⁷ Concluding Comments, 1999

³⁸⁸ Sutter, 2012: 1

³⁸⁹ Dingding, 2009

³⁹⁰ Sutter, 2012: 118

are arguably the ‘most powerful’ players in the UN. Further, like India, China is also a part of the BRICS and participates in the group BASIC which consists of Brazil, India, China and South Africa³⁹¹, indicating that China has become very involved in international cooperation. Recent years have also showed that China on the international stage has become more forceful when it comes to protecting Chinese interests in relation to what has been viewed as foreign interference³⁹². According to Robert Sutter³⁹³, examples of this could be, e.g. the incident with India, where China chose to reject the claim India had made on the border between the two states. Another example is how China criticized and pressured other governments due to the award of the Nobel Peace Prize to a Chinese nonconformist³⁹⁴, Liu Xiaobo. This line of action taken by China can be explained by realism, as a means of attaining power and as such secure state survival and security, if the state has felt ‘threatened’ by other states. The incident with Liu Xiaobo would, for example, indicate that other states were indirectly supportive of a person, who is considered to have ‘betrayed’ the Chinese state. Realism would consider the supportive states as being against China and as such the states are threats to China’s state survival and security.

It is also worth noting that Chinese culture is still affected by ‘the Century of National Humiliation’, as the period between the Chinese defeat in the First Opium War in 1839 to the victory of the Sino-Japanese War in 1945 was termed. This is an era China remembers as a time when it was bullied and assailed at the hands of the Japanese and western imperialism, something which has left a great mark on Chinese culture and has helped shape its current state identity³⁹⁵. By applying constructivism to this victim mentality of China, the logic of appropriateness may also explain the reactions of China, as the state will assess a situation based on its experiences and knowledge when determining the appropriate rules to apply to a given situation³⁹⁶. As such, the Chinese relations to the international community can be influenced by this prior humiliation and can affect international agreements, such as the CEDAW.

³⁹¹ Sutter, 2012: 119

³⁹² Sutter, 2012: 118-119

³⁹³ Sutter, 2012: 118-119

³⁹⁴ Sutter, 2012:119

³⁹⁵ Wang, 2013:

³⁹⁶ Sending, 2002

Domestic Violence

According to Fagan³⁹⁷, China is one of the states participating in the CEDAW that is yet to criminalize marital rape. ‘The Supreme People’s Court on Several Issues in the Application of Marriage Law of the People’s Republic of China’ defines family violence as “a behavior whereby a person causes certain physical or mental injuries to his family member(s) by beating, binding, forced restriction of personal freedom or by other means. Durative or frequent family violence constitutes maltreatment.”³⁹⁸

In this definition there is no direct mention of marital rape despite the fact that it is referring to the ‘Marriage’ law. However, the NGO, Human Rights In China (HRIC) goes on to state in its report on the implementation of the CEDAW in China that in comparison to the Beijing Platform for Action from 1995, the Chinese definition is too narrow and excludes abuse such as marital rape and threats of physical violence³⁹⁹.

The HRIC goes on to state that the fact that China uses the Marriage Act to discuss and define domestic violence (instead of dealing with the issue in a separate act) shows lack of commitment and limited resources invested in the cause⁴⁰⁰. One may argue that seeing as there is a lack of legal definition of what domestic violence entails and that it has simply been addressed through the Marriage Act, as other case studies have implemented separate laws covering domestic violence. The Chinese Government has arguably not been making a serious attempt to deal with the CEDAW or the inequality problems occurring in China. Further, it can be argued that the Chinese government is simply trying to get the formal implementation and correspondence with the CEDAW over with as that would get the CEDAW Committee of its back. This formal implementation can improve China’s good standing in the international community, which indicates that China has ratified the CEDAW as a means to improve appearances and not to better women’s rights. Realism would explain this as the state attempting to attain power by ratifying the CEDAW without the intent to enforce it. On the basis of this, one may argue that China has ulterior motives behind ratifying the CEDAW, e.g. to improve its standing in international society and enter into a coalition of power with other UN states to better its reputation and improve its chances of cooperating with other states, potentially to balance the hegemony of the USA.

³⁹⁷ Fagan, 2010: 78

³⁹⁸ HRIC, 2006: 30 (‘Interpretation No. I’, article 1)

³⁹⁹ HRIC, 2006: 19

⁴⁰⁰ HRIC, 2006: 19

The report from the HRIC goes on to state that by lacking clear legal definitions on violence in a family and/or in a marriage, China is violating the CEDAW article 16⁴⁰¹. This article states that:

*“States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations [...]”*⁴⁰²

Without a clear definition of domestic violence and marital rape, China will have difficulties implementing and enforcing rules in accordance with the stipulations within the CEDAW, and is therefore currently not in compliance with the CEDAW. This could indicate that the effects of China entering into the CEDAW may not be sufficient in the area of eliminating discrimination within the sphere of family relations and marriage. The aspect of marital rape is however not one that is mentioned within the CEDAW Committees Concluding Comments to China’s Third and Fourth Periodic Report or to the Fourth and Fifth Periodic Report. This could indicate that the CEDAW Committee either does not know about the issue or that it has focused on other more pressing matters of violations of women’s rights within China. China had more matters that would take priority to be resolved over that of marital rape on the matter of women’s rights. On the basis of logic of consequentialism, it can be argued that the actions of the CEDAW Committee strive towards obtaining the best possible outcome for the women in China. As such, one may argue that the CEDAW Committee has deducted that the infrastructure within China is currently not conducive to achieve the best possible outcome in the sphere of domestic violence and marital rape.

Legislative Effects of the CEDAW

According to Ming Wan⁴⁰³, China has a quickly growing domestic legal system and has since the 1980s passed more than 450 new laws⁴⁰⁴ in the National People’s Congress as well as legal decisions. Further, the Chinese legal system is expanding with a number of overt human rights purposes, including women’s rights. Examples of such provisions include The Law on the Protection of Women’s Rights and

⁴⁰¹ HRIC, 2006: 19

⁴⁰² CEDAW, 1979: article 16

⁴⁰³ Wan, 2007: 728

⁴⁰⁴ Wan, 2007: 728

Interests which was put into effect in 1992, The Law on Maternal and Infant from 1995 which dealt with the wellbeing of infants and mothers, and the Education Law (1995) which ensures equal rights to receive education.⁴⁰⁵ As such, China has implemented provisions to deal with women's rights.

Wan further questions the reasons behind China's participation in the human rights arena, as "human rights law is bound to restrain its non-democratic party rule",⁴⁰⁶. Wan's question refers to whether the development is simply a 'legal formalism' created in order to deceive the international community or if the development is actually sincere as the development has occurred at the same time as China has engaged in human rights law and society⁴⁰⁷. If Wan is right, the notion that China is using the CEDAW to achieve good standing within the international community can be said to be correct. This means that the CEDAW may not be implemented as it is only the ratification of the CEDAW that is meant to send a (false) signal to the international society. However, the laws listed above pertaining to women's rights have been implemented, which is arguably in any case the first step towards enforcing the CEDAW. One may also question if the legal formalism ensures that China is obtaining good standing, as it by ratifying the CEDAW is arguably put under more scrutiny by the fellow CEDAW states and the monitoring Committee. With the increasing scrutiny, more pressure would also be put on China for not enforcing the CEDAW in a satisfactory manner. Wan states that it is good for Chinese human rights that China has agreed to a number of treaties, due to the fact that not abiding by the treaties and conventions will be defined as 'bad behavior' for the ratifying states. If China does not comply with, e.g. the CEDAW, it would entail diplomatic costs for the Chinese government⁴⁰⁸, which is naturally not desirable for China.

Wan further states that a socialization process has happened to China due to the pressure from the western world. This pressure has meant that the international human [and women] rights have affected domestic Chinese laws⁴⁰⁹. On the basis of this, one may also argue that the CEDAW is in fact working, seeing as China has agreed to

⁴⁰⁵ Wan, 2007: 735-737

⁴⁰⁶ Wan, 2007: 728

⁴⁰⁷ Wan 2007:728

⁴⁰⁸ Wan, 2007: 728

⁴⁰⁹ Wan, 2007: 728

participate and ratify the treaty and indeed (consciously or subconsciously) has begun to implement the international standards of women's rights. One may see the CEDAW as a possible means of socialization into the sphere of women's rights, gradually assisting states into fulfilling the rights.

Further, the Law on the Protection of Women's Rights and Interests (1992) was revised in 2005 in order "[t]o strengthen the law against discrimination, sexual harassment, and domestic violence"⁴¹⁰. This revision can be a sign that the Chinese government is monitoring the situation with women's rights in China and ensuring that the law is updated. This shows an engagement in international women's rights and indicates that the CEDAW may be effective in China. The Committee however states in its Concluding Comments to China's Fifth and Sixth Periodic Report that even though the law was revised in 2005, China is still not in compliance with the CEDAW, as the law is still missing a clear definition of the term discrimination like the one presented in article 1 of the CEDAW⁴¹¹. One possible reason for China to not have incorporated the definition of discrimination in its legal system could be that if a definition is not officially in place it is more difficult to outline when an act of discrimination has occurred. This lack of a definition can therefore damage or hinder the de facto effect of the CEDAW in the Chinese system.

The Committee goes on to recommend that China cultivates a way to comprehend the necessity of "substantive equality and non-discrimination"⁴¹². This recommendation indicates that the Committee finds the equality levels in China to be below standards and that China does not currently even have the 'capacity' to understand what full equality means. This is arguably a setback for China and women's rights in China. According to the CEDAW Committee, China has also established special tribunals and courts dedicated to women's rights⁴¹³. The problem is that there is little or no legal remedies for women to secure justice, which entails that justice for women is not a given in China, especially not in the rural areas. Another relevant point of the Committee is that to its knowledge, the Convention has never been evoked in a

⁴¹⁰ Wan, 2007: 737

⁴¹¹ CEDAW Committee, 2006: 2-3

⁴¹² CEDAW Committee, 2006: 3

⁴¹³ CEDAW Committee, 2006: 3

Chinese court⁴¹⁴. This indicates that an inconsistency exists between the de jure implementation and the de facto implementation of the CEDAW in China. As such, the CEDAW has not been effective on all aspects as China is yet to implement such an aspect of women's rights as a definition of discrimination against women is, and that the de facto use of the CEDAW is non-existing. Further, one cannot be certain of the legislative effects of the CEDAW which have occurred after China ratified, as the reform of the law system had already begun prior to ratification as a planned link to the economic reform of China⁴¹⁵. As such, a direct causal relation between the CEDAW and China can be difficult to establish.

