
Judiciary Committee

HJM 4034

Brief Description: Urging adoption of a treaty fighting discrimination against women.

Sponsors: Representatives Kenney, Morrell, Hankins, Clibborn, Conway, Dickerson, McDermott, Chase, Haigh, Kessler, Wallace, Sommers, Linville, Skinner, Green, Holmquist, Dunn, Appleton, Schual-Berke, Hudgins, Upthegrove, Darneille, Santos, Ormsby, Woods and Roberts.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Urges the United States ratification of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women.
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Hearing Date: 1/25/06

Staff: Elisabeth Frost (786-5793).

Background:

Content of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): CEDAW defines the term "discrimination against women" as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or human rights and fundamental freedoms in the political economic, social, cultural, civil or any other field." States parties to CEDAW commit to eliminating all forms of discrimination against women.

Procedural background: In 1979 the United Nations General Assembly adopted CEDAW. The treaty entered into force in September 1981, after the twentieth country had ratified it. As of October 2005, 180 of the 191 member states of the United Nations have ratified CEDAW.

In addition to the original treaty, there is an Optional Protocol to CEDAW. It entitles individuals or groups of individuals to submit claims of violations of CEDAW. It also provides CEDAW with the power to inquire into grave or systematic violations of the Convention in States parties. The Optional Protocol contains an exhaustion requirement, meaning that CEDAW may not hear claims unless the claimant has exhausted local remedies. As of January 2005, 76 states had signed the Optional Protocol and 71 of those states had ratified it.

The power to conduct foreign affairs (including treaty negotiations) rests with the executive branch. The United States participated in the drafting of CEDAW and President Carter signed the treaty in July 1980.

While there is precedent for the executive branch ratifying a treaty independent of legislative approval (termed a "sole executive agreement"), most treaties are ratified by obtaining the advice and consent of 2/3 of the Senate. These treaties are termed "Article II treaties" and modernly, they first go to the Senate Foreign Relations Committee. If the Senate Foreign Relations Committee favorably passes the treaty to the United States Senate floor, a 2/3 majority vote is required for the Senate to approve ratification. Sometimes, the Senate will approve ratification of a treaty contingent upon the attachment of reservations, understandings or declarations (RUDs). Common RUDs include statements that it is the United States' understanding that the treaty is not "self-executing" (meaning Congress will have to pass implementing legislation in order for the treaty obligations to become domestic law), or for example, that the treaty has no effect on First Amendment rights. Ratification is completed by filing a copy of the signed treaty with the United Nations.

In September 1994 the Senate Foreign Relations Committee reported CEDAW out of committee (13-5 in favor, with one abstention), but CEDAW did not get a vote on the Senate floor. Senate rules required that the treaty revert back to the committee in the next Congress. In early 2002 the State Department notified the Senate Foreign Relations Committee that CEDAW was "generally desirable and should be ratified." In July 2002 CEDAW was again reported out of the Senate Foreign Relations Committee (12-7 in favor), but did not receive a vote on the Senate Floor. The Administration has not yet taken a formal position on the treaty. As of January 2006, the Senate Foreign Relations Committee had not yet set its agenda for the 2nd session of the 109th Congress, which is scheduled to begin on January 31, 2006.

The legislatures of the following states have endorsed United States ratification of CEDAW: California, Delaware, Hawaii, Iowa, Maine, Massachusetts, New Hampshire, New York, North Carolina, Rhode Island and Vermont. The Connecticut and Wisconsin Senates and the House of Representatives in Florida, Illinois and South Dakota also have endorsed U.S. ratification and in April 1998, San Francisco implemented CEDAW provisions and appropriated funds to monitor compliance. State governments are forbidden by the Constitution from entering into treaties themselves; thus, the ultimate decision of whether the United States Senate hears CEDAW and has an opportunity to approve ratification rests with the chair of the Senate Foreign Relations Committee.

Consequences of ratification: Under international law, ratification of CEDAW obliges a party state to take steps to eliminate gender based discrimination against women and requires that the state submit a report, at least once every four years, to the Secretary General of the United Nations detailing steps taken to that end. While the United States is not a party to the treaty, and thus not bound to the substantive requirements of the treaty, under international law the signing of a treaty (even without ratification) binds a state to do nothing that contradicts the terms of the treaty.

Under domestic law, the implications of ratification are slightly different than under international law. United States courts, in evaluating whether by becoming party to a treaty the United States has created individual rights under that treaty, examines whether or not the treaty is "self-executing." If it is determined that the treaty is not self-executing, then the treaty alone does not

create domestic law – Congress must pass implementing legislation in order for individuals to have rights under the treaty. Increasingly, whether or not a treaty is self-executing is determined by looking to the RUDs requested by the Senate as a requirement of ratification.

Summary of Bill:

The Washington State Legislature urges the President of the United States and the Secretary of State to put the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) amongst their highest priorities in order to accelerate the treaty's passage to ratification by the Senate. The Legislature urges approval of CEDAW by the full Senate, with the goal of United States ratification of CEDAW.

Appropriation: None.

Fiscal Note: Not requested.