Criticism of Legislative Effects

The elements of women's rights which have been introduced into the Chinese system have also received some criticism. The Law on the Protection of Women's Rights and Interests, which was introduced and implemented in order to ban discrimination against women, may claim to want to prevent discrimination but it is not stated in the law what is perceived to be discrimination against women. According to the HRIC⁴¹⁶, this lack of a definition of discrimination and the lack of mechanisms within the law mean that it is unclear for Chinese women when and how they can invoke the laws encouraged by the CEDAW. This can be explained by means of constructivism, as the law leaves open for interpretation what exactly discrimination entails. If China was to define specifically what it viewed discrimination to be, it may receive criticism from the CEDAW Committee that it did not agree to the Chinese definition of discrimination. Further, the fact the definition is lacking after the CEDAW Committee recommended implementation of a definition⁴¹⁷ after China's Third and Fourth Periodic Report, also indicates that China may not be willing to implement such an essential element in its own legislation. One may argue that this could also be due to domestic reasons, as the Chinese civil society may not find it reasonable to define certain elements as discrimination even though they are considered discrimination by the international community. Avoiding providing a definition could therefore be China's way of avoiding domestic criticism and a possible decrease in popularity for the Chinese government. If one regards this as being true, it can, to a certain degree,

⁴¹⁴ CEDAW Committee, 2006: 3

⁴¹⁵ Wan, 2007

⁴¹⁶ HRIC, 2006: 4

⁴¹⁷ HRIC, 2006: 4

be explained by a realist approach, as China is managing its own national interest before those of the CEDAW.

Rural Women in China

Women in rural areas are also represented in the CEDAW which is relevant in regards to China. Article 14.2 of the Convention reads as follows that “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas [...]”⁴¹⁸. China has experienced a high level of urbanization in recent years, creating an increasing inequality between the urban and rural areas. Therefore, the women in rural areas are more at risk⁴¹⁹. In the 1980s, a reform meant that the provision of education was given to the local levels of government rather than the central government. The problem was that funding did not transfer with the change of provision of education, making the “lower levels of government, county and township, shoulder the biggest burden by providing 87 percent of public expenditure for education”⁴²⁰ and therefore more fees apply for people in rural areas. As a result of this transfer, more girls than boys are pulled out of schools resulting in the illiteracy rate in 2006 being 2.6 times higher for women in rural areas than men⁴²¹. Furthermore, in small villages in rural areas, 8.7 percent⁴²² do not receive schooling compared to 2.5⁴²³ percent of people in the city, and women in rural areas are therefore at a disproportionate disadvantage. This transfer of provision of education has entailed that China indirectly violates its own Education Law, as well as article 10 of the CEDAW which states that women have equal rights with men to education⁴²⁴. Furthermore, Chinese rural women have another unfortunate distinction: they have exceptionally high levels of suicides. When viewing all deaths in China between the ages of 15-34, 30 percent is suicides⁴²⁵. For women especially this is alarming, as women’s suicide rates in China are 25 percent higher than men’s⁴²⁶. Rural people have a suicide level three times higher than in the urban areas⁴²⁷. The HRIC connects

⁴¹⁸ CEDAW, 1979: article 14.2

⁴¹⁹ HRIC, 2006: 14

⁴²⁰ HRIC, 2006: 15

⁴²¹ HRIC, 2006: 15

⁴²² HRIC, 2006: 15

⁴²³ HRIC, 2006: 15

⁴²⁴ CEDAW, 1979: article 10

⁴²⁵ HRIC, 2006: 16

⁴²⁶ HRIC, 2006: 16

⁴²⁷ HRIC, 2006: 16

the high level of suicides among rural women with their lower education, economic and social status mixed with the effects of domestic violence⁴²⁸. The CEDAW committee advised China in its remarks to China's Third and Fourth Periodic Report to cope with the high female suicide rates in general and report back in its next report⁴²⁹. As a result, one may argue this indicates that the rural women of China are an exposed group.

China does have a number of laws aiming at protecting rural women. These laws include 'The Rural Land Contracting Law' and the 'Law on the Protection of Women's Rights and Interest'. These laws state that women are equal to men to contract, own and use land. Nonetheless, most deeds to land ownership belong to men, and rural women comprise over 70 percent of landless people in rural areas⁴³⁰. One may therefore argue that again the Chinese implementation is on a de jure level and lacking in de facto women's rights. It is therefore apparent that China has problems enforcing the provisions implemented in accordance to the CEDAW when it comes to rural women. As such, China is not enforcing article 14.2⁴³¹ relating to rural women and until it does, the high suicide rates among rural women will probably not decrease.

Human Trafficking

According to the HRIC, China has been ranked high as a country of origin by The United Nations Office of Drugs and Crimes. That is, China has been ranked 'very high' as an origin country for both crime and drugs and 'high' as a country of destination for drugs and crimes⁴³². Especially women and girls have been classified as victims of forced labor and exploitation of a sexual character in regards to human trafficking. In China, it is especially the domestic trafficking which is of a serious nature, as it is believed that around 90 percent of the trafficking in China is rural-urban. That is, the main trafficking in women and girls is from the rural areas into urban areas. The reason, HRIC states in its shadow report, is that rural women and girls are already in a detrimental situation due to their poor education, poor health,

⁴²⁸ HRIC, 2006: 16

⁴²⁹ HRIC, 2006: 15

⁴³⁰ HRIC, 2006: 14-15

⁴³¹ CEDAW, 1976: 14.2

⁴³² HRIC, 2006: 5

and poor employment chances. Rural females may therefore more easily be tricked into trafficking rather than by actual violent force. The mistreatment can be of forced labor, serving as brides or exposed to sexual abuse⁴³³. Further, as with the other case studies presented, the U.S. Department of State has placed China on its ‘tier’ ranking, as a Tier 2WL (Watchlist), as China is not in full compliance with the minimum standards set up by the Trafficking Victims Protection Act (TVPA). The ranking as tier 2 on their watch list is also based on whether a state has a high number of trafficking victims or whether there has been a great increase in the number. Further, it is based on whether the state has been able to produce evidence of the measures taken to handle trafficking in the previous year, and whether the state is resolved to be in full compliance with the Act based on the willingness to take further steps in the period over the following year to meet the standards of the Act⁴³⁴.

According to article 6 of the CEDAW: “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women [...]”⁴³⁵. According to the HRIC, China has not introduced satisfactory means to handle this high trafficking of women due to a lack of implementation of policies, legislative definitions and information distribution to the Chinese people and HRIC therefore does not find that China is in compliance with article 6 of the CEDAW⁴³⁶.

China has also been criticized for having a too narrow approach to the trafficking of women, as China, according to the HRIC, mainly refers to the exploitation of women by means of prostitution, excluding different kinds of exploitation such as domestic slavery, arranged marriages, and sex tourism⁴³⁷. China claims in its Fifth and Sixth Periodic Report to have addressed the issues of trafficking women by distributing ‘the Opinions on Issues Relating to Applicable Laws and Policies in the Suppression of Abducting and Trafficking in Women and Children’⁴³⁸. Furthermore, the Ministry of Public Security in China has supported the local authorities in their making of local legislation against trafficking of women in order to design the system in a way that

⁴³³ HRIC, 2006: 16

⁴³⁴ US Department of State, 2011

⁴³⁵ CEDAW, 1979: article 6

⁴³⁶ HRIC, 2006: 5-6

⁴³⁷ HRIC, 2006: 5-6

⁴³⁸ China Fifth And Sixth Periodic Report, 2004: 18

fits the reality of the rural areas. China also states that it has polished regulations at an administrative level and enhanced law enforcement on the area of prostitution and trafficking of women⁴³⁹. The CEDAW Committee however states in its remarks to the report that although they recognize that China has taken steps to deal with trafficking of women domestically and internationally, the committee is concerned that the Chinese penal code is limited to the exploitation through prostitution and does not define any other exploitations. Therefore the CEDAW Committee has expressed that the Chinese handling of trafficking and prostitution is not up to international standards. Also, the Committee states that with China's stronger enforcement on the issue prostitutes have been put at a disproportionately disadvantageous situation instead of targeting the persecution of traffickers and pimps⁴⁴⁰. One may argue that as China has taken steps to address the issues of human trafficking and prostitution, it is attempting to enforce rights for women, which is arguably a sign that China tries to extend equal rights to all. However, as the Committee mentions, the fact that the attempts by China to implement the CEDAW are seemingly not benefitting the right groups, one may argue that even as China is attempting to implement the CEDAW it is not fully effective. It is, however, a good sign that China is attempting to introduce the legislative tools to address the issue, as the time may come when it is effective on a civil level. The Committee also expresses concerns that prostitutes are being held in detention 'without due process of law'⁴⁴¹. In such a case, it is a clear violation of human rights and the specific rights of women.

Lack of Data

An overall comment from both the HRIC and the CEDAW Committee is that thorough data is missing from the Chinese reports. E.g. in regards to the area of trafficking, the Committee complains that there is little statistical data especially concerning trafficking within China, general data on violence against women, and sex-disaggregated statistics over rural women⁴⁴². In 1992, the Committee's General Recommendation No. 19 stated that states were to include statistical data in their country reports to the Committee⁴⁴³. As such, China has had time to gather the data

⁴³⁹ China Fifth And Sixth Periodic Report, 2004

⁴⁴⁰ CEDAW Committee, 2006: 4

⁴⁴¹ CEDAW Committee, 2006: 4

⁴⁴² CEDAW Committee, 2006: 5-7

⁴⁴³ UN CEDAW, n/d

and include it in the report but has not done so. One may argue that the lack of statistical data could be due to the size of China and its large population, which makes the data difficult to track. However, as was presented previously, the Chinese Government has, in regards to education, transferred areas of responsibility to the Chinese local authorities. If the same was initiated in regards to the gathering of data, it might be easier to track, e.g. violence against women, rapes, etc. Furthermore, the fact that China has not included the data could also indicate that China has chosen not to provide the information. Realists would argue that China does not want to disclose information that may shed a bad light on the state if the data shows poor development, as this would go against the interests of the state. It could also be an indication that the CEDAW is not effective in China would arguably show the data of it showed a positive development, in order to receive good standing in regards to the CEDAW and UN.

Family Relations: One child and Family Planning policy

In the 1970s, China started to implement its family planning policies in order to control the rapidly growing Chinese population. Therefore, in 1979 the one-child policy was introduced to further specify the Chinese family planning policies and it specified that it was only allowed to have one child per woman or couple with few exceptions⁴⁴⁴. Despite the enforcement beginning in 1979, the idea however goes back to the 1960s in the wake of the great famine mainly due to the rapidly increasing Chinese population, which occurred under Mao⁴⁴⁵. Expanding on the policy, the Law on Population and Family Planning from 2002 arranged the legislative basis for this approach. Zhang Weiqing, Director of the National Population and Family Planning Commission, however states that this family planning law cannot be termed as one-child-policy as the law only restricts 40 percent of the Chinese population from having only one child⁴⁴⁶. Article 18 of the Population and Family Planning Law states that the one-child policy is only an encouragement and not a law, however, it has been proven that cases of forced sterilization and abortion continue to occur⁴⁴⁷. One may argue that this goes against the CEDAW article 16 (e) as this states that:

⁴⁴⁴ Incorporating Responsibility, 2011

⁴⁴⁵ Fitzpatrick, 2009

⁴⁴⁶ Incorporating Responsibility, 2011

⁴⁴⁷ Incorporating Responsibility, 2011

“The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights”⁴⁴⁸.

By ‘forcing’ women and couples to have only one child either by making them follow the one child policy campaign or by actual forced abortion or sterilization, the Chinese government is in violation of the CEDAW. The one-child-policy has arguably increased discrimination of women as gender selective abortions and infanticide have known to occur⁴⁴⁹. Furthermore, the consequences for the Chinese Population is an increased difference in birth ratios as there are 113 males born for every 100 females arguably due to a cultural preference to have sons, where the natural birth ration would be 105 males for every 100 females⁴⁵⁰. The consequence of the one-child policy is therefore that people are choosing males over females, and as such discriminates towards women. This cultural preference to have a son has also caused many families to choose not to register the birth of a girl, as they want to try again and have a son, and by not registering the birth of a girl, they save the ratio for the arrival of a son⁴⁵¹. This entails that many girls and women live ‘under the radar’, hindering them from receiving proper health care, education, social benefits, and so on⁴⁵². This fact also entails that women and girls are in a situation where they cannot obtain different elements of their entitled rights. E.g. article 10 of the CEDAW says that states must *“take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education, and in particular, on the basis of equality of men and women[...]”*⁴⁵³. Seeing as unregistered girls and women do not have the opportunity to get an education on equal terms with boys and men, the one-child policy damages the rights of women in China and as such the effectiveness of the CEDAW. Further, the Minister of the State Commission of Population and Family Planning, Zhang Weiqing, has stated that there are no plans to lessen the strictness of the one- child policy in the future⁴⁵⁴. On the other hand, it is worth noting that in the last few years, China has increased the level

⁴⁴⁸ CEDAW, 1979: article 16, paragraph e.

⁴⁴⁹ Rosenberg, 2012

⁴⁵⁰ Rosenberg, 2012

⁴⁵¹ Incorporating Responsibility, 2008

⁴⁵² Incorporating Responsibility, 2008

⁴⁵³ CEDAW, 1979: article 10

⁴⁵⁴ Rosenberg, 2012

of education and support on the matter of alternative birth control for all⁴⁵⁵. One may argue that this is a means to ensure that no extreme measures are taken to end a pregnancy. It is also stated that a third of the people working in China's family planning system do not have the necessary medical qualifications, which does not comply with the CEDAW article 11.1(f), which states that the state should ensure that women have: "[t]he right to protection of health[...]"⁴⁵⁶. This arguably makes the situation more dangerous for the women who are in need of an abortion, e.g. in relation to the one-child policy.

This means that a current grand scale Chinese policy is in direct opposition to the rights listed in the CEDAW. As a result, the CEDAW has not been effective in this area in China. On the basis of a realist approach, the notion that China is not willing to eliminate its one-child-policy can be explained by the idea that the state could once again have problems controlling the numbers of its population. If it was to remove the one-child-policy, it could end up with the same hunger and distress as it did after the great increase in population under Mao⁴⁵⁷, which would go against the self-interest of China and would compromise its state survival.

It is further interesting to note that the one-child-policy was introduced in 1979⁴⁵⁸, the same year the CEDAW was created. As mentioned previously, China signed and ratified the CEDAW in 1980, just a few months apart, only a year after the one-child-policy was introduced in China. The notion that the two elements were created and started around the same time is interesting, as it indicates that China implemented and enforced its one child policy at the same time as it ratified the Convention, supposedly agreeing to the CEDAW, even though the one-child policy is a conflicting notion to the stipulations within the CEDAW. This indicates that China was aware of the conflicting notions but that the state may not have had intentions of fully complying with the CEDAW, and as such, did not respect the Convention. This can be explained by realism, as China could have done this to improve its international standing by ratifying the CEDAW without giving up power by e.g. removing its one-child policy, as states, according to realism, always are in pursuit of power. China also began

⁴⁵⁵ Rosenberg, 2012

⁴⁵⁶ CEDAW, 1979: article 11, paragraph 1.f

⁴⁵⁷ Fitzpatrick, 2009

⁴⁵⁸ Fitzpatrick, 2009

opening up to the international community in 1978⁴⁵⁹, which can also explain why China decided to ratify the CEDAW despite the fact that it knew that it had just introduced a new policy which would go against the principles of the CEDAW. Further, the one-child-policy can be explained by realism, as a way to control the growing masses. That is, the expenses of a quickly growing population like China could be high and could create a disadvantageous situation for the entire Chinese people. Realism would therefore explain this one-child-policy as “sometimes it is kind to be cruel⁴⁶⁰”, as the policy is a way to ensure the future of China.

This means that today China does not fulfill what can be argued to be a key issue within the CEDAW. The fact that China is not planning on altering their one-child policy to possibly change the cultural son-preference also indicates that China is not willing to sacrifice self-interest in order to fulfill the CEDAW.

Gender Roles and Stereotypes

The notion of stereotypes may undermine the way women’s rights are viewed and attribute certain responsibilities to the female gender. The CEDAW Committee has expressed concern that not enough has been done by China to deal with the stereotypes and gender roles related to women both within the public sphere and the private sphere of families. The problems mentioned by the Committee is, amongst other, the before mentioned cultural preference to have a son rather than a daughter as this leads to, among other things, sex-selective abortions⁴⁶¹. One may argue that this cultural preference can be based on the idea that the son will get a job and be able to provide for the parents when they reach old age, whereas the daughter will have to be married away and take care of her husband, who will provide for her. This preference indicates that stereotypes remain as to whether a woman should have a job and take care of herself. In its report, China states that it puts great emphasis on the media in changing these stereotypical roles and that China has therefore introduced new regulations and laws⁴⁶² and have amongst other things made “content of a sexually discriminatory nature⁴⁶³” forbidden in advertisements⁴⁶⁴. China goes on to state that

⁴⁵⁹ Wan, 2007: 738

⁴⁶⁰ Desch as quoted in Dunnes & Schmidt, 2008

⁴⁶¹ CEDAW Committee, 2006: 4

⁴⁶² China CEDAW report, 2004: 15

⁴⁶³ China CEDAW report, 2004: 15

as it used to be a feudal society, changing how men and women behave in different settings and eliminating the ideas on which a lot of gender discrimination is based on, can and will be difficult and take a great deal of time⁴⁶⁵. By stating this, one may argue that China is indirectly excusing why it has not fully implemented and enforced the CEDAW, indicating that the CEDAW may not be effective in China. However, one may argue that takes time to change the way a people think and how they view each other. Therefore, China could be viewed as wanting to change this and fully implement this aspect of the CEDAW, but that China needs time to change the people's perception. Article 5(a) of the CEDAW does however state that neither of the genders should be inferior or superior and that no stereotypes must be forced upon the genders.

China towards International Standards

Wan argues that the Chinese move towards the international rights law system could be seen as only a byproduct of the economic reform started in 1978 by Chinese leader Deng Xiaoping and China opening up to the international society, as Chinese leaders stated that "China had fallen behind in the world"⁴⁶⁶. Also China needed an economic reform after the Cultural Revolution had left China economically unstable⁴⁶⁷.

Some motives as to why China has introduced these domestic laws of human rights is also that human rights has and is becoming a quickly increasing part of international affairs and China can therefore not escape having to address the rights issue. Further, it would be problematic for China to refuse human rights, as it is a permanent member of the UN Security Council⁴⁶⁸. As such, if China does not keep up to date with the convention of the UN, it is not keeping up to date with the values of the UN, endangering its own position. Therefore, one may argue that the idea that if China was to not ratify the CEDAW, it would go against the values of the CEDAW and could endanger the interests of China in different areas, as the other members of the security council may then find the non-ratification to be 'bad behavior'. This can be explained on the basis of realism, as China has ratified the CEDAW as a means to not

⁴⁶⁴ China CEDAW report, 2004: 15

⁴⁶⁵ China CEDAW Report, 2004: 17

⁴⁶⁶ Wan, 2007: 738

⁴⁶⁷ Wan, 2007, 738-39

⁴⁶⁸ Wan, 2007: 739-40

lose national interest and the CEDAW therefore becomes a matter of limited sacrifice. If this is in fact the approach chosen, it would entail that China was not interested in the notion of women's rights when joining the CEDAW but that it rather viewed the Convention as something to be quickly ratified and with little sacrifice when it came to implementing it.

According to Andrew Fagan⁴⁶⁹, China has 'some equality measures in place' for women. The problem is, however, that these measures are not effectually enforced. One may argue that the equality measures Fagan refers to could be those of the CEDAW. As such, Fagan insinuates that the CEDAW measures have been implemented by China but not enforced, effectively making the measures irrelevant. That is, the official measures have been implemented as the CEDAW states, but if China is not following up on them, the measures arguably will have little success. On the basis of this, one may again contemplate whether China is doing it to obtain national interests in form of e.g. good standing in the international arena. One may however also argue that the fact that China has put some of these measures into place is the first step in the right direction to enforce the equality measures in the future indicating that, in time, the CEDAW may prove to be more effective in China.

In this section, the case study of China has been analyzed. This has been done by examining the main three aspect of domestic violence, trafficking and family relations. It has been found that China has taken some measures to address the domestic violence problem, however, it seems an actual act on domestic violence, as the ones implemented in the other case studies, has not been considered as it has simply been put into the Marriage law. In regards to trafficking, it has been established that this is a large problem for China to handle as it does not have the adequate standards in place according to, e.g. the tier ranking. In regards to family relations, especially China's one-child policy has been discussed, as it discriminates against women's rights to choose the number of children to have and is an issue as it furthers the discriminatory son preference in China. The matter of legislative effects has also been examined, and it can be stated that it seems China has ensured high de jure equality, however, the problem lies within the enforcement of these provisions

⁴⁶⁹ Fagan, 2010: 74

implemented. As an overall conclusion, realism can be claimed to be the theory which have explained China's overall actions the best, and has therefore been the most useful tool in this part of the analysis.

Case Study of the USA

The USA is the only western democracy not to have ratified the CEDAW, and the motives behind the lack of ratification will be examined in order to measure the non-ratification of the USA against the ratification of France, India and China.

In order to analyze the USA it is important to establish the role of the USA in international relations as well as in the creation of the CEDAW. Furthermore, since the USA signed the treaty in 1980, it will be relevant to examine what has happened in the USA since. Looking at each presidency since Jimmy Carter, who initially signed the Convention, will provide an insight into why the convention has not been ratified and if attempts have been made at ratification.

Furthermore, in order to analyze the USA as a comparative study to the other cases, focus will also be put on the topics of domestic violence and human trafficking.

The United States and the UN

The USA is known as one of the most influential states, within the UN, if not *the* most influential. With a population size of over 316,000,000 people⁴⁷⁰, it is the third largest state by population size⁴⁷¹. It is a permanent member of the UN Security Council and thus holds veto power when the Council is voting on issues⁴⁷². With the ability to veto suggestions, the USA, along with the other four permanent members of the Security Council, is ensured the ability to guide the UN in the direction closest to that of the national interest of the state. The national interest of the state can differ depending on who is in charge, and is defined as interests of a nation, which are different from those of other nations⁴⁷³. Working towards national interests with no, or little, concern for the interests of other states and groups is in accordance with the realist approach of maintaining sovereignty and ensuring national gain above all, as realism has been shown to be all about the power of the state and maintaining or increasing said power. With its position in the Security Council, and also its influence in the general assembly, the USA has managed to have a say in many issues within the UN, including the formation of conventions, agreements and other major initiatives⁴⁷⁴.

⁴⁷⁰ The World Factbook1, 2013

⁴⁷¹ The World Factbook2, 2013

⁴⁷² United Nations Security Council, n/d

⁴⁷³ Merriam Websters Dictionary, n/d: national interest

⁴⁷⁴ Malone, 2003: 73-74+ 81-82

One such initiative is the International Women's Year (1975), which President Richard Nixon was a great supporter of. This became evident, when he called for the U.S. Government to commemorate the year in all aspects possible⁴⁷⁵. Through this, Nixon was referring to Congress, local and federal officials, organizations, interest groups and the citizens of the USA doing everything possible to spread the knowledge of 1975 being International Women's Year. This should be done through:

*"[P]ractical and constructive measures for the advancement of the status of women, and also to cooperate with the activities and observances to be arranged under the auspices of the United Nations"*⁴⁷⁶.

By making this proclamation, Nixon showed support for women's rights and received much accolade throughout the international society for his determination⁴⁷⁷. His determination to have the International Women's Year commemorated showed the world and the USA that Nixon had an interest in women's rights and the deficiencies, which were present at the time of his presidency. The UN established International Women's Year in order to highlight the deficiencies in women's rights worldwide, and the presence of the US in commemorating this year had a positive effect on the involvement of other states, as a ripple effect initiated by the USA saw many other states participate in International Women's Year⁴⁷⁸. This effect of the USA showing interest and support for issues may prove to be important in the debate on the ratification of the CEDAW, as the power of the USA internationally may be of importance for the advancement of women's rights. The involvement of Nixon in women's rights may have other motives than simply improving the rights of women. When Nixon ran for election in 1968, one of the areas he showed support for was the 'Equal Rights Amendment'. However, when he was elected he did little to further the cause and was called out by feminists⁴⁷⁹, and it is arguable that the push from Nixon to have the International Women's Year commemorated was a means of showing continued support for women's rights without having the 'Equal Rights Amendment' ratified. Despite not having the 'Equal Rights Amendment' ratified, Nixon did make improvements to women's situation within the USA, as he increased the number of

⁴⁷⁵ Baldez, 2013

⁴⁷⁶ Nixon, 1974

⁴⁷⁷ Baldez, 2013

⁴⁷⁸ Baldez, 2013

⁴⁷⁹ PBS, 2010

women who had seats in his administration; and he asked the Justice Department to include in the Civil Rights Code lawsuits for discrimination based on gender, amongst other things⁴⁸⁰.

Another initiative where the USA has had an influence on the developments within the UN is in regards to the formation of the CEDAW, as President Nixon sent Patricia Hutar to represent the USA in the CSW⁴⁸¹. Hutar, who had a passion for the empowerment of women's political and economic rights, had been involved with the Republican Party since she was young⁴⁸². Hutar, increased her influence from the CSW to also have an important role in the initial process of creating the CEDAW⁴⁸³. As such the influence of the USA in drafting the CEDAW was initiated, and it was further increased by President Gerald Ford towards the end of his term as president, as he sent a delegation of accomplished women from both the Democratic and Republican parties to Geneva in order to help produce the initial draft of the CEDAW⁴⁸⁴. As such the USA has been able to ensure that the articles within the CEDAW are in accordance with American ideas and hence should arguably be able to support the CEDAW. It is also important to note that Nixon and Ford, both being republican, worked towards the protection of women's rights, and in Ford's case by including democrat women in the process as well⁴⁸⁵.

With the influence of the USA, some may argue that the CEDAW 'caters' to the more western ideals and values, and as such should not have the support of the non-democratic states within the UN. However, looking at the ratifications of the CEDAW such premonitions have been put to shame, as the CEDAW has been ratified by states considered non-democratic, such as China and Afghanistan⁴⁸⁶. One reason for the diversity in state participants could be the broadness of the Convention as has been explained earlier in the section on the CEDAW. Another reason has been attributed to the hard work of Hutar, as she was instrumental in persuading the communist states within the UN to support the Convention, as she negotiated with these states in order

⁴⁸⁰ PBS, 2010

⁴⁸¹ PennState University Libraries, 2013

⁴⁸² Jensen, 2010

⁴⁸³ Baldez, 2013

⁴⁸⁴ Baldez, 2013

⁴⁸⁵ Baldez, 2013

⁴⁸⁶ UN Treaty Collection, 2013

to have them approve the text of the CEDAW. Her hard work in negotiating with other states and discussing the importance of the CEDAW led the way for the Convention to be adopted by the UN in 1979 and opened for signature and ratification in 1980⁴⁸⁷. Hutars diligent work is arguably a sign of the support towards women's rights and non-discrimination by the USA in the initial process of creating the CEDAW. With one of the superpowers of the time and the largest western democracy behind the Convention, it is likely that other states followed suit as the notion of the USA being behind the Convention and supporting its message created a notion of legitimacy towards women's rights.

With the adoption of the CEDAW in 1980, it was left up to President Jimmy Carter to sign and ratify the Convention on behalf of the USA. Carter signed the treaty on July 17, 1980, approximately 3 months after it was opened for signing⁴⁸⁸. With the signature, the USA took a further step towards adopting the Convention and proving its involvement and dedication to women's rights and also the international community. This can be explained by liberalism and its ideas of standing together to protect the rights of the people through international cooperation. However, the process of ratifying the Convention was not as simple and as such, the progress stalled after signature. The process of ratification should be sent to the Senate Foreign Relations Committee (SFRC) by the president, and the SFRC must approve of the Convention and send it to a vote at the full senate. The SFRC consists of 18 members divided into one chairman, one ranking member, nine members from the majority party (currently democratic), and seven members from the minority party (currently republican). These members have the tasks of debating, reporting and considering treaties and conventions, as well as overseeing the nominations of diplomats for high-ranking positions within the U.S. Government. Throughout history, the SFRC has overseen many important events such as the establishment of the UN in 1945⁴⁸⁹. At the SFRC, the Convention is discussed in detail and analyzed in order to determine the value of the Convention to the USA, and in order to be able to provide the full Senate with recommendations for possible reservations to articles within the Convention. When the SFRC has analyzed the Convention and settled on possible

⁴⁸⁷ Baldez, 2013

⁴⁸⁸ UN Treaty Collection, 2013

⁴⁸⁹ United States Senate Committee on Foreign Relations, 2013

reservations, the Convention is sent to the full Senate for a vote, as a majority of the Senate must be in favor of the Convention in order for it to be ratified. The necessary majority in favor of the Convention must be two thirds of the senate (67 senators out of 100) or more in order for the Convention to be approved for ratification⁴⁹⁰.

Throughout this process the State Department, Senate and the SFRC must ensure that the Convention lives up to all state laws, as it must not go against national law. In order to ensure that the CEDAW is in accordance with national law, the State Department provides legal analysis of the Convention⁴⁹¹. A discrepancy between the CEDAW and national law can cause issues in the international society, as the challenges of arguing which rules and laws to follow may lead to more problems than necessary. When the Convention has been through the process of the SFRC and has been voted on favorably by two thirds of the senate, reservations will be implemented which are to accompany the ratification of the Convention. The Convention is then sent back to the President who will submit it to the UN, and the USA will be considered a ratifying party to the Convention. This means, that the USA will be required to live up to the stipulations within the CEDAW and must abide by the rules of submitting reports and providing information of national progress on an equal footing with other participating states⁴⁹².

Presidents Carter, Reagan and Bush Sr.

During the Presidency of Carter the process of ratifying the CEDAW was approved by the SFRC and sent to the full senate for a vote, however, the Senate never got to vote on the ratification of the Convention and the proposal was benched⁴⁹³. Carter sent the CEDAW to the SFRC in November 1980, for evaluation. However, as Carter lost his reelection he left office in January, 1981⁴⁹⁴, which means that the SFRC did not have enough time to have the CEDAW pass the necessary departments for analysis before a new Senate was elected and hence also a new SFRC.

When Carter did not get reelected for a second term it was up to President Ronald Reagan to continue the focus on women's rights, however, Reagan paid little attention to the importance of the CEDAW and did not send it to the SFRC for consideration.

⁴⁹⁰ Human Rights Watch: Student Task Force, n/d

⁴⁹¹ Feminist Majority Foundation, 2013

⁴⁹² Human Rights Watch: Student Task Force, n/d

⁴⁹³ Human Rights Watch, 2009

⁴⁹⁴ The White House, 2013

After Reagan, it was up to President George Bush Sr. to champion women's rights and the ratification of the CEDAW, but he, like Reagan, never had the Convention ratified⁴⁹⁵. It was not until the presidency of Bill Clinton that the SFRC once again voted on the Convention with a favorable outcome of 13 to 5 for the ratification of the CEDAW. However, despite the favorable outcome from the SFRC the Convention was never sent to the full Senate for a vote, and thus was not ratified. Under President George Bush Jr. the Convention was once again sent to the SFRC, and once again it received a vote in favor of ratification. However, the CEDAW was not sent to the full Senate for ratification⁴⁹⁶. What is interesting to examine in regards to the historical development of the process of approving and ratifying the CEDAW is that the ideological background of presidents who have sent the CEDAW to the SFRC for consideration is both democratic and republican. This shows bilateral support for the Convention and should indicate a willingness to ratify the Convention within Congress and more specifically the Senate.

Presidents Clinton and Bush Jr.

During Clinton's presidency, senators took action in attempting to have the attention put on the CEDAW, by joining together and asking Clinton to start the necessary actions in order to have the Convention ratified. This resulted in the State Department, after a while, releasing the CEDAW with four reservations, three understandings and two declarations, making Clinton's term the one with the most progress in ratifying the CEDAW. However, the release of the CEDAW, including reservations, being at the end of the congressional term, ended up being a hindrance to the progress, as several republican senators utilized their right to filibuster. The senatorial filibuster stalled the ratification and eventually led to the opportunity to ratify go by, due to changes in senate⁴⁹⁷. Later in Clinton's presidency, after having had the CEDAW for consideration without any results, a shift in development happened due to the Chair of the SFRC, Republican Jesse Helms. Helms made a statement on the Senate floor where he publicly stated his opposition to a hearing on the CEDAW as well as ratification⁴⁹⁸. A reason behind Helms' unwillingness to ratify the CEDAW, including holding hearings on the matter, can be found in a quote by Helms, which re

“negotiated by radical feminists with the intent of enshrining their radical anti-family

⁴⁹⁵ Feminist Majority Foundation, 2013

⁴⁹⁶ CEDAW 2013, 2013

⁴⁹⁷ Feminist Majority Foundation, 2013

⁴⁹⁸ Feminist Majority Foundation, 2013

agenda into international law”⁴⁹⁹. The use of the term ‘radical feminists’ is an indicator of Helms fearing that the CEDAW is being used as a tool for women to assert their power. If this really was the case for Helms, it could indicate a sexist tendency by the SFRC Chair, as he is then projecting the attitude of women being wanting to change the family dynamics of the USA. As such, the CEDAW did not get ratified under Clinton arguably due to changes in senators and lack of support, first from republican senators, later from the chair of the SFRC.

The CEDAW was once again sent to the SFRC under the presidency of Bush Jr., who never took a formal stance on the topic of the CEDAW. However, the State Department did make a statement saying that the CEDAW was generally desirable and should be ratified. Unfortunately, ratification never happened, in part due to time restraints⁵⁰⁰. The lack of stance from the Government under the presidency of Bush Jr. may also be a result of the events, which occurred after September 11, 2001. These events arguably led to the Government and citizens of the USA having other issues to deal with, possibly resulting in less pressure from interest groups and senators in the pursuit of ratifying the CEDAW. With pressure decreasing from interest groups, and with a brewing war on terror, the Government and the President may have considered the ratification of the CEDAW a low priority. Furthermore, it is interesting to remember that the resistance towards ratification, during the presidency of Clinton was primarily republican, and with Bush Jr. being a republican, the willingness to ratify the CEDAW may have been due to party position as well. Hence, Bush Jr. may have sensed a lack of party support for ratification, leading to the CEDAW being mostly left untouched during his presidency. As such, the USA is managing its national interest before the interests of the international community, which can be explained by realisms focus on national sovereignty and maintaining power.

President Obama

The presidency is now in democratic hands once again, with the Obama/Biden administration, and attention could once again be put on the ratification of the CEDAW. According to the Obama administration, the ratification of the CEDAW has been identified as being one of a few international treaties, which holds priority

⁴⁹⁹ Sommers, 2010

⁵⁰⁰ Feminist Majority Foundation, 2013

within the Senate⁵⁰¹. However, as with Clinton, Obama may see difficulties in having the CEDAW ratified, as he, throughout his first term, had difficulties getting anything through Congress due to Republican resistance. In his book ‘Do not ask what good we do’, Robert Draper discussed events and meetings within the Republican Party immediately after Obama won his first election and took office. What transpired was a meeting between several top Republicans, amongst other, Newt Gingrich, Eric Cantor, Paul Ryan, Jim DeMint and Bob Corker, who, at this meeting, decided to do whatever possible to block Obama and the Democratic Party’s direction and progress, in order to ensure that Obama would not be re-elected⁵⁰². By going after ‘weak’ Democrats in the media, and by standing united in blocking Obama’s economic policies the Republican Congress members have been successful in ensuring that Obama and his administration have not had great success in creating new policies⁵⁰³.. By blocking Obama’s every suggestion, without much analysis of its content, the republican representatives are acting according to own interest and not according to the liberal idea of the “the greatest happiness of the greatest number”⁵⁰⁴. As such it could also be estimated that if Obama was to attempt the ratification of the CEDAW during his first term, Republicans would have blocked it in order to not have Obama gain votes and sympathy by a large group of voters – women. However, Obama was re-elected for a second term and one may argue that the Republican Party would ease up on the blocking of Obamas initiatives, however, recently Republican Senator, Pat Toomey, publicly stated that members of his party had voted against the recently discussed expansion on background checks on gun owners, due to the fact that they did not want to seem supportive of Obama⁵⁰⁵. Now, it could be argued that gun control and women’s rights are not comparable, but, in this case, it is not as much the issues which are relevant but the thoughts behind how Congress people vote, and in particular how Senators vote, as they are the ones who are ultimately left to decide on the ratification of the CEDAW. As such, with the Senate as of May 2, 2013, comprising of 53 Democrats, 2 Independents, and 45 Republicans⁵⁰⁶, the task of ratifying the CEDAW must include support from members of all parties. As previous presidents have attempted to have the CEDAW ratified, it has been shown that it is

⁵⁰¹ CEDAW 2013b, 2013

⁵⁰² Draper, 2012: xix

⁵⁰³ Draper, 2013: xix

⁵⁰⁴ Bentham, as quoted in Jackson and Sorensen, 2010:96

⁵⁰⁵ Terkel, 2013

⁵⁰⁶ United States Senate, 2013

mostly the more conservative politicians who are against ratification. Hence, if Obama is to have the CEDAW ratified during his presidency, he must have support from some of the republican senators who currently seem to be sticking to party politics.

Like Obama, the attempts by Clinton to have the CEDAW ratified were complicated by the resistance of several republicans, including the SFRC Chair Jesse Helms. Republicans are known to be quite conservative compared to democrats, and along with some of the conservative groups within the American society, they have found parts of the CEDAW to be against the interests of American women.

Some of the reasons given by conservative groups to why the USA should not ratify the CEDAW include a fear of the USA losing sovereignty due to the presence of the CEDAW Committee and the progress reports, which will be available to all states⁵⁰⁷. The fear is that the CEDAW Committee will act as an intrusion to state sovereignty, as some groups believe the Committee to have more power and influence on state behavior than is actually the case⁵⁰⁸. The Committee has no jurisdiction within the participating states and as such can only provide suggestions for state behavior. It is up to the state itself to act according to these suggestions. As such some groups, most often the more liberal groups, believe that the right wing groups use scare tactics to enhance the perception that ratifying the CEDAW is a negative development for the USA. One of the issues, which have been highlighted by right winged groups, is the idea that the USA is already doing a lot in order to advance women's rights globally. It is even believed that the USA has done more for women's rights than have the CEDAW⁵⁰⁹. Whether the USA has done more for women's rights than the CEDAW is debatable, as many variants must be taken into account in order to clearly make a statement on the matter. However, the USA does consider itself a global leader in human rights and the promotion thereof⁵¹⁰, and the signal it sends by not having ratified the CEDAW is not beneficial to the perception of the USA. This can be analyzed through the use of logic of consequentialism, as the actions of the USA have started to result in the outcome not being good, hence hurting the reputation of the

⁵⁰⁷ Martin & Sethi, 2013

⁵⁰⁸ Ramdas & Janus, 2011

⁵⁰⁹ Ramdas & Janus, 2011

⁵¹⁰ U.S. Department of state, 2013

state. This dichotomy between what the USA says and how it acts has not passed by President Obama unnoticed, as he in his Nobel acceptance speech said:

“[...] America cannot insist that others follow the rules of the road if we refuse to follow them ourselves. For when we don't, our action can appear arbitrary, and undercut the legitimacy of future intervention - no matter how justified⁵¹¹”.

What this shows is an understanding by Obama that actions must follow words, and as such the USA cannot ask other states to follow the CEDAW and respect women's rights by non-discrimination, if the USA is not doing so itself. Even if a state is guilty of extensive and horrendous violations of women's rights, the USA will not be able to act with as much authority if intervening as it has not shown the international society that it is seriously backing the rights of women through ratification of the CEDAW. If the CEDAW had been ratified by the USA, it could be used as a tool by the Government in protecting women's rights globally, and intervention would most likely be more effective and respected had the USA ratified. As such, though right-winged groups may consider the CEDAW to have little effect on women's rights, there is a belief that the USA could be more effective than it already is in protecting women's rights, if it ratified the CEDAW, as the legitimacy of its actions would be stronger.

Conservative Resistance

Conservative groups also have other issues with the CEDAW, as it is believed to clash with the conservative ideas of the right to life. As such conservative groups are worried that the CEDAW promotes abortion and demands states to legalize and make available the right to abortion for all women⁵¹². However, the State Department has stated that the CEDAW is “abortion neutral” and as such leaves it up to each state to determine its stance on abortion⁵¹³. There have been comments from the CEDAW Committee to issues of abortion in e.g. France, but it can be argued that such comments can be limited through reservations and declarations to any article, which could be construed as including abortion. Furthermore, when examining the proposed reservations and understandings, which the State Department and SFRC produced

⁵¹¹ Obama, 2010

⁵¹² Ramdas & Janus, 2011

⁵¹³ Amnesty International, 2005

during Clintons presidency, the concern over the legalization of abortion becomes even more irrelevant as Understanding number 4 states that “nothing in this Convention shall be construed to reflect or create any right to abortion and in no case should abortion be promoted as a method of family planning”⁵¹⁴. Hence, the concern of some, that the CEDAW may be construed to mean that abortion should be legal has been dealt with by the SFRC and the State Department and as such should not be used as an argument against ratification. Conservatives further criticize the CEDAW based on the fear that traditional American family values will be eradicated due to stipulations within the CEDAW⁵¹⁵. The fear is based on the idea that the current gender roles, which conservatives believe to be an essential part of current American society, are in danger of disappearing due to the articles within the CEDAW which states that men and women share equal responsibility within the home⁵¹⁶. The article most likely to be the topic of critique on family life is article 16, as it states that women and men should share equal rights within their families. Arguably this means, that they should share equal rights and responsibility of the children, during marriage and its dissolution as well as equal rights to choose an occupation and profession⁵¹⁷. What may be of the essence within this article, is that some Americans are quite religious and as such live their lives according to the Bible. Hence, some believe that the way of life should be protected and restored to its original state, as stipulated within the Bible. This entails going back to the more stereotypical gender roles of men earning the living and women taking care of the home⁵¹⁸. If the CEDAW is ratified by the USA these groups will have less of a chance of arguing for the way of life which is described in the Bible⁵¹⁹, as women and men may seek to change lifestyles to a more modern version, which is more equal and have women and men live the lifestyle they choose and want. This is what the CEDAW seeks to accomplish, as it does not condemn the religious way of life, but only maintains that women should have a choice and not be forced into a lifestyle, which they do not wish to live. It is not a matter of the Bible vs. the CEDAW, but some religious groups may view it that way due to the differences in opinion on lifestyles. With the CEDAW ratified, people can oppose religious views in a way, which provides a somewhat legal

⁵¹⁴ Library of Congress, 2002

⁵¹⁵ Ramdas & Janus, 2011

⁵¹⁶ Ramdas & Janus, 2011

⁵¹⁷ CEDAW, 1979

⁵¹⁸ Ramdas & Janus, 2011

⁵¹⁹ Ramdas & Janus, 2011

argument towards a modern lifestyle of equality between men and women. Meaning women in particular can use the articles within the CEDAW to argue their case of why they are entitled to live the life they choose.

It is not only the matter of abortion and family lifestyles, which has conservatives opposing the ratification of the CEDAW. Another argument is the view that the CEDAW has not changed the circumstances for women globally, and should hence not be expected to make a change for women in the USA if ratified. However, some changes have been attributed to the CEDAW, which was outlined in the chapters on India, France and China.

Furthermore, it is important to note that concerns by Conservatives, such as gender roles and family atmosphere, are constructed based on norms, values, culture, and at times economical background. This means that the definition, of for instance gender roles, is based off of how individual people view them, as a person growing up in a very liberal home may view gender roles very differently from a person who grew up in a strict conservative house. As such, the validity of the argument by the conservative groups falters, as they are the ones being inconsiderate of the fact that the way their world is constructed is different from the way others view the world⁵²⁰. Hence, the CEDAW may be considered a step towards women and men being able to live in a world and have a lifestyle, which is based on their construction. Within the CEDAW there is no article stating that religious lifestyles and ideas are limiting women's rights, and conservative and religious groups should therefore not be concerned with the CEDAW limiting their lifestyle. It is more likely that the CEDAW opens up to the possibility of women being able to live their lives according to their wishes and as such their construction, whether that being in a traditional religious home or in a liberal lifestyle. The idea of the CEDAW is to take away limitations to women's rights and not to dictate a lifestyle, as women may choose to live according to stereotypic views, but as long as they have chosen that lifestyle, and has not had it forced upon them, then they can live however they see fit.

⁵²⁰ Barnett, 2008: 168

It is not only the conservative-, religious-, and right winged groups, who have shown concern for the ratification of the CEDAW as some liberals, though not as many, have shown concern for aspects of the CEDAW. This concern has not resulted in less support for the ratification of the CEDAW, rather it is a concern, which has been aired, most likely, with the intention of putting focus on the importance of enforcement if ratifying. Amongst the liberal concerns is the fear that ratification of the CEDAW will lead to a satisfaction that ratification will make it seem as if all is well. As such, the fear is that the CEDAW will not be enforced to a degree where it helps promote the rights of women in the USA, as it instead will be swept under the carpet⁵²¹. This concern, of ratification leading to nothing else, seems valid if looking at the USA and women's rights through realist eyes, as ratification would then mean that the USA has opened itself up to the international community and the possibility of criticism without much national gain. What this means is that the USA will be ratifying a convention which seems to always look towards improvement, meaning, the USA will have a hard time being part of the CEDAW without getting recommendations and requests by the CEDAW Committee and possible criticism from other states. By burying the CEDAW after ratification and doing little to implement it, the cost for the USA would still seem small, which can be explained by the realist notion of limited sacrifice. However, this can be counter argued through liberalist arguments of the rights of individual liberties, which everyone should have. Liberals believe in the international realm being based on peace, tolerance, justice, and citizens possessing basic human rights. It is arguable that the CEDAW provides the means for people to have their rights be available while the state still remains self-determining. This means that the UN, through the CEDAW, provides women with the chance to possess basic human rights, whilst not dictating rules for them to live by. These aspects of the CEDAW should be of interest to the USA as it is known as a liberal democracy, and as such should value the protection of human rights, both nationally and internationally. Liberal democracies like the USA also realize that the citizens which it protects holds different loyalties, based on their perception of the world⁵²², and as such the USA should have an interest in ratifying, implementing and enforcing the CEDAW as it will help provide rights to its citizens, as well as provide the USA with benefits on the international arena, including improved legitimacy.

⁵²¹ Ramdas & Janus, 2011

⁵²² Linklater, 2008: 544

Women's Rights Issues in the USA

The general consensus is that democratic states are less likely to violate the rights of their citizens than are non-democratic states, and they are further more likely to promote the economic and social rights of their people⁵²³. By this definition, the USA should have fewer violations of women's rights than, say, China, as it is a communist state. This may very well be the case, but looking at some of the same topics as in the chapter on France, India and China, it may prove less obvious that the difference in violations is greatly visible. One disadvantage in the protection of women's rights is that the USA is currently dealing with the aftermath of the 'War on Terror', which the USA has not fully ended yet. Some argue that states, which are at war, are more likely to have human rights violations than states, which are not at war⁵²⁴. Therefore, in order to examine the current situation in the USA in relation to domestic violence and trafficking, the following two subsections will focus on these topics in order to be able to make somewhat of a comparison to France, India and China.

Domestic Violence

As in every other state in the world, domestic violence is also a problem in the USA, with an estimate of one in every four women having experienced domestic violence in her lifetime⁵²⁵. Though domestic violence can have both male and female victims, focus is most often put on the victimization of women, as they comprise 85% of domestic violence victims⁵²⁶. The statistics have changed for the better over time, and the occurrence of domestic violence is estimated to have fallen by 64% in the last decade⁵²⁷. However, these numbers are only explanatory of the evolution within violent crimes against women, as the number look different when looking at the rape statistics. Reportings of rape are uneven, and have differed over time. The Statistics Bureau within the USA has calculated the percentages of rapes reported to the police, by basing its victimization studies on interviews with American citizens on unreported and reported crimes of rape. Through these calculations, it has been found that in 1995, 29% of rapes were reported, whereas in 2003 that number had risen to

⁵²³ Schmitz & Sikkink, 2002: 517

⁵²⁴ Schmitz & Sikkink, 2002: 519

⁵²⁵ NCADV, 2007

⁵²⁶ NCADV, 2007

⁵²⁷ CBSNews, 2013

56% of rapes being reported. However, the progress did not continue, as in 2010 the percentage of rapes reported was at 35%⁵²⁸.

There is however another initiative which may have had an effect on the improvement of statistics within domestic violence – the Violence Against Women’s Act (VAWA). On March 3, 2013, President Obama reauthorized VAWA, which includes provisions for the advancement of rights of women⁵²⁹. VAWA is a national law within the USA, which covers aspects ranging from the treatment of women in the workplace to the severity of date rape compared to rape as it is generally known. Furthermore, the VAWA ensures women’s rights in case of abuse at the work place⁵³⁰. Other stipulations within the VAWA operate with many of the same provisions as the CEDAW. One such example is in regards to native women, who are prone to be victims of violent crimes more so than any other group within the USA⁵³¹. These women are protected in the CEDAW as well as VAWA as the rights to access justice have been highlighted as they sometimes have difficulties getting help from authorities. Furthermore, VAWA protects the rights of immigrant women, as these women often do not seek justice from crimes and violations out of fear of having their legal status within the USA examined. As such, VAWA has set out to make it easier for these women to seek justice in cases where they are violated⁵³².

Another group of women who have been included in VAWA are homosexual women, who, like immigrants, are less likely to seek justice after abuse due to the fear of prejudice. Therefore, the Government of the USA has included Lesbian, Gay, Bisexual, and Transgender (LGBT) people in VAWA as a means to ensure the equality of this group compared to everyone else⁵³³. Lastly, VAWA includes providing tools for law enforcement to counteract trafficking of women as it is seen as a great violation of women’s rights⁵³⁴. All of these groups are included in the CEDAW as well, through their own articles or mentioned in passing as is the case with LGBT people in the definition of discrimination which reads: “[...] irrespective of their marital status, on a basis of equality of men and women, of human rights and

⁵²⁸ CBSNews, 2013

⁵²⁹ The White House, 2013

⁵³⁰ The White House, 2013

⁵³¹ Tjaden & Thoennes, 2000: iv

⁵³² Finch, 2013

⁵³³ Finch, 2013

⁵³⁴ Finch, 2013

fundamental freedoms in the political, economic, social, cultural, civil or any other field⁵³⁵”. With the similarities between the CEDAW and VAWA it becomes evident that it is not the rights in themselves that make the USA hesitant to ratify the CEDAW, but rather other factors. This can be explained by the realist notion of managing national affairs first.

Some have suggested that the most damaging aspect of the CEDAW is that it goes against the Constitution of the USA. The fear is that constitutional changes must be made if ratifying the CEDAW, or that the CEDAW will simply triumph over the laws outlined in the Constitution, making it obsolete to some degree⁵³⁶. However, if examining the CEDAW closely, and the jurisdiction it has, it becomes less daunting to ratify if worried about the Constitution. This is because the CEDAW is not self-executing, and as such, needs the Government to implement it and put it into law, if it is to become effective⁵³⁷. Hence, in order to have any legislation put through and make it a final law within the USA, it would have to go through the legislative process of Congress, as is the case with any other law⁵³⁸. This, combined with the rights of states to include reservations to their ratification, leaves the SFRC and the State Department with the possibility of protecting the Constitution, and not letting any provisions within the CEDAW, which are against the Constitution be applicable. By concluding that the CEDAW hardly challenges the Constitution of the USA, the disadvantages of ratification become less visible, as the CEDAW would act as an addition to the rights stipulated within the Constitution and not as an overwriting law.

Human Trafficking

At the time of reauthorization of VAWA, President Obama also reauthorized another act important for the advancement of women’s rights – the Trafficking Victims Protection Act (TVPA)⁵³⁹. TVPA is considered the most comprehensive national legislation on the matter of combatting trafficking and helping victims of trafficking. Through the TVPA, the Government of the USA has defined human trafficking as the “recruitment, harboring, transportation, provision, or obtaining of a person for one of

⁵³⁵ The CEDAW, 1979

⁵³⁶ Wright, 2010

⁵³⁷ Blanchfield, 2011

⁵³⁸ Amnesty International, 2005

⁵³⁹ Jarrett, 2013

three purposes”⁵⁴⁰. The three purposes within the definition of trafficking are labor or services; commercial sex acts by use of force, coercion or fraud; or any commercial sex act with a person under the age of 18⁵⁴¹. The reauthorization of the TVPA is an indicator of the Government of the USA realizing that trafficking is a problem within its nation, which is also backed by the data collected by the Human Trafficking Reporting System (HTRS). Between 2008 and 2010, the HTRS opened 2515 cases of suspected trafficking within the USA. Out of these cases 82% were classified as trafficking for the purpose of sex labor, 11% were general labor trafficking, and 7% were unknown types of trafficking⁵⁴². Sex trafficking is generally associated with hostesses and strip clubs, truck stop prostitution, fake massage businesses, street prostitution, residential brothels, and escort services⁵⁴³. Though the general compilation of trafficking has sex trafficking as the main source of women’s rights violations, it has been discovered that labor cases are more likely to be addressed by federal agencies rather than sex trafficking. The discrepancy between the cases taken is 29% to 7%⁵⁴⁴, so even though sex trafficking cases are more normal from the HTRS, federal agencies are more likely to work with labor cases. A possible reason behind this that labor trafficking may be easier to discover and prove than is sex trafficking, as labor trafficking is primarily involving undocumented aliens (67%)⁵⁴⁵, which makes it easier for the federal authorities to prove that the workers are working illegally. Then it becomes possible to find documentation for the pay of the workers, and the possibility of finding that the workers are working under the conditions defined as trafficking. The percentage of sex trafficking victims who are American citizens is 83%⁵⁴⁶ and may be a little harder to discover, as the job description is harder to pinpoint than is a worker being forced to clean a house for 16 hours a day with little pay. Sex trafficking is a much less tangible area, as it may be harder to provide evidence for the trafficking victims being held for a “commercial sex act through the use of force, fraud, or coercion”⁵⁴⁷. This is because the evidence, which can be used in a case of labor trafficking, includes payment records, whereas sex is an

⁵⁴⁰ Banks & Kyckelhahn, 2011: 2

⁵⁴¹ Banks & Kyckelhahn, 2011: 2

⁵⁴² Banks & Kyckelhahn, 2011: 1

⁵⁴³ Polaris Project, 2013

⁵⁴⁴ Banks & Kyckelhahn, 2011: 1

⁵⁴⁵ Banks & Kyckelhahn, 2011: 1

⁵⁴⁶ Banks & Kyckelhahn, 2011: 1

⁵⁴⁷ Banks & Kyckelhahn, 2011: 2

act, which can be performed at the free will of any person without being paid. As such, the trafficking victim and everyone working around her denies her being forced into working, it may be considered a voluntary act to have sex with people, and this is not a crime.

In order for the Government to eliminate the victimization of women for the purpose of performing acts defined as trafficking, it has implemented the TVPA. The TVPA gives the President of the USA certain responsibilities in regards to the eradication of trafficking, including the task of increasing the protection of victims of trafficking, creating programs to educate people of the atrocities of trafficking etc.⁵⁴⁸.

Interestingly enough, the TVPA does not only address actions and responsibilities within the USA, as the Act also outlines the responsibility of the President of the USA to help eradicate trafficking internationally. Through the TVPA, the President of the USA shall create economic stipends for groups and organizations working to eliminate trafficking internationally and especially in states with high levels of human trafficking. One tool, which can also be used, besides the involvement of interest groups, is the media, as the creation of awareness campaigns and documentaries can provide the necessary information for people to consider their actions before travelling or buying services from others⁵⁴⁹. As such, the USA has not only pledged to end trafficking domestically through its reauthorization of the TVPA, but also to provide the assistance to end trafficking internationally.

Seen through a liberal point of view, this is done in order to provide the 'the greatest happiness for the greatest number'⁵⁵⁰. The state in this case provides a means to ensure security and order within the USA as well as internationally, proving that liberalism's negative liberty can be of use in the domestic as well as international sphere if applied without the need for power. Introducing media as a tool to eliminate trafficking internationally as well as domestically is also conducive to the ideas of liberalism as liberalism views people as being able to triumph through reason⁵⁵¹, therefore, the utilization of the media as a means to reach the inner good of the people can be explained by liberalism's idea of the human nature possessing powers so

⁵⁴⁸ The Trafficking Victims Protection Act 2013, 2013

⁵⁴⁹ The Trafficking Victims Protection Act 2013, 2013

⁵⁵⁰ Bentham, as quoted in Jackson and Sorensen, 2010:96

⁵⁵¹ Jackson & Sorensen, 2010: 97

strong, that action is taken. Furthermore, liberalists would view the actions of economic assistance to other states as an instrument to help curb the negative direction of trafficking. As trafficking is an international problem, as it occurs across borders, it is in the spirit of liberalism for the USA to provide the necessary assistance to other states, as cumulative progress is desirable within international relations⁵⁵².

Throughout this chapter, the USA's lack of ratification has been discussed as a means to compare a non-ratifying state to the three ratifying case studies. It has been found that the USA had much influence on the creation of the CEDAW. This in combination with the rapid signing of the Convention by President Carter made it look as if the USA were going to be a ratifying state. However, as events turned out, no president has been able to have the Convention ratified since. Some have tried, and the general reason behind the inability of the USA to ratify has been attributed to party politics within Congress, as conservative politicians as well as interest groups have been vocal in their opposition of the CEDAW. It has also been estimated that the USA has been unwilling to ratify the CEDAW due to the fear of infringements on state sovereignty, in particular in relation to the CEDAW Committee.

⁵⁵² Jackson & Sorensen, 2010: 97

Discussion

France, India, China and the USA have been analyzed in order to examine why states ratify the CEDAW and whether the Convention is effective. All four states signed the Convention at its opening in 1980, however, not all states have ratified and the ones that have, ratified at different intervals. The Communist state China ratified a couple of months after signing, and as the first of the case studies. France ratified in 1983, and 10 years later, in 1993, the CEDAW was ratified by India. The USA has never ratified despite several attempts, which is interesting as it is the only liberal democracy within the UN not to ratify. As such, it is in the company of 6 other states, arguably considered to be human rights violators, as it includes states as Iran and South Sudan. The difference in time of signature and time of ratification may, at times, seem long, but looking at the full list of ratifying state parties to the CEDAW, it becomes evident that it is not uncommon to ratify long after signature⁵⁵³. The reasons may be different from state to state, and can be explained by both realism and liberalism. Realists would argue that states should not enter into the Convention if unsure of the outcome in relation to state sovereignty and power. Therefore, some states may take longer to ratify, as they wish to make sure that the CEDAW is not conflicting with national legislation and state sovereignty.

Considering logic of consequentialism may prove difficult for some states in particular, due to their vast population size and the diversity within the state. China and India have the two largest populations in the world with great diversity and have experienced difficulties implementing and enforcing the CEDAW. Even though both states have implemented many aspects of the CEDAW, their main problem seems to be enforcement. The difficulties in enforcing the stipulation within the CEDAW are further highlighted when looking at a smaller state, such as France. Where India has declared its willingness to comply with articles within the CEDAW, it has still made declarations based on the notion of enforcement being difficult due to the vastness and diversity of the Indian population. China, on the other hand, has not commented on its population being a weakness in enforcement of the CEDAW, but the issue has been pointed out by the CEDAW Committee as a potential hindrance to enforcement. France on the other hand, the largest state in the EU, has a significantly smaller

⁵⁵³ United Nations Treaty Collection, n/d

population and has arguably had less difficulty implementing and enforcing the CEDAW. The ability of France to implement and enforce the articles within the CEDAW is interesting to examine in relation to its number of reservations and declarations, as France has started out with many reservations and declarations, and since removed several when it felt confident that they were covered by national law. However, it is still the state with the most reservations and declarations out of all the case studies. China and India have very few reservations and declarations, but still have problems implementing and, in particular, enforcing the CEDAW.

The many reservations and declarations by France may be a result of the level of commitment by France, and indicates that France is taking the stipulations within the CEDAW seriously. This is further supported by the idea of France making reservations to articles which it believes it is currently not able to fulfill, and as such, by making reservations, France is limiting the backlash of criticism. This is an argument supported by liberalism, as liberalism is a matter of “self-restraint, moderation, compromise, and peace”⁵⁵⁴. Hence, France has been showing self-restraint in its actions relating to the CEDAW as it has not wanted to act without the consent of its people, or at least without the people being able to keep up with the legislative changes. This is also in line with the liberal idea of the state being a necessary evil, with no more power than the people permit. If France had ratified with very little or no reservations, it could have been considered a way to decide for the people what is right and wrong, which means the state would have taken the power from the people and decided on their behalf.

The limited reservations and declarations by India and China are very likely a result of poorer infrastructure compared to that of France, and as such has resulted in India and China being less able to enforce the CEDAW in its national legislation. The two states are less established in the international arena and still have areas in which they are developing as opposed to France, which is developed, and has a high status in international relations. China is getting there, but India still has a way to go, which has been discussed in relation to its desire to be a permanent member of the Security Council, to which France, China and the USA belong.

⁵⁵⁴ Stanley Hoffmann as cited in Dunne, 2008: 110

Out of the four case studies, the USA and France are both liberal democracies and part of the West. Both states also signed the CEDAW shortly after its opening for signature, but where France chose to ratify the Convention after a while, the USA has still to do so. Two main reasons have been shown to affect the full participation of the USA: party politics and religious influence. Comparing the religious influence between the USA and France, it is possible to see that where France has been able to separate the Church and state, resulting in little conflict between politicians and religious figures, the USA has experienced adversity from religious groups when discussing the CEDAW. The only time France has had religious conflict in relation to national politics and the CEDAW was in relation to its ban of religious symbols in schools. Furthermore, the notion of party politics within the USA has proven less conducive to the ratification of the CEDAW as the Convention has at times been used as a tool to pit the two major parties against each other.

Both France and the USA have both signed the Convention, but in regards to the CEDAW, this is where the similarities stop, as the USA has not ratified but France has. Analysis has shown that one of the motives behind lack of ratification by the USA is due to religious beliefs conflicting with the stipulation within the CEDAW, indicating that the USA has been unable to separate church and state. France on the other hand, has put more focus on the separation of church and state, and as such has not mixed religion into its reasoning behind participation, and actions in relation to participation, e.g. RUDs.

The discussion of lack of ratification by the USA has been increased due to the ability of states to make reservations, understandings and declarations to articles. Arguably the USA should be able to make it easier on itself and get out of the company of the other 6 non-ratifying states, by ratifying the CEDAW with reservations, understandings and declarations. However, the internal structure does not allow for the USA to ratify as easily, as party politics is prevalent. Particularly the more conservative groups have proven detrimental to the lack of ratification by the USA, as conservatives believe the CEDAW to go against the values of the USA, which they base on Christian values. As such, the USA has been unable to separate church and state, as well as move past party politics and rivalry, making the political structure

less conducive to the ratification of conventions such as the CEDAW. It is interesting to compare this non-ratification of the CEDAW to that of the cases of e.g. India and China, which have both ratified, as these states have a weaker infrastructure and lower levels of general human rights than that of the USA, as a well-established liberal democracy. The fact that both India and China have ratified and not the USA indicates that China and India have a stronger motive to achieve improved status in the international community, where the USA may not feel as strong an incentive as it already is well asserted on the international stage as hegemon. However, as both India and China have problems enforcing their implementations of the CEDAW, it is arguably just the motives which have led them to ratify and not a strong wish to comply with the CEDAW as they believe in women's rights as a cause. In this relation, the motives of France to ratify the CEDAW could arguably be due to a more rights oriented approach, as it has made reservations to the CEDAW, which it has removed when it believed the national legislation was up to date. This indicates that France has been more oriented towards implementing the rights of the CEDAW for the greatest good for the greatest number, and not just to attain further power to improve status.

It is interesting to note the high prevalence of reservations to article 29.1 of the Convention, as all three ratifying state have made reservations to this article, and the USA has made a proposed declaration which states that the USA would not consider itself bound by article 29.1. All states are therefore excluded from the part of the CEDAW, which can be considered the governance aspect, making forced enforcement of the CEDAW near impossible, as other states as well as the CEDAW Committee are unable to dictate or bring other states before the ICJ. It can therefore be discussed how effective the CEDAW really is, as the only article which introduces measures of governance can be made reservations to, essentially making states able to go about implementing and enforcing the CEDAW as they please. This problem with 29.1 can arguably be best explained by use of realism, as it is a way for the states in our case study to maintain sovereignty and power.

In regards to 29.1, it is also interesting that where India made a reservation, China made a declaration to the article. This creates a debate on whether or not there is a difference between declarations and reservations. It would appear that there is no

apparent difference except the signal effect, as declarations seem less harsh and exclusive of the content of the article, whereas reservations signal a more definite exclusion of the content. Backing this is also the declarations India has made to some of the articles within the CEDAW, as the reasoning behind the declarations point to the notion that India accepts the validity of the articles, but does not consider the success of enforcement high due to India's vast and diverse population. As such, India has used declarations as a means to possibly seem less cynical than if reservations were made, but have also maintained the possibility of not adequately living up to the articles of the CEDAW. Looking at this from the perspective of 'logic of appropriateness', it can be argued that states base their decision of where to make declarations and reservations on what is appropriate for the state to obtain national interest. In the case of India it is likely that it has decided that making reservations based on vastness and diversity of population is not conducive to the wish of growing in the international community and increasing power.

The notion of declarations and reservations being pretty much the same can also provide some insight into the validity of the Convention as a whole, as states are left to make reservations and declarations to any article, which does not go against the general goal of the Convention. The notion of constructivism has been presented as it clarifies some of the issues relating to international conventions pertaining to as large a community as that of the UN. The diversity of the UN and participating states to the CEDAW includes having states with very different values, cultures, beliefs and perceptions working towards the same goal with the same articles to follow.

However, as each state has its own perception and understanding of situations, articles within the CEDAW are inevitably interpreted differently by states, leaving the implement and enforcement of the CEDAW vulnerable. With this in mind, it is possible that states enter into the CEDAW as a means to create and maintain social relationships with other states as a means to further national development and influence in international relations.

Another notion of importance is that of the state reports submitted to the CEDAW Committee. The states often do not keep the deadline of submitting a report every four year, which entails that the Committee receives many combined reports. This could be due to the bureaucratic elements of collecting the reports and finding the

right people to do it. The states examined in the analysis have all submitted combined reports at some point. These delayed and combined reports are arguably a sign that the states do not respect the CEDAW, which can be said to indicate that the states are not taking the aspect of reporting seriously.

Further, Globalization may turn out to be a contributing factor in the enforcement of the CEDAW, as the media has become more involved across borders, rights groups and NGOs are present in the member states and in the UN at Committee meetings. The pressure, which the media and NGOs can put on governments, can result in action arguably more so than can pressure from the CEDAW Committee, as the media in particular can highlight issues and broadcast stories worldwide. As such, states must be aware of how they are projected and how they conduct themselves in relation to women's rights and other areas. An example of the media highlighting abuse of women has been shown in regards to the violent rapes of women in India. With the increase in media attention NGOs and women's rights groups have started focusing further on what can be done in India to improve the rights of women. This can result in an increase in attention from the CEDAW Committee as well, as it receives shadow reports from NGOs and women's rights groups. As such globalization may contribute to the enforcement of the CEDAW.

One may also discuss the relevancy of discussing women's rights in states as China and India, as the two states arguably have problems implementing and enforcing basic human rights for its people. The fact that the two states have ratified the CEDAW is naturally a good sign, but it can be argued that the first step ought be to make sure the basic human rights are fulfilled before ratifying conventions on women's rights such as the CEDAW. This arguably indicates that China and India have had motives of ratifying the CEDAW concerning their status in the international community and concerning their power relations. Seen from this point of view, the CEDAW has arguably not been effective.

Conclusion

Since the opening of the CEDAW for signature and ratification many states have chosen to sign and ratify the Convention. But seeing as there is no clear governance of the CEDAW, the implementation and enforcement thereof is lacking. In the case of China and India the implementation of the Convention can be seen in many of the investigated areas of the analysis. It is however the overall enforcement which is lacking in the China and India. In China especially, a great deal of de jure measures have been implemented in compliance with the CEDAW, however the lack of enforcement is a problem.

It can be concluded that in the analysis of the four case studies the most useful tool to explain the actions of states was the theory of realism. This is based on the fact that in many of the areas investigated, realism could explain the motives behind the actions by applying either power relations, the struggle to preserve national sovereignty or limited sacrifice. Further, the idea of realism that international relations was a place of anarchy with no central authority proved relevant when analyzing the three states' reservations or declarations to article 29.1 of the Convention. As a result, it can be concluded that states often view international society as uncertain as there is no real over-arching governance. This hurts the effectiveness of the CEDAW as states will then be less likely to take the implementation and enforcement thereof seriously. Further, as the states themselves are opting out of the one governing aspect of the CEDAW, article 29, it can also be concluded that states would rather not have any governance of the Convention, as it could hurt them if arbitration or the ICJ was involved. This aspect shows that the motives behind state ratification are mainly due to national interests no matter if these interests are driven by wanting to implement women's rights because it fits into the national line of idea or if the interests are based on a pursuit of power by entering an international cooperation. The theory of liberalism was also useful in explaining many of the actions made by states by means of e.g. logic of consequentialism. Liberalism was useful in explain why France had ratified the CEDAW and explained many of its actions. The theory of constructivism can be concluded to be the less useful theory in our theoretical framework, as it was not as able to convincingly explain the actions of the four case studies in their

dealings with the CEDAW. The theory can and is off course applied because it can explain certain situations presented within our analysis.

Also, the notion of power politics can be said to be a factor, as India uses the CEDAW to be a part of a coalition of power while India itself is engaged in an international pursuit of power which can e.g. be seen in its wish to become a member of the UN Security Council. Also, as India states that it does not have the infrastructure to enforce the implemented measures of the CEDAW, it can also be concluded that implementing and enforcing women's rights as presented in the Convention is not the main priority behind ratification for India. Therefore, it can be concluded that India's motive behind entering into the CEDAW has been a pursuit for power in the international community.

The case of the USA is however special as it has not ratified the CEDAW. measures are in place which could be in accordance with the stipulations outlined within the CEDAW. The fact that the USA has not ratified, despite the fact that it is in accordance with the thought behind the Convention, can be concluded to be based on international power politics as well as internal political struggles between the Republican Party and Democratic Party. As such, the motive behind the USA's non-ratification is related to the fact that the USA has been unable to separate church and state. This causes problems in relation to the CEDAW as some American groups and individuals, primarily conservatives, are concerned that the CEDAW will interfere with the general religious lifestyle within the USA in regards to, amongst other things abortion and gender roles. Further, internal political disagreement in the USA can also be said to be a strong factor in why the state has not ratified the CEDAW.

France, on the other hand, has thoroughly stated its secularist position in the state and in regards to the CEDAW. In the analysis, it became apparent that even though realism could explain some of the actions of France, liberalism could explain most of them. Even though France also has issues with trafficking and domestic violence, the majority of its actions relating to these areas were explained by France trying to do the best for the greatest number. Further, the fact that France is founding member and great participant in the EU can also be said to be a strong factor in France's ratification of the CEDAW, as France is used to being a part of a bigger cooperation, involving many different states with many different motives. As such, the main

motives of France implementing the CEDAW can be concluded to be its interest in creating equality for its citizens as well as too participate in something bigger.

Finally, China has implemented a great deal of measures which are in compliance with the rights stipulated in the CEDAW. However, as China is not doing a very good job at enforcing the implemented measures the situation remains the same. In regards to the famous one-child policy, concerns expressed, by the Committee and HRIC, has not been heard by China, as it continues the policy to ensure its national interests. China therefore is putting its national interest before the women's rights expressed in the CEDAW. Wanting to return to its glory days, China is participating in many international cooperation like the CEDAW, as it is a way for it to continue to pursue power as to further reestablish itself in power politics. Therefore, it can be concluded that China's main motives behind ratifying the CEDAW is to enter the CEDAW as a step in its pursuit for power and other national interests.

The effectiveness of the CEDAW can be said to be good if one only examines the implementation of the rights stipulated in the CEDAW. As many measures have been introduced in our three ratifying case studies in regards to domestic violence, human trafficking and in areas relating to family relations, a great *de jure* equality is in place. The reporting requested of ratifying states also seems to be a measure to make the CEDAW effective. However, the notion that the deadlines for reports are rarely kept, which can be concluded to undermine the effectiveness as the Committee cannot keep a closer eye on the states' progress or lack thereof. Further, the fact that many measures implemented by ratifying states are not adequately enforced, if enforced at all, shows that states are not respecting the CEDAW. This is a strong hindrance in the effectiveness of the CEDAW, as *de facto* equality is rarely an aim for the states if they chose not to enforce.

It is further difficult to establish a clear causal relation between the CEDAW and the implementations in the states. However, seeing as it has been found a number of times that the states listen to the recommendation and comments made by the CEDAW Committee, causal relations between the CEDAW and the implementation in states can at least be strongly indicated.

Overall, it can be concluded that states' main motives behind ratifying the CEDAW differ much. However, the motives of attaining national interests through pursuit of power is a durable state motive but also the idea that states want to participate in a cooperation at state level to better equality for citizens can be concluded to be a motive for ratification. As an overall conclusion in regards to the effectiveness of the CEDAW, it can be stated that due to the lack of enforcement and lack of governance to make sure states enforce the rights stipulated within the Convention, the CEDAW is not effective.

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